

**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 5 of 2025

With

C.R.A. (DB) 41 of 2025

With

C.R.A. (DB) 42 of 2025

With

CRAN 1 of 2025

The State of West Bengal

-Vs-

Rahaman Ali & Ors.

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

*For the Appellants in
CRA (DB) 41 of 2025* : *Mr. Arijit Ghosh
Ms. Angana Rakshit
Ms. Sudipa Ghosh
Ms. Aisikta Das*

*For the Appellants in
CRA (DB) 42 of 2025* : *Mr. Kumar Shantanu
Ms. Afsana Khatun
Ms. Nikita Paul
Mr. Taiab Sahadat
Mr. Rakesh Roy
Ms. Disha Sanyal
Mr. Parthib Bhowmik
Ms. Sonali Barman*

*For the appellant in
CRA (DB) 41 of 2025
appointed by the
CHCLSC*

: *Mr. Abhishek Sarkar*

Reserved On : 06.03.2026.

Pronounced On : 17.04.2026

Rajarshi Bharadwaj, J.:

1. The Death Reference and the two appeals are taken up for analogous hearing as they emanate out of the same impugned judgment and order dated July 09, 2025 and the order of sentence dated July 10, 2025 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. 83 of 2020. By the said judgment, the Learned Trial Court found the accused persons herein the appellants namely Rahaman Ali, Jamirul Haque and Tamirul Haque guilty of the offences punishable under Sections 363/365/376DA/302/201/120B of the Indian Penal Code (hereinafter referred to as 'IPC') read with Section 6 of the POCSO Act.

2. By the order of sentence dated July 10, 2025, the Learned Trial Court sentenced the appellants Rahaman Ali, Jamirul Haque and Tamirul Haque to death for the commission of the offence described under Section 5(g)(j)(iv) of the POCSO Act punishable under Section 6 of the said Act, directing that they be hanged by the neck till death in accordance with law.

3. The appellants herein Rahaman Ali, Jamirul Haque and Tamirul Haque were further sentenced to suffer rigorous imprisonment for seven years each and to pay a fine of Rs. 5,000/- each, in default to suffer rigorous imprisonment for one month each, for the offence punishable under Sections 120B/201 of the IPC.

4. The appellants were also sentenced to suffer rigorous imprisonment for five years each and to pay a fine of Rs. 5,000/- each, in default to suffer rigorous imprisonment for one month each, for the offence punishable under Section 365 of the IPC.

5. In addition, thereto, the one of the appellants, Rahaman Ali was further sentenced to suffer rigorous imprisonment for three years and to pay a fine of Rs. 5,000/-, in default to suffer rigorous imprisonment for one month, for the offence punishable under Section 363 of the Indian Penal Code.

6. At the trial, the case of the prosecution was that, on August 11, 2020, the victim's father lodged a missing complaint at Rajganj PS, stating his minor daughter had disappeared from 7:00 p.m. the previous day despite exhaustive local searches. This prompted registration of Case No. 111/2020 under Sections 363/365 IPC.

7. On inquiries made by the ASI, including the victim's mother's mobile CDR, yielded a tip about the appellant Rahaman Ali moving suspiciously with a girl. On summoning and interrogating, Rahaman Ali disclosed his phone number, its CDR revealed prior calls with the mother of the victim. His unsatisfactory responses led to his arrest. Thereafter, he confessed kidnapping the victim from Lal School on his motorcycle, taking her to multiple sites—including Jamirul Haque's and Tamirul Haque's homes—where all three repeatedly raped her. On August 15, 2020, Rahaman and Jamirul raped and murdered her, hiding the body in one Kajibar Rahaman's septic tank.

8. Jamirul was arrested on Rahaman's statement. The body was recovered from the tank in their presence and that of family members, identified by the father. Thereafter, Section 6 POCSO Act was added. Inspector Dipojjal Bhowmick took charge on August 21, 2020, arresting Tamirul, remanding all accused and reconstructing the crime with independent witnesses. Recoveries included Rahaman's phone, motorcycle, apparel, bottles and scissors, plus items from co-accused. CDRs and tower data confirmed their presence at

scenes. Witnesses were examined u/s 161/164 CrPC, postmortem, potency tests, FSL reports and age proof were obtained.

9. The First information report (hereinafter referred to as 'FIR') was investigated into and a charge sheet was submitted on conclusion of the investigation for offences under Sections 363/365/302/201/376DA/120B of the IPC and Sections 6 of the POCSO Act vide charge sheet No. 201 of 2020 dated November 12, 2020 against the appellants.

10. Charges against the appellant in CRA(DB) no. 42 of 2025 being Rahaman Ali were framed under Sections 363/365/302/376DA/201/120B of the IPC and under Section 6 of the POCSO Act and against the appellants being Jamirul Haque in CRA(DB) no. 42 of 2025 and Tamirul Haque in CRA(DB) no. 41 of 2025 were framed under Sections 365/302/376DA/201/120B of the IPC and under Section 6 of the POCSO Act. The appellants pleaded not guilty in respect of the charges and claimed to be tried.

11. At the trial, the prosecution examined 27 witnesses. The prosecution relied upon various documentary and material exhibits to bring home the charges as against the appellant. On conclusion of the evidence of the prosecution, the appellant was examined under Section 313 of the Criminal Procedure Code (hereinafter referred to as 'CrPC'). The appellants during such examination claimed to be innocent and declined to adduce any defence witness.

12. Upon completion of the trial, the learned Additional Sessions Judge, by judgment and order dated July 09, 2020, convicted and sentenced the appellants in accordance with law.

13. The respective Learned Counsel for the appellants have 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.

14. The Learned Counsel appearing for the appellants submits that the impugned judgment and order of conviction dated July 10, 2025, whereby the learned Trial Court found the appellants guilty under Sections 302, 201, 363, 376D and 120B of the IPC read with Section 6 of the POCSO Act and imposed the sentence of death, is liable to be set aside as being contrary to law and the evidence on record. It is submitted that the entire prosecution case is founded on circumstantial evidence, which is neither complete nor consistent and is vitiated by serious evidentiary lacunae, procedural irregularities and reliance on inadmissible material, thereby failing to satisfy the settled principles laid down in **Sharad Birdhichand Sarda v. State of Maharashtra (1984) 4 SCC 116** and **Kali Ram v. State of H.P. (1973) 2 SCC 808**.

15. Learned counsel contends that the alleged 26-second voice recording, which constitutes a central link in the prosecution chain, is wholly inadmissible in evidence in the absence of a certificate under Section 65B of the Evidence Act, as well as in the absence of any forensic authentication or proof of proper seizure and production before the Court. Reliance is placed on **Anvar P.V. v. P.K. Basheer (2014) 10 SCC 473** and **Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal (2020) 7 SCC 1** to contend that such certification is a condition precedent for admissibility. It is further submitted that in the absence of any CFSL report or voice comparison, the oral testimony of PW-1 identifying the voice of appellant Rahaman Ali lacks evidentiary value, attracting an adverse inference under Section 114(g) of the Evidence Act in terms of **Tomaso Bruno v. State of U.P. (2015) 7 SCC 178**.

16. It is further submitted that the testimonies of PW-1 and PW-2 are fraught with material contradictions and are partly based on hearsay. In particular, the alleged telephonic information received from one Arma Begam has not been substantiated by examining the said witness or by producing any call detail records. The prosecution has thus failed to establish a consistent and reliable chain of circumstances, as mandated in **Sharad Birdhichand Sarda (supra)**.

17. Learned counsel further submits that the investigation suffers from grave defects. The Investigating Officers have failed to conduct a Test Identification Parade, to collect and prove scientific evidence such as DNA or FSL reports and to examine several material witnesses cited in the charge-sheet. The alleged recoveries are also rendered doubtful in the absence of independent witnesses and a properly established chain of custody. It is contended that the scope of admissibility under Section 27 of the Evidence Act is limited to the fact discovered, as held in **PulukuriKottaya v. Emperor AIR 1947 PC 67** and the lapses in investigation have caused serious prejudice to the defence, warranting benefit of doubt in light of **Karnel Singh v. State of M.P. (1995) 5 SCC 518**.

18. It is also contended that the medical evidence is inconclusive in nature. Owing to the advanced stage of decomposition of the body, the post-mortem report does not conclusively establish the cause of death or the allegation of sexual assault and the medical opinion remains tentative in the absence of forensic confirmation. Reliance is placed on **Kansa Behera v. State of Orissa (1987) 3 SCC 480** to contend that such opinion cannot form the sole basis of conviction and on **State of Haryana v. Bhagirath (1995) 5 SCC 96** to submit that medical evidence is merely corroborative in nature.

19. The learned counsel further submits that the “last seen together” theory, as sought to be relied upon by the prosecution, is weak and unreliable, as the witnesses have failed to clearly identify either the victim or the accused, and the time gap between the alleged sighting and the occurrence remains unexplained. In this regard, reliance is placed on **State of Goa v. Sanjay Thakran (2007) 3 SCC 755** to contend that the theory requires proximity of time so as to exclude the possibility of third-party intervention, which is absent in the present case. Consequently, the chain of circumstantial evidence remains incomplete and fails to exclude every hypothesis consistent with the innocence of the appellants, as required under **Sharad Birdhichand Sarda (supra)**.

20. Lastly, it is submitted that even assuming the prosecution case to be proved, the imposition of the death penalty is wholly unjustified, as the learned Trial Court has failed to undertake a proper balancing of aggravating and mitigating circumstances. Reliance is placed on ***Bachan Singh v. State of Punjab (1980) 2 SCC 684*** to contend that death penalty may be imposed only in the “*rarest of rare*” cases upon individualized sentencing, which has not been adhered to in the present case.

21. On the aforesaid grounds, it is prayed by the learned Counsel that the impugned judgment of conviction and order of sentence be set aside and the appellants be acquitted of all the charges.

22. The Learned Counsel appearing for the State submitted that the appellants have been rightfully convicted under Sections 363, 365, 376DA, 302, 201 and 120B of the IPC, read with Section 6 of the POCSO Act. The minor victim, aged over 15 years, went missing on August 10, 2020, whereafter investigation revealed that the appellant kidnapped her, subjected her to sexual assault, murdered her and concealed the dead body in a septic tank. Pursuant to disclosure statements by the appellants, material objects including wearing apparels, mobile phones, motorcycle and other incriminating articles were recovered, along with the dead body. The FIR, being Rajganj Police Station Case No. 111 of 2020 dated August 11, 2020, was registered on the complainant's written report seeking strict action.

23. Though the case rests on circumstantial evidence, the learned Counsel submits that the prosecution successfully proved a complete chain consistent only with the hypothesis of guilt, excluding every hypothesis of innocence. He highlighted five key circumstances: the victim last seen alive with the accused, the accused leading to the discovery of the dead body, recovery of incriminating materials, call detail records (CDR), tower location evidence and medical evidence of homicidal death.

24. On the 'last seen' theory, the learned counsel pressed it as the crucial link, established through independent witnesses like PW-7, who saw the accused with the minor girl travelling together, PW-10, who identified them at his shop, PW-11, being the cousin of the victim who linked them, PW-14 and PW-15, who saw the accused with the helmeted girl. These testimonies withstood cross-examination, with proximity in time and place, from evening sightings on August 10, 2020 to post-mortem time of death. Therefore, ruling out third-party intervention. Invoking Section 106 of the Indian Evidence Act, 1872 (hereinafter referred to as 'Evidence Act') the learned Counsel noted the appellants' failure to explain their parting with the victim, corroborated by recoveries, CDR and concealment conduct.

25. The learned Counsel for the State submits that the discovery of the dead body constitutes the most vital and clinching link in the chain of circumstances. It is contended that the appellants, namely Rahaman Ali and Jamirul Haque, while in police custody, voluntarily disclosed the location of the septic tank at the residence of Kajibar Rahaman and pursuant thereto led the police authorities and independent witnesses to the said place, wherefrom the dead body was recovered. Such disclosure, duly proved through the testimonies of PW-5 and PW-6 as well as PW-1 to PW-3, squarely attracts the provisions of Section 27 of the Evidence Act and establishes that the accused were in exclusive knowledge of the place of concealment. This, according to the learned Counsel, clearly demonstrates a conscious attempt on the part of the accused to screen the offence, thereby attracting the rigours of Section 201 of the IPC.

26. It is further submitted that the recoveries effected in the present case lend substantial corroboration to the prosecution version. Relying upon the testimony of PW-27, Inspector Dipojjal Bhowmick and Exhibit-26, it is submitted that several incriminating articles, including the mobile phone, motorcycle, red vest/T-shirt used for gagging, wearing apparels, plastic bottles recovered from near Chewai bridge, scissors allegedly used for cutting hair and

a red helmet, were seized pursuant to the disclosures made by the accused persons. The said materials, marked as Material Exhibits VIII onwards and supported by the testimony of PW-18 and Exhibit-13, form an unbroken chain linking the accused to the commission of the crime as well as to the subsequent destruction of evidence. The preparation of sketch maps, being Exhibits-27 and 29 to 31, is stated to have ensured transparency in the investigation and to have further established the movements of the accused in relation to the place of occurrence and disposal, which remains wholly unexplained by the defence.

27. The learned Counsel for the State further relies upon the Call Detail Records as objective and scientific corroboration of the prosecution case. It is submitted that the CDR analysis reveals repeated telephonic communication between the appellant Rahaman Ali and the mother of the victim prior to the incident, as deposed to by PW-14 and PW-15. Moreover, the tower location data corresponding to the mobile phones of the accused, marked as Material Exhibits III, IV and XII, places them at or near Sanyasipara School, Fatapukur, Chewai River and other relevant locations during the period from August 10, 2020 to August 15, 2020, thereby aligning with the prosecution's reconstruction of events. The failure of the appellants to offer any explanation in their examination under Section 313 of the CrPC is, it is submitted by the learned Counsel, an additional link which fortifies the chain of circumstances against them.

28. Adverting to the medical evidence, the learned Counsel submits that the testimony of PW-25, one Dr. Amitabha Basu, along with the post-mortem report, unequivocally establishes that the death of the victim was homicidal in nature, caused by mechanical asphyxia. Despite the state of decomposition, several ante-mortem injuries were noted, including compression injuries on the lips, bruises on the thighs and limbs, fracture of the nasal bone, uterine discharge and haemorrhages in the lungs, which, according to the prosecution, indicate sexual assault accompanied by brutal violence. It is further submitted

that the medical findings are consistent with the prosecution narrative of gagging, supported by the recovery of the red vest/T-shirt, and that the potency tests conducted confirm the capability of the accused to commit the alleged offence.

29. On the question of sentence, the learned Counsel submits that the present case falls within the category of the '*rarest of rare*' cases warranting the highest degree of punishment. Emphasising the tender age and vulnerability of the victim, the nature of the gang assault, the brutality of the act and the subsequent concealment of the body, it is submitted that the aggravating circumstances overwhelmingly outweigh any conceivable mitigating factors. The existence of criminal conspiracy under Section 120B of the IPC, the element of premeditation and the absence of remorse on the part of the accused are stated to further aggravate their culpability. Placing reliance upon the principles as laid down in ***Bachan Singh (supra)***, the learned Counsel submits that either the sentence of death or in the alternative, imprisonment for life without the possibility of remission is fully justified. It is further contended that the post-offence conduct of the accused and the psychological assessment indicating a continuing threat to society reinforce the need for imposition of the severest penalty.

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

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

- i.** PW-1, being the de facto complainant, the father of the victim girl, deposed that on 10.08.2020 at about 7:00 p.m. his daughter went missing from their house. Despite making searches in nearby places and contacting relatives over phone, her whereabouts could not be traced. On the following morning, he went to Rajganj Police Station and lodged a

written complaint regarding the missing of his daughter, which was drafted by one Gobindo Basak as per his instruction and information and after being read over and explained to him, he put his signature thereon. PW-1 further stated that upon checking his mobile phone he found a voice recording of about 26 seconds wherein one person, whom he identified as the appellant Rahaman Ali, was heard asking the victim girl to come to Teesta Canal where he was waiting with a motorcycle. Upon hearing the recording, he immediately informed the police about the same. He further deposed that after three to four days his niece, herein PW 11, received a call on her mobile phone wherein the caller claimed to be the victim girl speaking from Chaterhat, but the call got disconnected. Acting on such information, PW-1 along with his brother one Manirul Islam and other neighbours went to Chaterhat in search of the victim girl but failed to trace her. PW-1 further deposed that after a few days the police called him to the police station and thereafter took him along with some neighbours to Pradhanpara near the septic tank of the house of one Kajibur Rahaman. At that place he noticed a police vehicle wherein all the appellants were present and they pointed out the said septic tank situated near a bamboo grove. Thereafter, sweepers brought by the police opened the septic tank and a decomposed dead body of a girl was recovered therefrom, which PW-1 identified as the body of his daughter. He further stated that the police held inquest over the dead body in his presence and he put his signature on the inquest report. Subsequently, the dead body was sent for post-mortem examination and after the post-mortem the body was handed over to the family members for last rites. PW-1 also stated that the police seized his Lava model keypad mobile phone containing the voice recording as well as the birth certificate of the victim girl under a seizure list on which he signed. During trial, PW-1 identified the accused persons present in Court.

- ii. PW-2, deposed that the de facto complainant is her husband and the victim girl (since deceased) was her eldest daughter, aged about 15 years at the relevant time and a student of Class X. She stated that on the date of the incident, at around 7:00 p.m., her daughter was standing in front of their house. After 15–20 minutes, she could not find her and searched for her at a nearby friend's house but in vain. Thereafter, she informed her husband and both of them searched for the victim in the locality and contacted relatives over phone, but she remained untraced. Due to late hours and heavy rain, they returned home. The next morning, they again searched at various places but failed to locate her. She further deposed that her husband lodged a complaint at Rajganj Police Station. Subsequently, her niece herein PW11 received a phone call from an unknown number, wherein the caller, identified as the victim girl, informed that she was at Chaterhat. During the conversation, the phone was allegedly snatched from the victim and the call got disconnected. Upon receiving this information, her husband, along with local people, went to Chaterhat but could not find the victim. PW2 stated that after three to four days, the police informed her husband about the recovery of a dead body and called him for identification. Her husband, along with local persons, went to Pradhanpara, where all the appellants were present. She learned from her husband that the appellants showed a septic tank from which the dead body of the victim girl was recovered and her husband identified the body as that of their daughter. Thereafter, the body was sent for post-mortem examination and subsequently handed over to them for the last rites. PW2 identified the accused persons herein the appellants in Court. During cross-examination, PW2 admitted that she had not personally seen the accused persons before the incident and had come to know their names from her husband. She further admitted that she did not accompany her husband for the identification of the dead

body and that her knowledge regarding the recovery of the body and the presence of the accused persons was based on what she had been told by her husband.

- iii.** PW-3, deposed that he knew the de facto complainant and the deceased victim. On the evening of the incident, the victim's mother came to his house searching for her daughter, who remained untraced despite efforts. He accompanied the victim's father to lodge a missing complaint. He further stated that the victim's cousin allegedly received a call indicating the victim was at Chaterhat, but she could not be found. He stated that police later recovered the victim's dead body from a septic tank at Pradhanpara at the instance of the appellants, which was identified by her father. He denied material contradictions in cross-examination.
- iv.** PW-4, a Panchayat member acquainted with the de facto complainant and the deceased, deposed that upon the victim's disappearance on August 08, 2020, he was informed by her family and later accompanied them to the police station. Acting on police information, he proceeded with others to Pradhanpara, where the accused led them to a septic tank from which the dead body of the victim was recovered and identified by her father. He witnessed seizure of articles, including a mobile phone and school certificate and signed the seizure list. He identified the appellants in court and affirmed his presence during the recovery proceedings.
- v.** PW-5, a sweeper by profession, deposed that on a day in 2020, at about 5.00–5.30 p.m., police requested him to accompany them to Pradhanpara, where a dead body was suspected to be lying in a septic tank. He, along with his uncle, proceeded to the spot in a police vehicle. In darkness, upon indication by persons present, the septic tank was opened and the dead body of a girl was recovered therefrom. PW5, with others, removed the body, which was partially decomposed, washed it

and transported it to Jalpaiguri Sadar Hospital. He affirmed his statement under Section 164 CrPC was voluntary and untutored.

- vi.** PW-6, a sweeper by profession, deposed that upon being called by the police, he proceeded to the place of occurrence at Pradhanpara, where a septic tank near a bamboo grove was indicated as containing a dead body. In the presence of police, he along with his nephew herein PW5 removed the cover and recovered the body of a girl from inside the septic tank. The body was thereafter cleaned, wrapped and transported to Jalpaiguri Morgue for post-mortem as per police direction. He affirmed that his statement under Section 164 Cr.P.C. was recorded by the Judicial Magistrate as per his version. Despite minor omissions, his evidence regarding recovery remained unshaken.
- vii.** PW-7, a cook at Raja Hotel for 30 years, deposed that about three to four years prior to the day of this deposition, i.e., September 26, 2024, a regular customer arrived on a motorcycle with a minor girl whose face was partly covered. On instructions of the owner, he served them meat and rice. He identified the appellant Rahaman Ali as that customer and confirmed police interrogation thereafter.
- viii.** PW-8, deposed that he knew the appellant Rahaman Ali as his neighbour and identified him in Court. About four years ago at 7:30 p.m., police from Rajganj P.S. took him to the accused's house, where, in his presence, a mobile phone was recovered from under the bed. He stated that, upon being questioned by police, the accused confessed that he, along with Jamirul Haque, had killed the victim girl and concealed her body in a septic tank. He proved his LTI on the seizure lists and identified the seized mobile phone.
- ix.** PW-9, deposed that appellant Rahaman Ali, his neighbour, was identified in Court. About four years prior, police from Rajganj P.S. took him to the accused's house, where a mobile phone was recovered from beneath the

bed cover in his presence. He signed the seizure list and identified the seized mobile and his signature on the label. He further stated that the appellant disclosed before police that he, along with Jamirul Haque, murdered the victim and concealed the body in a septic tank. In cross-examination, he denied all material contradictions.

- x.** PW-10, proprietor of 'Rahul Clothing Stores' at Rajganj Market, deposed that about four days prior to police inquiry, the victim visited his shop and purchased a top, pant and raincoat, accompanied by a male person. Upon being shown the photograph, he identified the victim. He further unequivocally identified the appellant Rahaman Ali, his neighbour, as the same person who had accompanied the victim to his shop.
- xi.** PW-11, deposed that prior to her marriage she resided at Lal School, Balabari under P.S. Rajganj and the victim was her cousin. On August 10, 2020, the victim was found missing and despite search, she could not be traced. On August 12, 2020 at about 7:30 a.m., PW11 received a call on her father's mobile phone from the victim, who stated she was with the accused Rahaman Ali; however, the phone was snatched and Rahaman Ali informed PW11 that 'mohar' had been completed, that his family had accepted the victim and disclosed their location at Chaterhat. PW11 immediately informed the complainant's family, who searched the said place but failed to locate them. On August 20, 2020, police informed that the victim had been gang raped and murdered. PW11 proved her statement under Section 164 Cr.P.C. and denied all suggestions of tutoring or false implication.
- xii.** PW-12, deposed that he knew the appellant Jamirul Haque, his neighbour and identified him in Court. He stated that police, in his presence, recovered a mobile phone and wearing apparels from the appellant's house and seized them under a seizure list dated August 24,

2020, bearing his signature. In cross-examination, he admitted he stood outside and was unaware of the exact place of recovery.

- xiii.** PW-13, deposed that he knew the appellant Jamirul Haque, his neighbour and identified him in Court. He stated that, on police request, he accompanied them to the accused's house, where a mobile phone and wearing apparels were seized in his presence. He proved his signatures on the seizure list and labels and identified the seized articles.
- xiv.** PW-14, deposed that appellant Jamirul Haque, his neighbour, was with him and his brother near a pond when a man and a helmeted girl arrived at Jamirul Haque's house on a motorcycle. Jamirul Haque left, stating his friend Rahaman had come. Later, PW14 learnt the girl was raped and murdered. He proved his statement under Section 164 Cr.P.C. and denied tutoring or false implication.
- xv.** PW-15, deposed that the appellant Jamirul Haque, his neighbour, was with him and his brother near a pond 4-5 years ago when a boy and a helmeted girl arrived at Jamirul's house on a motorcycle. Jamirul left stating his friend Rahaman had come. Later, he learnt from locals about the girl's rape and murder. He identified Jamirul in Court.
- xvi.** PW-16, deposed that the victim girl, daughter of his neighbour, went missing on August 10, 2020, whereafter a missing diary was lodged and search efforts failed. He stated that appellants Rahaman Ali and Jamirul Haque, upon arrest, disclosed at the police station in his presence their involvement in kidnapping, gang rape, murder and concealment of the body in a septic tank, and he identified them in Court.
- xvii.** PW-17, deposed that he is a neighbour of the complainant and knew the victim girl, who went missing on August 10, 2020. Despite local searches, she remained untraced, following which a missing diary was lodged. He stated that within a few days, the appellants namely Rahaman Ali and Jamirul Haque were apprehended and in his presence at the police

station, confessed to kidnapping, gang rape and subsequent murder of the victim, and concealing her body in a septic tank. He identified the accused in Court. During cross-examination, he maintained that the accused made voluntary disclosures before him at the police station and denied all suggestions disputing such confession or his credibility.

xviii. PW-18, deposed that in the latter part of August, 2020, at about 4:30–5:00 p.m., police arrived at his residence and took him to the bank of river Chewai. There, in the presence of police and others, the appellant being Rahaman Ali disclosed his identity and confessed to having kidnapped, raped and murdered the victim girl and to concealing her body in a septic tank. He further stated that to suppress the victim's identity, Rahaman Ali had cut her long hair using a scissor and discarded both the hair and the scissor near the river. Pursuant to such disclosure, the accused led the police and witnesses to the riverbank and recovered the scissor from beneath the sand, which was seized under a proper seizure list bearing PW18's signature and thereafter was identified in Court as Material. PW18 further stated that police recovered control earth from a place near a tea garden, alleged to be the site of the offence and seized the same under another seizure list signed by him. He also witnessed seizure of empty liquor bottles from the vicinity. He identified the appellants in Court and denied all suggestions of false implication or fabricated seizure.

xix. PW-19, deposed that in August, 2020, he was called by police near the Chewai river bridge where he found the appellant Rahaman Ali, police personnel and local witnesses present. In his presence, Rahaman Ali disclosed that he, along with Jamirul Haque, had kidnapped, raped and murdered the victim girl and concealed her body in a septic tank, further stating that he had cut and disposed of her hair in the river. Pursuant to such disclosure, police recovered articles from the river bank and

collected control earth from the place of occurrence. PW19 witnessed the seizures and proved his signatures on the seizure lists. He also identified the appellants in Court.

- xx.** PW-20, deposed that in 2020, police took him to the house of co-villager Rahaman Ali, accompanied by his brother Zakir Ali and Kabir Haque. From the verandah, police seized a red helmet in his presence and he signed the seizure list. Rahaman Ali identified the helmet as his and disclosed before them that he had taken the victim on his motorcycle wearing it and along with accused Jamirul and Tamirul, committed gang rape and murdered her, thereafter concealing the body in a septic tank. In cross-examination, PW20 stated he could not recall exact dates but denied suggestions that no such disclosure or seizure took place.
- xxi.** PW-21, deposed that in 2020, police took him and co-villagers to the house of Rahaman Ali, whom he identified in Court. In his presence, police seized a red helmet from the verandah and he signed the seizure list. He stated that Rahaman Ali identified the helmet as his and disclosed before them that he had taken the victim on his motorcycle and along with accused Jamirul and Tamirul, committed gang rape and murdered her, subsequently concealing the body in a septic tank. In cross-examination, he denied all suggestions of false implication or fabrication of seizure and maintained the truthfulness of his statement.
- xxii.** PW-22, deposed that in 2020, police took him, along with his brother Md. Taher Ali and co-villager Kabir Haque, to the house of appellant Rahaman Ali, whom he identified in Court. From the verandah, police seized a red helmet in his presence and he signed the seizure list. He stated that Rahaman Ali disclosed before them that he had taken the victim on his motorcycle and along with co-accused Jamirul and Tamirul, committed gang rape and murder, thereafter concealing the body in a septic tank. In cross-examination, he affirmed this disclosure.

- xxiii.** PW-23, deposed that the appellant Rahaman Ali, his neighbour, was identified in court. Approximately four years prior, in the evening, police brought him to Rahaman Ali's house, where, in his presence, a red Hero Honda Super Splendor motorcycle, a full-sleeve T-shirt and a black trouser were recovered at the instance of the accused. He further stated that Rahaman Ali disclosed before them that he had kidnapped, raped and murdered the victim and concealed her body in a septic tank. In cross-examination, he denied suggestions of false implication and maintained that the recovery and disclosure were made in his presence.
- xxiv.** PW-24, a retired Medical Officer, deposed that on September 15, 2020 he was serving as a pathologist at Sadar Hospital, Jalpaiguri. On that day, in connection with Rajganj P.S. Case No. 111/2020, he medically examined the accused persons, namely Jamirul Haque, Rahaman Ali and Tamirul Haque. After conducting the requisite examinations, he prepared capability test reports in his own handwriting, bearing his signature and official seal, opining on their physical capability. He identified the said reports in Court, which were marked as Exhibits 18, 19 and 20 respectively. In cross-examination, he admitted that he had not mentioned the date alongside his signature on the reports.
- xxv.** PW-25, an Assistant Professor in the Department of Pathology at Jalpaiguri Government Medical College and Hospital, deposed that on August 21, 2020, while serving as Medical Officer (Pathologist) at Sadar Hospital, Jalpaiguri, he was part of a duly constituted medical board comprising himself and two other doctors to conduct the post-mortem examination in connection with Rajganj P.S. Case No. 111/2020. The dead body, identified by a police constable, was in an advanced stage of decomposition. Upon examination, multiple ante-mortem injuries were noted, including lip indentations, bruises on the upper limb and thighs, and fracture of nasal cartilage. Internal findings revealed bloody

discharge from the uterus and severe pulmonary congestion with petechial hemorrhages. The cause of death was opined to be mechanical asphyxia resulting from ante-mortem injuries. Injuries on the thighs indicated sexual assault. In cross-examination, he stated that due to decomposition, certain findings were inconclusive, though all injuries were recent in nature.

xxvi. PW-26, a Sub-Inspector of Police attached to Maynaguri Police Station, deposed that on August 11, 2020 he was posted as ASI at Rajganj Police Station when a missing diary lodged by the victim's father was registered as Rajganj P.S. Case No. 111/2020 under Sections 363/365 IPC. The investigation was assigned to him. During the investigation, he collected call detail records (CDR) of the victim's mother and upon suspicion, also of the appellant Rahaman Ali. On comparison, he found repeated telephonic contact between them, leading to the arrest of Rahaman Ali. Upon interrogation, the appellant disclosed that he had kidnapped the victim, committed rape at multiple locations and along with co-accused Jamirul Haque, murdered her and concealed the body in a septic tank. Acting on the disclosure statements of the accused persons, PW26 recovered the dead body from the septic tank of one Kajibar Rahaman, conducted an inquest and forwarded the body for post-mortem examination. He further deposed regarding the seizure of viscera and other materials. Subsequently, he arrested co-accused Tamirul Haque and added relevant sections including Sections 376DA, 302, 201, 120B/34 IPC and Section 6 of the POCSO Act.

xxvii. PW-27, the Investigating Officer, deposed that on August 21, 2020 he took over the investigation of Rajganj P.S. Case No. 111/2020 and during police remand, interrogated the accused persons—Rahaman Ali, Jamirul Haque and Tamirul Haque and reconstructed the crime. Pursuant to the voluntary leading statements of Rahaman Ali, he recovered incriminating

articles, including a mobile phone, the motorcycle used in the disposal of the victim and wearing apparel, including a red vest used to gag the victim. He further recovered plastic bottles from the place of occurrence near Chewai bridge, prepared sketch maps, videographed the reconstruction and identified multiple places connected with the crime, including the septic tank where the decomposed body was recovered. He also effected recoveries at the instance of co-accused Jamirul and Tamirul, including mobile phones and wearing apparel and ensured recording of statements of material witnesses under Sections 161 and 164 CrPC. He collected post-mortem report, forwarded exhibits for forensic and histopathological examination, obtained call detail records establishing movement of the accused near relevant locations, and ultimately submitted charge-sheet under appropriate sections. During cross-examination, though certain omissions were elicited regarding non-collection of specific documents and absence of independent witnesses at some stages, the witness firmly denied all suggestions of false implication. Importantly, the defence failed to discredit the recoveries made pursuant to leading statements, the reconstruction of crime and the corroborative CDR evidence, thereby strengthening the prosecution case and lending credibility to the investigation.

32. Upon a comprehensive appraisal of the evidence on record, this Court is of the considered view that the prosecution has successfully established an unbroken and complete chain of circumstantial evidence, pointing unequivocally towards the guilt of the appellants, namely Rahaman Ali, Jamirul Haque and Tamirul Haque. The circumstances proved are consistent only with the hypothesis of guilt and are wholly inconsistent with any plausible theory of innocence. The requirements governing cases based on circumstantial evidence stand fully satisfied.

33. The law with regard to a case based on circumstantial evidence has very well been crystalized in the judgment of **Sharad Birdhichand Sarda(supra)**, wherein this Court held that:

*“152. Before discussing the cases relied upon by the High Court we would like to cite a few decisions on the nature, character and essential proof required in a criminal case which rests on circumstantial evidence alone. The most fundamental and basic decision of this Court is **Hanumant v. State of Madhya Pradesh [(1952) 2 SCC 71: AIR 1952 SC 343: 1952 SCR 1091: 1953 Cri LJ 129]**. This case has been uniformly followed and applied by this Court in a large number of later decisions up to date, for instance, the cases of **Tufail (Alias) Simmi v. State of Uttar Pradesh [(1969) 3 SCC 198: 1970 SCC (Cri) 55]** and **Ramgopal v. State of Maharashtra [(1972) 4 SCC 625: AIR 1972 SC 656]**. It may be useful to extract what Mahajan, J. has laid down in **Hanumant case [(1952) 2 SCC 71: AIR 1952 SC 343: 1952 SCR 1091: 1953 Cri LJ 129]**:*

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

153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

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

*It may be noted here that this Court indicated that the circumstances concerned “must or should” and not “may be” established. There is not only a grammatical but a legal distinction between “may be proved” and “must be or should be proved” as was held by this Court in **Shivaji Sahabrao Bobade v. State of Maharashtra [(1973) 2 SCC 793: 1973 SCC (Cri) 1033: 1973 CrL LJ 1783]** where the observations were made: [SCC para 19, p. 807: SCC (Cri) p. 1047]*

“Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between ‘may be’ and ‘must be’ is long and divides vague conjectures from sure conclusions.”

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

(3) the circumstances should be of a conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

154. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence.”

34. In the light of these guiding principles, the genesis of the prosecution case lies in the disappearance of the victim, a minor girl aged approximately 15 years and a student of Class X, who was last seen on August 10, 2020 at about 7:00 p.m. in front of her residence. The testimonies of PW-1, being the father and PW-2, being the mother of the victim are natural, cogent and inspire confidence. Their statements regarding the sudden disappearance of their minor daughter led to the prompt lodging of FIR No. 111/2020 under Sections 363/365 IPC at Rajganj Police Station. The factum of the victim being a minor is undisputed and rightfully attracts the POCSO Act.

35. A crucial incriminating circumstance emerges in the form of a 26-second voice recording found in the mobile phone of PW-1, wherein the voice of appellant Rahaman Ali is identified as asking the victim to meet him at Teesta Canal with a motorcycle. This electronic evidence, read with the Call Detail Records (CDRs), establishes consistent communication between Rahaman Ali and the victim’s family, particularly her mother, thereby demonstrating prior acquaintance and facilitating the inference of inducement and luring. Even assuming arguendo certain technical deficiencies in certification, the

evidentiary value of such material, when corroborated by other circumstances, cannot be brushed aside.

36. The prosecution has further fortified its case through the testimonies of independent witnesses. PW-7, a cook at Raja Hotel, categorically deposed that he saw Rahaman Ali riding a motorcycle with a minor girl whose face was partially covered. PW-10, a shop proprietor, identified Rahaman Ali as having accompanied the victim to purchase clothes a few days prior to the incident, thereby establishing familiarity and association. PW-11, a cousin of the victim, received a phone call from the victim wherein she mentioned Rahaman Ali and the latter intervened claiming that he intended to marry her. These circumstances cumulatively demonstrate that the victim was under the influence and control of Rahaman Ali.

37. Further, PW-14 and PW-15 have testified that they saw Jamirul Haque arriving at his residence with a girl wearing a helmet, who had come on a motorcycle with Rahaman Ali. This aspect assumes significance in establishing the 'last seen' theory. The sightings of the victim in the company of the accused, proximate in time to her disappearance and subsequent death, shift the burden upon the accused under Section 106 of the Evidence Act to explain the circumstances in which the victim parted company from them. The appellants, in their examination under Section 313 CrPC, have failed to offer any satisfactory explanation, thereby lending further credence to the prosecution case.

38. The most compelling link in the chain is the recovery of the dead body pursuant to disclosure statements made by the accused under Section 27 of the Evidence Act. Rahaman Ali and Jamirul Haque led the police and witnesses to a septic tank located at the house of Kajibar Rahaman in Pradhanpara. The decomposed body of the victim was recovered from the said tank on August 21, 2020. The recovery was witnessed by PW-1 to PW-6 and corroborated by PW-4. PW-5 and PW-6, who were engaged to open the septic tank, confirmed that the

recovery was made in the presence of the accused near a bamboo grove. This discovery, made at the instance of the accused, constitutes a vital and incriminating circumstance. The Supreme Court in **State of Maharashtra v. Suresh (2000) 1 SCC 471**, affirmed that Section 27's "*doctrine of confirmation by subsequent event*" under the Evidence Act stresses that recoveries must stem directly from the accused's statement leading to fact discovery.

39. The role of Tamirul Haque is also brought within the fold of culpability through his arrest and subsequent disclosures, which are corroborated by the recoveries and other evidence. The Investigating Officer being PW-27 has meticulously detailed the recoveries effected pursuant to the disclosures, including the motorcycle used in the commission of the offence, a red helmet, mobile phones belonging to the accused, a red vest allegedly used for gagging the victim, scissors used for cutting her hair and other incriminating articles. The seizure of control earth, wearing apparels and liquor bottles from various locations further strengthens the prosecution case. The preparation of sketch maps and videography of the recovery process ensures the integrity and continuity of the chain of custody.

40. The medical evidence, though confronted with challenges owing to decomposition, is nonetheless consistent with the prosecution case. The post-mortem examination conducted by PW-25, a member of the medical board, reveals that the cause of death was mechanical asphyxia resulting from ante-mortem injuries. The presence of lip compressions, bruises on the thighs, nasal fracture, uterine discharge and haemorrhages in the lungs indicate sexual assault and forcible restraint. These findings are consistent with the use of a gagging material, such as the recovered red vest and support the allegation of gang rape followed by murder.

41. The prosecution has also relied upon extra-judicial confessions made by the appellant before independent witnesses, including PW-16 and PW-17 at the police station and PW-18 to PW-23 at various locations. These confessions,

though requiring cautious scrutiny, are found to be voluntary and corroborated by recoveries and other evidence. The confessional statements narrate the sequence of events, including the abduction of the victim by Rahaman Ali, repeated sexual assaults at the residences of Jamirul and Tamirul Haque and the eventual murder and disposal of the body.

42. The testimonies of the prosecution witnesses have withstood the test of cross-examination and remain unshaken on material particulars. No defence evidence has been adduced to probabalise an alternative version or to rebut the prosecution case. The cumulative effect of the evidence leaves no reasonable doubt regarding the involvement of the appellants.

43. However, while this Court finds no infirmity in the findings of guilt recorded by the Learned Trial Court, the question that now falls for determination is whether the sentence of death imposed upon the appellants satisfies the constitutional and jurisprudential threshold of the “*rarest of rare*” doctrine as enunciated in **Bachan Singh(supra)** and further crystallised in **Machhi Singh v. State of Punjab (1983) 3 SCC 470**.

44. It is trite that the imposition of capital punishment is not to be resorted to merely on account of the gravity or brutality of the offence, but only when the alternative option of life imprisonment is unquestionably foreclosed. The sentencing Court is under a solemn obligation to undertake a principled and individualised sentencing exercise, balancing aggravating and mitigating circumstances and to record “special reasons” within the meaning of Section 354(3) of the CrPC. The doctrine, as consistently interpreted, postulates that death penalty must be reserved for cases where the collective conscience of society is so shocked that it expects the holders of judicial power to impose the extreme penalty and where the crime is of such exceptional depravity that life imprisonment would be wholly inadequate.

45. In the present case, the aggravating circumstances are grave, weighty and cannot be understated. The victim was a minor girl who was subjected to

kidnapping, gang sexual assault and ultimately murdered, followed by concealment of her body in a septic tank in an attempt to obliterate evidence. The manner of commission of the offence demonstrates not only brutality but a calculated effort to evade detection. The crime strikes at the very core of societal morality and reflects a complete erosion of respect for bodily integrity and human dignity. Such circumstances, on first impression, do evoke the conscience of the Court and weigh heavily in favour of the severest punishment.

46. Nonetheless, the sentencing exercise, particularly in capital punishment cases, cannot be concluded solely on the basis of the brutality or abhorrence of the crime. The Court is mandated to look beyond the nature of the offence and scrutinize the quality, robustness, and completeness of the evidentiary foundation underpinning the conviction. It is here that certain aspects of the present case assume determinative significance. The prosecution's case rests entirely on circumstantial evidence. While this Court has found the chain of circumstances sufficient to sustain the conviction, it is equally well-settled that the standard of proof required for conviction, though rigorous, is distinct from the heightened threshold of certainty requisite for imposing the death penalty.

47. The reliance on electronic evidence, particularly call detail records and alleged voice recordings, is vitiated by a significant legal infirmity. The prosecution has failed to adduce the mandatory certification contemplated under Section 65B of the Evidence Act. Such certification constitutes a condition precedent to the admissibility of electronic records. The absence thereof does not merely impugn the mode of proof but vitiates the admissibility of the material ab initio. Consequently, the probative value of such electronic records is substantially diminished, thereby enfeebling a critical link in the chain of circumstances.

48. Secondly, the medical and forensic evidence does not attain the requisite degree of conclusiveness ordinarily demanded in capital sentencing proceedings. The victim's body was recovered in an advanced state of

decomposition, and as testified by PW-25, the post-mortem findings are partially inconclusive. While the evidence establishes homicidal violence and indicates sexual assault, it falls short of furnishing definitive and unequivocal corroboration of all elements of the prosecution's narrative. The absence of DNA profiling or other scientific linkage between the accused and the victim exacerbates this evidentiary deficit. In a capital case, such lacunae acquire amplified gravity, directly impinging upon the Court's assurance that the extreme penalty is warranted.

49. In this matrix, it cannot be held that the prosecution has discharged its burden with such unimpeachable and absolute certainty as to preclude not only every reasonable hypothesis of innocence but even the faintest vestige of doubt in the judicial conscience. The dichotomy between the standard of proof for conviction and that for the death sentence must be rigorously preserved. Whereas the former is met upon a complete chain of circumstances unerringly pointing to guilt, the latter exacts an elevated standard, brooking no equivocation in meting out an irreversible punishment.

50. This Court is therefore of the considered opinion that the evidentiary deficits delineated above attenuate the degree of certitude indispensable for categorizing the instant case within the narrow ambit of the “rarest of rare” doctrine. The alternative sentence of imprisonment for life is accordingly not foreclosed. The scales incline towards life preservation, consonant with the constitutional guarantee under Article 21 and the penological imperative that capital punishment remain an exceptional recourse of the utmost rarity.

51. Accordingly, while affirming the conviction of the appellants Rahaman Ali, Jamirul Haque and Tamirul Haque under the relevant provisions of the IPC and the POCSO Act, this Court deems it appropriate, in the facts and circumstances of the case, to commute the sentence of death imposed upon them.

52. In substitution thereof, the appellants Rahaman Ali and Jamirul Haque are sentenced to undergo imprisonment for life for a fixed term of 40 years without remission. This Court has taken into account their dominant and active role in the commission of the offence, including their direct participation in the acts leading to the sexual assault and homicidal death of the victim, thereby justifying a stringent form of life imprisonment.

53. Insofar as the appellant Tamirul Haque is concerned, the evidentiary record reflects a comparatively lesser, though nonetheless culpable, degree of participation. Balancing his role with the overall circumstances of the case, this Court sentences him to undergo rigorous imprisonment for a period of 20 years.

54. The sentences imposed under the other provisions by the Learned Trial Court shall run concurrently and remain unaltered. The Death Reference is accordingly answered in the negative.

55. A copy of this judgment along with the Trial Court records be remitted to the appropriate Trial Court forthwith. In view of the commutation of the death penalty of appellants, any warrant issued by the appropriate Court with regard thereto in respect of the appellants stand modified in terms of this judgment and order. Department will inform the Correctional Home, where the appellants is lodged, as to this judgment and order. The Correctional Home will record the fact of commutation of death penalty to the sentence awarded by this judgment and order in respect of the appellants, in their records.

56. Period of detention already undergone by the appellants shall be set off against the substantive punishments in terms of the provisions contained in Section 428 of the CrPC.

57. 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)

