



NON-REPORTABLE

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 3909 OF 2025**

DEBOJIT PANKIKA CHARAIDEO SONARI ... APPELLANT (s)

VERSUS

THE STATE OF ASSAM ... RESPONDENT (s)

J U D G M E N T

PRASANNA B. VARALE, J.

1. The present criminal appeal is directed against the judgment and order dated 22.12.2022 passed by the Division Bench of the High Court of Gauhati at Guwahati in Criminal Appeal (J) No. 16/2019. By the impugned judgment and order, the High Court dismissed the appeal filed by the appellant and upheld the order of the Additional Sessions Judge, Charaideo, Sonari [hereinafter referred to as “Trial Court”] passed in Session Case No. 10 (S-C) of 2016, thereby convicting the accused-appellant under Sections 302 and 201 of the Indian Penal Code, 1860 [hereinafter referred to as “IPC”]. The appellant was

sentenced to undergo imprisonment for life and pay a fine of Rs. 5000/- and in default of payment of fine to further undergo S.I. for 6 months for the offence under Section 302 and to undergo R.I. for seven years and pay a fine of Rs. 5000/-, and in default of payment of fine to further undergo S.I. for 6 months for the offence under Section 201 IPC.

BRIEF FACTS

2. The factual matrix of the case is that a minor girl named **Soru Kharia** (also referred to as Haru Kharia) [hereinafter referred to as “deceased”], aged approximately 10 years, had been adopted by Smt. Sumitra Panika, who is the mother of the present appellant. The deceased had been residing with the appellant and his mother for approximately seven years. In the first week of June 2015, Smt. Sumitra Panika left their residence to receive medical treatment, leaving the deceased child in the sole custody of the appellant. Subsequently, the child went missing. On 27.06.2015, one Babu Paik [hereinafter referred to as “informant”], who is the maternal uncle of the deceased, lodged a written complaint at the Sonari Police Station alleging that the deceased had been missing for 22 days and despite this,

the appellant allegedly had neither conducted a search nor informed the deceased's family.

3. It was in this background that the First Information Report No. 130/2015 was registered, initially under Section 365 of IPC, and the criminal machinery was set into motion.

4. During the course of investigation, police strongly suspected involvement of the appellant. Police based its investigation mainly on the disclosure statement of Kishore Mall/PW-4 who revealed that the appellant informed him that the deceased had burnt herself and compelled PW-4, under threat of a dagger, to assist in disposing of the dead body. As per PW-4, the body was placed in a sack, carried on a bicycle, and thrown into the Teok River.

5. The investigation concluded by filing chargesheet against the appellant under Sections 365, 302 and 201 of IPC. Sessions Case No. 10(S-C) was registered against the appellant and the Trial Court vide order dated 31.08.2016 charged the appellant for commission of offences punishable under Section 302 and 201 of IPC. The case was committed to the Court of Sessions for trial. The appellant claimed not guilty by denying the case of prosecution. The prosecution in support of its case examined 9 witnesses whereas the appellant did not examine any witness in

his defence. In the statement under Section 313 of Code of Criminal Procedure, 1973 [hereinafter referred to as “C.R.P.C”], the appellant denied the case of prosecution against him.

6. On appreciation of evidence, the Trial Court, vide its judgment and order dated 28.09.2018, convicted the appellant under Sections 302 and 201 of IPC. The appellant was sentenced to undergo imprisonment for life and pay a fine of Rs. 5000/-, and in default of payment of fine to further undergo S.I. for 6 months for the offence under Section 302 and to undergo R.I. for seven years and pay a fine of Rs. 5000/-, and in default of payment of fine to further undergo S.I. for 6 months for the offence under Section 201 IPC.

7. Being aggrieved by the judgment and order of the Trial Court, appellant preferred an appeal before the High Court. Division Bench of the Gauhati High Court and the High Court vide its judgment and order dated 22.12.2022 dismissed the appeal, thereby sustaining the conviction. Being aggrieved by the judgment and order of the High Court, the appellant approaches this Court by filing the present appeal.

CONTENTIONS

8. Learned counsel for the appellant namely, Mr. D.B. Goswami has made the following submissions:

8.1. Learned counsel appearing for the appellant contended that the charges framed against the appellant are vague and suffer from non-compliance with the mandate of Section 212 Cr.P.C. It was submitted that a charge must contain sufficient particulars as to the time, place and manner of commission of the alleged offence so as to afford the accused a fair opportunity to defend himself. According to the learned counsel, the charge in the present case neither specifies the exact date and time of the alleged murder nor identifies the place within the village where the offence is stated to have been committed or the manner in which murder was committed. It was further submitted that the charges are defective and thus no fair opportunity to defend himself was granted to the accused appellant.

8.2. Learned counsel submitted that PW-9 Investigating Officer admitted in cross-examination that he did not know the actual date of the incident or the date of

disposal, and further admitted that neither the dead body nor any incriminating materials were found against the appellant.

- 8.3. It was contended that the High Court erred in describing Kishore Mall PW-4 as a “sterling witness,” arguing that he was a planted witness with a long-standing enmity towards the appellant as appellant was prosecuted for murder of uncle of PW-4. Learned Counsel argued that there was no basis to conclude that the sack contained the body of the deceased as PW-4 was neither an eyewitness to actual commission of crime nor he had any occasion to see the dead body. As per his own version, the body was already tied in a sack and PW-4 only accompanied the appellant to some distance. It is further submitted that the testimony of PW-4 is nothing but hearsay evidence as the appellant told him that the deceased had burnt herself and such hearsay evidence is clearly inadmissible.
- 8.4. Learned counsel further argued that even if testimony of PW-4 were accepted, he would be an accomplice and not

a witness. He argued that since the prosecution did not charge him as an accused, his statement holds no evidentiary value under Section 30 of the Indian Evidence Act, 1872.

- 8.5. Lastly, learned counsel submitted that while recovery of a *corpus delicti* is not always essential, the circumstantial evidence in this case was not cogent or compelling enough to prove homicidal death beyond reasonable doubt. He argued that the only thing which goes against appellant was that he did not inform that the deceased was missing. Learned counsel relying on the judgment of this Hon'ble Court in ***Sawal Das v. State of Bihar***¹ argued that section 106 of the Indian Evidence Act, 1872 is an exception to Section 101 the Indian Evidence Act and thus Section 106 of the Indian Evidence Act does not absolve prosecution from discharging its primary burden of proving the prosecution case beyond reasonable doubt.

¹ (1974) 4 SCC 193

9. Per Contra, learned Sr. A.A.G., namely, Mr. Chinmoy Pradip Sharma, appearing on behalf of the respondent/State of Assam has made following submissions:

9.1 Learned Counsel contended that the prosecution has established a complete and unbroken chain of circumstantial evidence that satisfies all the conditions laid down by this Court in **Sharad Birdi Chand Sarda v. State of Maharashtra**², thereby excluding every alternative hypothesis of innocence. It was submitted that the deceased was under the exclusive custody and control of the appellant when she went missing, and appellant's deliberate silence for 22 days, combined with his total failure to search for the deceased or inform her family, constitutes a strong incriminating circumstance indicating his guilt.

9.2 Learned counsel argued that **PW-4 is a credible and reliable witness** whose testimony before the Trial Court regarding the appellant's disclosure of the burning incident and the subsequent disposal of the body in the Teok River was entirely consistent with his statements recorded under Section 164 of the Cr.P.C. Learned

² (1984) 4 SCC 116

counsel relying on judgments of this Hon'ble Court in ***Sadhu Singh v. State of Uttar Pradesh***³, ***Raman Kalia v. State of Gujrat***⁴ and ***Lakhwinder Singh v. State of Punjab***⁵ argued that the evidence of PW-4 cannot be discarded solely on the ground of prior enmity if the deposition is otherwise convincing and stands corroborated by other facts.

9.3 Learned Counsel further emphasized that the appellant's failure to offer any plausible explanation during his examination under Section 313 of the Cr.P.C. regarding the deceased's disappearance from his exclusive custody or his failure to report disappearance for 22 days forms a vital and additional link in the chain of circumstances.

9.4 Learned Counsel submitted that the non-recovery of the dead body is not fatal to the case of the prosecution as the appellant himself disposed of the body in Teok river making recovery improbable and the half burnt green apparel seen by PW-2/informant in the appellant's courtyard further supports prosecution case. Learned counsel relying on judgment of this Hon'ble Court in

3 AIR 1978 SC 1506

4 AIR 1979 SC 1261

5 AIR 1993 SC 87

Sanjay Rajak v. State of Bihar⁶ argued that when homicidal death is proven through other cogent and satisfactory evidence, non-recovery is not fatal.

9.5 Finally, learned counsel submitted that both the Trial Court and the High Court conducted a careful scrutiny of the evidence and arrived at concurrent findings of guilt based on legally admissible evidence, and since no perversity or omission has been shown, the impugned judgment warrants no interference by this Court.

ANALYSIS

10. Heard Learned Counsel for the appellant as well as Learned **Counsel** for the respondent. We have also perused relevant material on record and the judgments passed by the Courts below.

11. The High court vide its judgment and order dated 22.12.2022 upheld the judgment and order of the Trial Court and sustained conviction of the appellant while observing as under:

30. Reverting to the case in hand, the prosecution evidence shows that the PW-4 Kishor Mall is the sterling witness in this case. He was a young boy at the relevant time of the

6 (2019) 12 SCC 552

occurrence. His evidence is consistent with his statement recorded under Sections 161 and 164 CrPC. There are no discrepancies and contradictions in the evidence of PW-4. Therefore his evidence inspired confidence. He is a trustworthy witness.

31. There exists unchallenged evidence in this case that Soru Kharia was the adopted daughter of Sumitra Panika and she was living with her till Sumitra had gone out of her house for medical treatment. The appellant also resided with his mother Sumitra Panika and Soru Kharia. Suddenly, Soru. Kharia disappeared after Sumitra Panika had left her house for medical treatment. The PW-4 Kishor Mall has stated in his evidence that the appellant had killed Soru Kharia by burning her and thereafter had thrown her dead body into river Teok. The statements of Kishor Mall under Sections 161 as well as 164 CrPC are consistent with his evidence. There is nothing in his cross-examination to disbelieve him.

32. The disappearance of Soru Kharia is proved beyond all reasonable doubt. The failure of the appellant to offer a plausible explanation constitutes an additional link in the chain of circumstances against him. The facts so established in this case are consistent with the hypothesis of guilt of the appellant and they are not explainable on any other hypothesis except that the appellant is guilty of murder of Soru Kharia.

33. Thus, we are of the opinion that the learned trial court has properly appreciated the prosecution evidence and arrived at a correct finding.

(emphasis supplied)

12. Considering the material perused by us as well as on hearing the submissions of learned counsels appearing for the respective parties, we are of the opinion that the High Court committed no error in confirming and upholding the judgment of

conviction of the accused and awarding the sentence to the accused for commission of offence.

13. Admittedly, the present case falls under the category of the cases based on principle of '*corpus delicti*'. True, it is that as per the prosecution case, the minor girl aged approximately 10 years was murdered and her body was thrown in the river. The Investigating Officer in his deposition before the Court stated that the Investigating Agency made certain attempts to recover the body thrown in the river but they were unable to find out the dead body.

14. Now, the most important and crucial evidence against the accused is in the form of oral testimony of PW-4. The version of PW-4 clearly discloses the facts namely, the deceased minor girl was in the custody of the accused and on an allegation of the accused that she has stolen an amount of Rs.40/-, the deceased child set herself on fire. The accused then wrapped up the body of the child in a sack and then asked help from PW-4 to throw the body in the Teok river. PW-4 deposed before the Court that the dead body was tied to a bicycle. PW-4 accompanied accused to some distance and thereafter he came back. Though the witness was subjected to cross-examination, the witness stood

firm. An attempt was made to submit that PW-4 is an interested witness as he was carrying the grudge against the deceased. The perusal of testimony of this witness show that he has deposed before the Court that he saw a sack was tied to the bicycle. The accused asked for help and initially the witness refused to help him but under the threat of dagger, the accused forced witness to help him and under that threat, PW-4 accompanied accused for some distance. If PW-4 was carrying grudge against the accused, he could have stated in his statement that he had seen the accused committing the murder or he would have deposed before the Court to that effect but in his testimony he only states that he accompanied accused for some distance. It may not be out of place to refer to the version of the witness before the Court in his examination-in-chief and it reads *"I had to accompany the accused as he had threatened me to kill me. I went along with the accused because he had threatened me by showing a dagger. I stopped before reaching Teok river. The dead body was carried on a bicycle"*. Accordingly, PW-4 emerges as a reliable and credible evidence.

15. As stated above, the present case falls into the category of the cases of '*corpus delicti*'. The '*corpus delicti*' in murder has two

components - death as the result, and criminal agency of another as the means. Where there is direct proof of the one, the other may be established by circumstantial evidence. '*Corpus delicti*' means that the offence has been committed and not that the dead body of the murdered person has been recovered. A person can be convicted of murdering another even if the later's body has not been recovered. It may not be out of place to refer to the judgments of this Court. As some of the facts are identical, we must refer to the judgment of this Court in the matter of **Prithi v. State of Haryana**⁷, **Prithipal Singh v. State of Punjab**⁸, and **Sevaka Perumal v. State of T.N.**⁹. The relevant paragraph from the judgment of this Court in **Sevaka Perumal (supra)**, is as follows:-

"5.....The fact of death of the deceased must be established like any other fact. Corpus delicti in some cases may not be possible to be traced or recovered. Take for instance that a murder was committed and the dead body was thrown into flowing tidal river or stream or burnt out. It is unlikely that the dead body may be recovered. If recovery of the dead body, therefore, is an absolute necessity to convict an accused, in many a case the accused would manage to see that the dead body is destroyed etc. and would afford a complete immunity to the guilty from being punished and would escape even when the offence of murder is

7 (2010) 8 SCC 536

8 (2012) 1 SCC 10

9 (1991) 3 SCC 471

proved. What, therefore, is required to base a conviction for an offence of murder is that there should be reliable and acceptable evidence that the offence of murder, like any other factum of death was committed and it must be proved by direct or circumstantial evidence, although the dead body may not be traced."

16. The other factum supporting the case of prosecution is failure of the accused in providing justifiable explanation about missing of the child for 22 days who was in his custody. It is interesting to note that the accused/appellant in his statement under Section 313 Cr.P.C. admitted: (i) that the deceased child used to live with him; (ii) mother of the accused was youngest paternal aunt of the deceased (bua); and (iii) mother of the accused adopted the deceased child as her daughter as such, she used to reside with the mother of the accused and accused was also residing in the same house along with his mother and the deceased child.

17. Admittedly, the mother of the accused left her house for medical treatment leaving the child in the house with the accused person. The child was missing for a long time i.e. 22 days and as such it was expected of the accused to offer some justifiable explanation about missing child but the accused utterly failed to provide any such explanation. It would have been

natural conduct of the accused to report to the Police if the child was missing for a long period or to inform some of the relatives but the accused made no such attempt.

18. Thus, considering the above-referred aspects, we are of the opinion that the learned Trial Court committed no error in holding the accused guilty for the offences charged against him and accordingly awarding sentence to him as well as the High Court was also justified in upholding and confirming the judgment and order of the Trial court. Thus, the appeal being devoid of any merit deserves no interference at the hands of this Court and accordingly, the appeal is dismissed.

.....**J.**
[SANJAY KAROL]

.....**J.**
[PRASANNA B. VARALE]

NEW DELHI;
JULY 13, 2026.