

FORM A

**IN THE COURT OF ADDITIONAL SESSIONS JUDGE-II,
DANAPUR, DISTRICT-PATNA (BIHAR)**

**Present :- Kshiprachala Anjalee
Additional Sessions Judge-II
Danapur**

Date of Judgment-06th July'2026

Session Tr. No. 839 of 2023

Reg. No. 839 of 2023

(Arising out of Dulhin Bazar P.S. Case No. 90 of 2022 dated 23-04-2022 registered under sections 363 IPC and later on 364, 392, 201 of the I.P.C. were added and after investigation charge-sheet submitted under sections 363, 364, 302, 201 of the I.P.C. and committed to the Court of Sessions by the Court of the then learned Ms Archana, J.M.F.C, Danapur, dated 07-07-2023)

INFORMANT	STATE OF BIHAR (on the written report of Rina Kumari, w/o Abhay Kumar, Resident of Village-Keshwarpur, Police Station-Narayanpur, District-Bhojpur)
REPRESENTED BY	Sri Ramkeshwar Prasad, Addl. P.P. for the State
ACCUSED	Dukhit Yadav, S/O Late Shiv Ratan Yadav, R/O Mauza-Sarkuna, Police Station- Dulhin Bazar, District-Patna.
REPRESENTED BY	Sri Jitendra Kumar, Learned counsel for the Accused.

FORM B

Date of Offence	23-04-2022
Date of FIR	23-04-2022

Date of Charge-Sheet	10-08-2022
Date of Framing of Charges	26-09-2023
Date of commencement of evidence	07-10-2023
Date on which Judgment is reserved	20-06-2026
Date of the Judgment	06-07-2026
Date of the Sentencing Order, if any	20-07-2026

Accused Details

Rank of the Accused	Name of the Accused	Date of Arrest	Date of release on bail	Offence charged with	Whether acquitted to Convicted	Sentence imposed	Period of detention undergone during trial for purpose Section 428 Cr. P.C.
1	Dukhit Yadav	17-05-22	--	U/S 363, 364, 302, 201 of the IPC	Convicted u/s 363, 364, 302 & 201 IPC	u/s 364 IPC- R.I for 10 years & fine of Rs.20000/- and in default	04 year, 02 month 03 days

						S.I for one year, u/s 302 IPC- Imprison ment for Life & fine of Rs. 50,000/- and in default S.I. for one year & U/S 201 IPC-R.I for three years & fine of Rs.10000 & in default S.I for 03 months No separate sentence u/s 363 IPC	
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J U D G M E N T

- 1 The sole accused Dukhit Yadav stands charged and tried for the offences punishable under sections 363, 364, 302, 201 of the Indian Penal Code (read as hereinafter as 'I.P.C.'). The prosecution alleged that accused kidnapped minor child Ayush, committed his murder and thereafter caused disappearance of evidence by throwing the dead body into a well.

PROSECUTION STORY

2 The prosecution case, as unfolded in the fardbeyan of informant, is that deceased Ayush was the minor son of the informant Rina Kumari, w/o Abhay Kumar, Resident of Village-Keshwarpur, Police Station-Narayanpur, District-Bhojpur. During the intervening night of 22-04-2022, at about 12:30 A.M., informant saw her son Ayush sitting in the lap of accused Dukhit Yadav, who happens to be the grandfather of the child. Thereafter, on the following day at about 1:00 A.M., when the informant started searching for her child, he could not be traced despite extensive search in the village and nearby places. It is further alleged that shortly after the occurrence accused Dukhit Yadav left the village at about 4:45 A.M. allegedly for attending a court case. Additionally it is stated that previously, Dukhit Yadav, father of the informant was involved in a robbery and murder cases and had fired upon her brother as well. She has given her father's mobile no. 8603766810. According to prosecution, such conduct was unnatural and suspicious. Subsequently, the dead body of child Ayush was recovered from a well by the police. Injuries were found on the person of the deceased. On the basis of written report, formal FIR was instituted and investigation commenced.

INVESTIGATION

3 On the basis of the written report of the informant, Dulhin Bazar P.S. Case No. 90 of 2022 dated 23-04-2022 is registered under section 363 of the IPC against accused Dukhit Yadav. Later on dead body of the deceased boy Ayush was found in a well situated in the village, then on request of police section 364, 302, 201 IPC was added. After investigation I.O of the case

submitted Charge Sheet No.199/2022 dated 10-08-2022 under sections 363, 364, 302, 201 of the I.P.C. against accused Dukhit Yadav.

COGNIZANCE

- 4 From the lower court record it transpires that vide order dated 27-02-2023, the then learned J.M.F.C, Danapur, has taken cognizance in this case against the accused person namely Dukhit Yadav under section 363, 364, 302, 201 of the I.P.C. and after supply of police paper under Section 207 Cr. P.C. the case record was committed to the court of learned Sessions Judge, Patna. Before the court of learned Sessions Judge, Patna, this case was registered as Session Trial No. 839 of 2023 and was transferred to the Court of Addl. Sessions Judge-II, Danapur, for disposal.

CHARGES

- 5 Charge under sections 363, 364, 302, 201 of the I.P.C. against accused Dukhit Yadav was framed on 26-09-2023. The contents of the charge was read over and explained to the accused person in Hindi to which he pleaded not guilty and claimed to be tried.
- 6 In order to substantiate the prosecution case, the prosecution adduced altogether seven witnesses which is listed as below:-

Rank	Name of Witnesses	Nature of Evidence
PW-1	Rina Kumari	Informant cum mother of deceased cum daughter of the accused
PW2	Ashutosh Kumar	Brother of the Informant cum son of the accused

PW3	Lila Devi	Sister in law of the informant cum daughter-in -law of the accused
PW4	Abhay Kumar	Husband of the informant cum father of deceased
PW5	Awadesh Kumar Yadav	Investigating Officer
PW6	Dr . Baban Kumar	Doctor
PW7	Pooja Mehta	Forensic Expert

7 On behalf of prosecution in support of their case following documents were exhibited:

Sr. No.	Exhibit Number	Description
1	P 1/PW1	Signature of the informant on the written report
2	P1/1/PW5	Endorsement on the written report by then SHO Prabha Kumari
3	P2/PW5	Formal FIR
4	P3/PW5	Application dated 28-04-2022
5	P4/PW5	Application dated 24-06-2022 addressing to Director, FSL,
6	P5/PW5	Charge-sheet.
7	P6/PW6	Postmortem Report
8	P7/PW7	FSL Report

Statement of Accused

8 After, closure of the prosecution evidence the statement of the accused person is recorded under Section 313(1)(b) of Cr.P.C. on 16-05-2026 wherein all incriminating evidence was put to him which he denied and claimed to be innocent.

9 **Defence of the Accused Persons in brief:** During trial no evidence either oral or documentary has been adduced by the defence. However, while cross examining the prosecution witnesses, it has been suggested by the defence that accused is innocent and has been falsely implicated in this case on pretext of property dispute among the family members. Defence has also given another suggestion that Ayush Kumar (deceased) is accidentally fallen in the well and accused is not connected in any way.

10 **Arguments of Prosecution in brief:** The learned Additional Public Prosecutor Sri Ramkeshwar Prasad has submitted that the prosecution has successfully established a complete chain of circumstantial evidence pointing unerringly towards the guilt of the accused. The evidence of PW-1, PW-2 and PW-3 consistently proves that the deceased Ayush was last seen alive in the lap of accused Dukhit Yadav shortly before his disappearance. Thereafter, despite an immediate search, the child could not be traced. The accused gave evasive replies regarding the whereabouts of the child and instead of participating in the search, hurriedly left the village at about 4:00–5:00 A.M. on the pretext of attending a court case, which is a highly incriminating circumstance under Section 8 of the Evidence Act. It is further argued that the dead body of the child was

recovered from a well after the accused disclosed to Bakrudal that he had thrown the child into the well. The recovery of the dead body pursuant to such information lends assurance to the prosecution case. The medical evidence reveals multiple ante-mortem injuries, including abrasions, scratch marks on the neck and petechial hemorrhage, clearly indicating a homicidal death. The FSL report has ruled out poisoning, thereby excluding any natural or accidental cause. The prosecution submits that the circumstances of last seen, the false explanation and suspicious conduct of the accused, recovery of the dead body and the medical evidence together form a complete and unbroken chain leading only to the guilt of the accused. The prosecution therefore prays that the accused be convicted under sections 363, 364, 302 and 201 IPC.

- 11 Arguments of Defence in brief:** The learned defence counsel Sri Jitendra Kumar contended that the entire prosecution case is based purely on suspicion and conjectures without any direct evidence connecting the accused with the alleged offences. No witness has seen the accused kidnapping, assaulting or throwing the child into the well. The "last seen" evidence is weak, as it merely establishes that the child was sitting in the lap of his maternal grandfather at a crowded wedding where 200–300 persons were present. The prosecution has failed to examine any independent witness from the wedding ceremony to corroborate this circumstance.

It is further argued that the alleged extra-judicial confession is wholly inadmissible and

unreliable, as Bakrudal—the person to whom the confession was allegedly made—has not been examined. The testimony of PWs 1 to 4 on this aspect is only hearsay and carries no evidentiary value. The Investigating Officer has admitted several serious lapses in the investigation, including failure to examine independent witnesses, failure to collect call detail records, and failure to properly record witness statements. The doctor has also admitted that he could not ascertain the precise cause of death, and no final medical opinion has been produced after receipt of the FSL report. The defence further submits that there is long-standing hostility within the family, and the accused has several criminal cases against him, providing a motive for false implication in order to deprive him of his property. It is therefore submitted that the prosecution has failed to prove the guilt of the accused beyond reasonable doubt, and the accused is entitled to the benefit of doubt and acquittal.

12 . Now the only point of consideration before the court is that whether the prosecution is able to prove the guilt of the accused beyond reasonable doubt by successfully establishing a complete chain of circumstances ?

FINDINGS

13 **Evidence of P.W. 1 Rina Kumari:** She has stated in her examination -in-chief that this case has been filed by her against her father, Dukhit Yadav. Dukhit Yadav was present in the court to whom she recognize. In para 3 she

stated that the incident is of 22.04.2022. She had gone to her mother's house in village Sarkuna, Police Station Dulhin Bazar, District Patna for a friend's wedding. It was around 12-12:30 in the night when she saw her child Ayush Kumar, aged 9 years, in the lap of accused Dukhit Yadav at the place of "Jaimala" in ceremonial tent (Samiyana Jalmasa). On 23.04.2022 at around 1 A.M. in the morning, she started searching for her child Ayush and when she asked her father Dukhit Yadav, upon which her father said that he (Ayush) must be somewhere around there and said that he (Ayush) must be sleeping somewhere. Her father did not say anything satisfactory. In para 4 she stated that they started searching for the child. Meanwhile, her father Dukhit Yadav fled from the village at 4-5 AM on the pretext of a date at the court. These actions of her father caused suspicion. Then they gave a written report to the police at Dulhin Bazar Police Station regarding the incident with the child. At the police station, on her request, Bakrudal wrote an application as per her instructions. After listening and understanding, she signed it and also wrote her mobile number. She identified written application dated 23.04.2022, which is in Bakrudal's handwriting and her signature, which is marked as Exhibit-P1/P.W-1 on identification. In para 5 she has stated that after submitting a written report to the police station, they searched for the child. During the search, they came to know that her father, Dukhit Yadav, had called Bakrudal Singh and told him that he had thrown the child into the well. In para 6 she stated that the police were again informed about this matter. The police arrived with a force of officers. Her child (Ayush) was pulled from the Well in

Sarkuna village. She has stated that her child's body was recovered from the well on 25-04-2022, at 4 P.M. After the body was recovered, the police took it for a postmortem examination. Following the postmortem, the child's body was returned and cremated. In para 7 she stated that her statement was recorded again by the police, in which she fully supported the incident. Lastly in para 8 she identified the accused present in the court.

14 During cross examination by the defence in para 9 **PW1 Rina Kumari** has stated that she has two brothers and two sisters. Her brothers are Asutosh Kumar and Rakesh Kumar, her sister is Renu Kumari. Both of her brothers are older than her. In para 10 she has stated that her father has married her elder brother. Her younger brother is not married. In para 11 she stated that her mother raised them not her father. Her father spent his entire life in prison. He used to go to jail, get released, and then go back to jail again. In para 12 she stated that all the property is in her father's name. Her mother is not gainfully employed. She used to do some farming. Her father never did any work. He would sit at home and eat, and then go to jail after killing someone. There are about 7-8 cases against her father. She didn't recall the numbers of those cases. However, she stated that her elder brother could tell. In para 13 she stated that her father is not mentally ill. He is arrogant. In para 14 she stated that she didn't recall the day, date or month when she used to come to her parents' house from her in-laws' house. In para 15 she stated that she received a telephonic invitation on 18-04-2022 to attend the wedding . She failed to recall the the phone number from which the call came.

She denied to have received any invitation card. In para 16 she stated that her friend Dolly, whose marriage was taking place, her father's name is Devendra Singh. In para 17 she stated on 22.04.2022, she came to the wedding during the day. She stayed at her house the entire day and night. In para 18 she stated that her mother has contributed to her marriage and the marriages of her siblings. She denied any contribution of her father. In para 19 she stated her father's property was sold to arrange the marriage. In para 20 she denied to have known the phone number of Bakrudal Yadav. In para 21 she stated that she did not see her child being thrown into a Well with her own eyes. She has stated that she has seen her child in her father's lap. In para 22 she stated that the FIR was lodged at the behest of Bakrudal Yadav. In para 23 she stated that she told the police that her father was watching the dance while holding her son in his lap. They had come from Jamui. In para 24 she stated that there were 200 to 300 people at that dance. She couldn't name those persons. In para 25 she denied to tell what all those who were watching the dance had with them. There was a ladies' dance. She didn't go to see it. Lastly in para 27 she has stated that it is not true that her father has not thrown her child into the Well and she has given false testimony.

15 **Evidence of PW2 Ashutosh Kumar:** He has stated in para 1 during his examination-in-chief that the incident occurred at 12:45 AM on 22-04-2022. A wedding procession arrived at Devendra Singh's house. There was a barn next to Devendra Singh's house where the wedding party was

staying. There was singing and dancing going on in the “Jalmasa”. Dukhit Yadav was sitting with Ayush Kumar, aged 9-10 years in his lap. They began searching for the child at 1 A.M. But they couldn't find him. When Dukhit was asked where the child was at 2:30 A.M., he said he must be sleeping in the “Jalmasa”. Dukhit Yadav refused to cooperate in the search for the child and fled at 4 A.M, making the excuse of going to court. During the search, they learned that Dukhit Yadav had told Bakrudan that the child was in the Well, and Bakrudan had told him about it. In para 2 he has stated that on 25-04-2022, the child's body was found in a Well. Police arrived and pulled the child from the Well. An inquest report/panchnama was prepared. He read it and signed it. In para 3 he has stated that he has seen the child's body and it was found that both of the child's arms were twisted, and he had a head injury and a broken tooth. It appeared that the child had been beaten brutally and thrown into the Well. Lastly in para 4 he identified the accused Dukhit Yadav present in the court

16 During cross-examination by the defence, in para 5 **PW2 Ashutosh Kumar** has stated that Dukhit Yadav is his father. His (witness) mother raised him since childhood. He grew up at his maternal uncle's house. His father had no contribution in his upbringing. In para 6 he has stated that he did not see the child being thrown into the Well. In para 7 he has stated that there was a wedding at Devendra's house that day. He had been visiting Devendra's place for a long time and eating and drinking at his place. He had no previous dispute with him. In para 8 he has stated that the “dance” had come from Jamui. It was taking place in the

barn next to Devendraji's house. Its boundaries were Devendraji's fallow land to the North, Devendraji's house to the South, Harivansh Prasad's land to the East, and Galij Yadav's fallow land to the West. In para 9 he stated that there was a crowd of over two hundred to two hundred and fifty people at that place. He couldn't name any of them. The wedding procession had come from another village. There were 15-20 people from his village. They included Deepak Kumar, Ajay Kumar, Rakesh Kumar, Devendra Prasad, Mukesh Kumar, Sanjeet Kumar, Ramesh Kumar, Nandan Prasad, etc. In para 10 he has stated that the "dance" started at 10 o'clock and ended at 5 in the morning. He wasn't watching the dance. He was just coming and going. In para 11 he has stated that he doesn't know Bakrudal personally. He only knows that he was in the police station. In para 12 he has stated that he doesn't know which village Bakrudan Yadav belongs to. In para 13 he stated that Bakrudan Yadav had never met his family or him before. In para 14 he has stated that whatever property he has is in his grandfather's name. His father has nothing. In para 15 he stated that his father is mentally healthy. In para 16 he denied that his father is mentally ill. In para 17 he stated that there are eight cases against his father. He didn't remember the case numbers for each one. He stated that he couldn't tell who filed the eight cases. However, he stated that he could provide a copy of the case after obtaining the certified copy. In para 18 he has stated that he has no idea when the dates are fixed for these cases filed against his father. In para 19 he has stated that before this case, he had never gone to testify in any case. Lastly in para 20 he has

stated that it is not the case that the child fell into the Well while playing and a false case has been filed and false testimony has been given to usurp the father's property.

- 17 **Evidence of PW3 Leela Devi** : She has stated during her examination-in-chief that this case has been filed by Reena Kumari against her father, Dukhit Yadav. In para 2 she stated that the incident occurred on 22-04-2022. Reena Kumari had come to her maternal home in Sarkuna for a wedding. In para 3 she stated that on 22-04-2022, between 12-12:30 A.M., Ayush Kumar was with his maternal grandfather, Dukhit Yadav. After 12:30 A.M., when they were about to go to bed and they began searching for Ayush, but he was not found anywhere. When they asked Ayush's maternal grandfather, Dukhit Yadav, he said he would find him in the morning, saying he might be sleeping in the "Jalmasa". With that, Dukhit Yadav went to the roof to sleep. They searched all night, but the child was not found anywhere. Then, Dukhit Yadav, citing a court case, fled between 4:00 to 5:00 A.M. She further stated that they and the police searched for Ayush for two or three days, but they couldn't find him. Later on, Dukhit Yadav asked his friend to tell everyone that he had killed him and thrown him into the Well. Upon receiving the information, they along with the administration went to the Well and pulled the child out. Ayush was dead. In para 4 he stated that Reena Kumari filed a case at the police station. The police also questioned her. In para 5 he identified the accused Dukhit Yadav.

18 During cross examination by the defence, in para 6 **PW3**

Leela Devi has stated that she did not see with her own eyes the child being killed and thrown into the Well. In para 7 she stated that she has come to the court to testify about the incident what she has heard about it. Lastly in para 8 she denied during suggestion that the incident as she has described did not happen and that she has given false testimony to trap her father-in-law by filing a false case.

19 **Evidence of P.W. 4 Abhay Kumar:** He has stated during his examination-in-chief in para 1 that Rina Kumari is his wife. This case has been filed by his wife Rina Kumari against Dukhit Yadav. In para 2 he has stated that his wife had come to her maternal home Sarkuna on 22-04-2022 for a friend's wedding. On 22 April 2022, at 12 midnight of the wedding, his wife saw that her son Ayush Kumar, aged 10 years, was sitting in the lap of his maternal grandfather Dukhit Yadav. When she started searching for the child at 1 AM in the night, she could not find him. When his wife asked Dukhit Yadav where the child was, Dukhit Yadav said that he must be sleeping somewhere. When she searched again, the child was not found. At 4 A.M., Dukhit Yadav ran away from the village on the pretext of court. In para 3 he has stated when his wife became suspicious, she filed a case at the Dulhin Bazar police station. Then, after two or three days, Dukhit Yadav told his friend that he had killed the child and thrown him into the Well. Police then arrived, retrieved the child's body from the Well, and a postmortem examination was conducted. Lastly in para 4 he identified the accused Dukhit Yadav present in the court

20 During his cross examination by the defence, **PW4 Abhay Kumar** has stated in para 5 that he has not attend the wedding on the date of occurrence. In para 6 he stated that his wife told him about the incident. He has given his testimony as told by her. Lastly in para 7 he has stated that he has not deposed on any earlier occasion.

21 **Evidence of P.W. 5 Awdhesh Kumar Yadav:** He has stated in his examination-in-chief in para 1 that on 23.04.2022, he was posted as SI in Dulhin Bazar Police Station. In para 2 he has stated that on 23-04-2022, a written application was received from Rina Kumari. Based on this, Dulhin Bazar Police Station Case No. 90/2022 was registered under Section 363 of the Indian Penal Code. In para 3 he has stated that the written application for registration of the case bears the signature in English of the then Station House Officer Prabha Kumari, whose handwriting he recognizes. On his identification, it is marked as **Exhibit P1/1/PW5**. In para 4 he has stated that after the case was registered, a formal FIR was prepared. This is the original formal FIR. This formal FIR is written in the handwriting of police clerk Manish Kumar, and bears Prabha Kumari's signature on the last page. It is marked as Exhibit P2/PW5. In para 5 he has stated that after the case was filed, he was assigned with the responsibility of investigation. Before beginning the investigation, he reviewed the preliminary information. He recorded the written information in the case diary and took the informant's statement again. Then he departed for the place

of occurrence. In para 6 he has stated that he met the informant's sister-in-law, Leela Devi, there. He took her statement and recorded it in the case diary. He also took the statement of another witness, Shatrudhan Yadav, and recorded it in the case diary. After that, he inspected the place of occurrence of the crime. In para 7 he has stated that the site of this incident is located in the barn of Davinder Yadav in Sarkuna village under Dulhin Bazar police station. From there, Ayush Kumar was reportedly kidnapped on the pretext of watching a dance. The boundaries of the place of occurrence are as follows: Davinder Yadav's house is to the South, Harivansh Yadav's cultivated land is to the North, Galij Yadav's cultivated land is to the East and Davinder Yadav's cultivated land is to the West. There is nothing else of being noted found at the place of occurrence. After raiding other places, he returned to the police station. In para 8 he has stated that on 25.04.2022, information was received that a dead body was lying in a Well next to the village of Sarkuna. He reached there. The body was recovered and taken out of the Well. In para 9 he has stated that the family identified the body as that of Ayush Kumar, 10 years old, son of Abhay Kumar, whose Inquest report was prepared by ASI Arun Kumar Pandey on 25-04-2022. The full details are recorded in paragraph 14 of the case diary, a carbon copy of which has been attached to the postmortem register. In para 10 he has stated that after preparation of Inquest Report of the body, the body was sent to the Sub-divisional Hospital, Paliganj for postmortem under the supervision of Chowkidar Sudhir Kumar and Sanjeev Kumar. He has stated in para 11 that after the body was found during the investigation, he

filed an application on 28-04-2022, to add additional sections 364, 302, and 201 IPC to the court of Ms. Nivedita Kumari, Judicial Magistrate. He identified the original form of the application/letter typed by the then Station Clerk Manish Kumar and his own signature and signature of the SHO. On identification, this letter is marked as Exhibit P3/PW5. He has stated in para 12 that then he arrested the accused under converted sections 364,302,201 I.P.C. on 16.05.2022 and sent him in judicial custody on 17.05.2022 He has stated in para 13 that he received the postmortem report on 10.06.2022. An application was filed before the learned Court, Ms. Visudha Prakash, Judicial Magistrate First Class, for permission to send the viscera obtained as evidence in the postmortem to the Forensic Science Laboratory for proper examination. Subsequently, the viscera obtained through the Court was sent to the Director, Forensic Science Laboratory, Bihar, Patna, as per the format given in Notice No. 128 dated 24.06.2022. Here is a carbon copy of the duly prepared letter, prepared using the same process. It bears his original signature and the signature of the learned Court. On his identification, it is marked as **Exhibit P4/PW5**. During this time the accused was arrested it is mentioned in para 12 A (wrongly types as 12). He has stated in para 13 (read as 13A as mistakenly typed as 13) that he inspected the place of occurrence where the deceased child's body was found. The second place of occurrence is a Well next to the house of Uday Yadav, son of Jamuna Yadav, where the body was found. This is 500 meters from the village. Uday Yadav's field is bordered to the North by the boundary of the place of occurrence, Vijay

Yadav's field is to the South by the boundary of the place of occurrence. Mahesh Yadav's field is to the East by the boundary of the place of occurrence. Vijendra Yadav's field is to the West by the boundary of the place of occurrence. The body was sent for postmortem examination from there. He has stated in para 14 that at the second place of occurrence, the statement of independent witness Ashutosh Kumar, son of Dukhit Yadav, village Sarkuna, police station Dulhin Bazar, was taken. In the statement, he stated that Ayush Kumar was sitting in his lap. That same night, Dukhit Yadav strangled Ayush Kumar and threw him into a Well. After throwing him, he fled, and his whereabouts were unknown. He has stated in para 15 that as part of the investigation, the postmortem report was obtained and recorded in the diary. For coming to the truth, statements of two more independent witnesses were taken. In which the statements of witness Deepak Kumar, s/o Jayamangal Yadav, village Sarkuna, police station Dulhin Bazar and witness Abhay Kumar, s/o Late Damodar Prasad, village Keshavpur, police station Narayanpur, district Bhojpur were also taken. He has stated in para 16 that Deepak Kumar, in his testimony, stated that accused Dukhit Yadav was watching the dance while holding the deceased Ayush Kumar in his lap. At dawn, he strangled Ayush Kumar to death and threw him into a Well, and Dukhit Yadav fled away from the house. He has stated in para 17 that Abhay Kumar said that his wife Rina Devi had come to her parental home to attend a wedding with her child Ayush Kumar. Dukhit Yadav strangled Ayush Kumar to death at dawn, threw him into a well, and fled. He has stated in para

18 that then he received a copy of the supervision report from the senior officer and followed his instructions. He then went to the Forensic Science Laboratory and requested to submit the report on the viscera sent. He has stated in para 19 that the Forensic Science Laboratory subsequently submitted the report in a sealed cover to the court of the learned Judicial Magistrate concerned, which is enclosed with the record. He has stated in para 20 that as per the statements of all the witnesses, postmortem report and the instructions of the senior officer, he has filed the Charge sheet No. 199/2022 dated 10.08.2022 in the court against Dukhit Yadav, s/o Late Shiv Ratan Yadav, r/o village Sarkuna, Police Station Dulhin Bazar, District-Patna. In para 21 he identified the original charge sheet which is in his handwriting and on his identification, it is marked as **Exhibit P5/PW5**. In para 22 he has stated that till the filling of charge-sheet, the Forensic Science Laboratory report was not received, but it was later on submitted to the Court, hence there was no need to file it again in the Court. Lastly in 23 he has recognized the accused who was present in the court.

22 During his cross-examination by the defence, **PW5 Awadesh Kumar Yadav** has stated in para 25 that he was posted at Dulhin Bazar Police Station from March 2022 to 24.03.2024. In para 26 he has stated that he doesn't remember how many cases he investigated at that time. In para 27 he has stated that he took the statement again of the informant, however, it is not written where it was taken. In para 28 he has stated that the informant again

stated before him in her statement that she suspected that her son Ayush Kumar had been kidnapped by her father Dukhit Yadav. In para 29 he has stated that in paragraph 5 of the diary contains the statement of witness Leela Devi, which was recorded on April 23, 2022, in Sarkuna village. The date and place of recording the statement are not recorded in paragraph 5 of the diary. In para 30 he has stated that Leela Devi had told him that they suspected that Ayush Kumar was being abducted by her father-in-law, Dukhit Yadav. In para 31 he has stated that it is not mentioned in paragraph number 6 as to when and where and on which date statement of witness Shatrudhan Yadav was recorded. In para 32 he has stated that in paragraph six of the diary, statement of Shushrudhan Yadav was taken. He said that he and his entire family, had doubts that Ayush Kumar has been kidnapped by his uncle Dukhit Yadav and he has been made to disappear somewhere. In para 33 he has stated that in paragraph 7 of diary, he described the place of the incident. He did not record the statement of the people residing near the boundary of the place of occurrence in the diary. In para 34 he has stated that in paragraph 78 of the diary he has described the second place of occurrence where the body was found. He has stated that he had not recorded statement of any person residing there. He had not mentioned the names of the persons who accompanied him to the place of the incident. He has stated in para 35 that in paragraph 89 of the diary he has mentioned a mobile number, but he couldn't tell the details of the person to whom the mobile numbers mentioned belong. And till date its CD and call details have

not been described and entered in the diary by him. He has stated in para 36 that he has not received any training in signature and handwriting recognition. Therefore, he couldn't identify. He has stated in para 37 that he has not mentioned in the diary when he submitted the FSL report, where he submitted it and on what date he submitted it. He has stated in para 38 that he has not mentioned in paragraph 43 and 44 of the diary, where and when the statements of Deepak and Abhay were taken. In para 39 he has stated that none of the witnesses have said that they have not seen the accused strangulating and throwing in the Well. Lastly in para 40 he has denied during suggestion that he has not done the investigation by inspecting the place of occurrence and not recording the statement of the witnesses and has submitted a wrong charge sheet.

23 **Evidence of P.W.6 Dr. Baban Kumar:** He has stated during his examination-in-chief in para 1 that on 25-04-2022 he was posted as M.O at S.D Hospital Paliganj and on the same day at 6:00 P.M body was received for the postmortem of Ayush Kumar age about 10 years, s/o Abhay Kumar, r/o Village- Keshwapur, P.S. Narayanpur, District- Bhojpur. Body brought from Vill.- Dhakuna Ramashray's well, P.S- Dulhin Bazar, Dist.- Patna. Body brought and identified by 1. Ashutosh Kumar, S/O. Dukhit Yadav 2. Virendra Prasad, S/o- Late Lal Prasad, both from vill.-Dhakuna, P.S- Dulhin Bazar, Dist.-Patna. Clothes and article as per inquest. In para 2 he has stated that on examination of the body of Ayush Kumar age about 10 years, s/o Abhay Kumar, Village

Keshwapur, P.S. Narayanpur, District Bhojpur he found following:-

- **External appearance Rigor mortis Degree of decomposition:-** Rigor mortis present, face and whole body was diffusely swollen. Both eye closed, venous congestion of face, blackening of both upper and lower lips. Bleeding from nose and mouth present. Avulsion of skin on left side of neck and right upper Abdomen measuring around 2cmx2cm. Abrasion measuring 3cmx2cm on right forehead.
- **External Finding:-** Face and whole body is diffused swollen. Rigor mortis present. Abrasion measuring 3cmx2cm.x soft tissue deep on right side forehead. Avulsion of skin on right side of neck measuring around 2cmx2cm and same dimension on avulsion of skin on right upper Abdomen. Wound measuring 2cmx1cmx tissue deep on right side of cheek.
- **On further dissection of Brain-** There is petechial hemorrhage in brain perenchyma. Skull is intact. All chamber of heart partially filled with altered blood.
- **Neck-** There are two linear scratch mark measuring around 4cm x 0.5 x subcutaneous deep on left side of neck and one linear scratch

measuring 2cm x 0.5cm x subcutaneous deep on right side of neck.

- All abdominal viscera congested, There is ballooning of intestine on further dissection. Part of Lungs, spleen, kidney, stomach with gastric content handed over to investigating police officer for forensic investigation and all viscera sent to FSL Patna.
- **Time elapsed since death** greater than 48 hours.
- **Opinion of case-** All viscera (Spleen, Stomach, Heart, kidney) sent to FSL Patna for investigation. Final report will be produced after FSL Reporting. Final opinion was not given in absence of FSL report.

Lastly he has stated that this report is in his pen and signature and on identification it is marked as **Ex.P6/PW6**.

24 During cross-examination by the defence, **PW6 Dr. Baban Kumar** in para 4 has stated that it is not written to which case this post-mortem report is related. In para 5 he has stated that no water of any kind was found inside the body of the deceased. In para 6 he has stated that there is no mention of any internal injury in the postmortem. In para 7 he has stated that he couldn't tell the cause of death

precisely. Lastly in para 8 he has denied during suggestion that he has not prepared the postmortem report in a scientific manner and he has not examined any postmortem report.

25 Evidence of P.W7 Pooja Mehta: She has stated in her examination-in-chief in para 1 that on 03.11.2022, she was posted as Assistant Director in FSL Patna. In para 2 she has stated that under F.S.L. No. 1365/22, Memo No. 128, dated 24.06.2022, a parcel was received as an exhibit in this office on 24.06.2022 by Special Messenger SI Awalesh Kumar Yadav related with Police Station Case No. 90/2022, dated 23.04.2022, Section 363 I.P.C. converted into 364/302/201 I.P.C. was mentioned. In para 3 she has stated that in this case, a parcel containing the viscera of Ayush Kumar, age 10 years, s/o Abhay Kumar was sent in a wooden box containing two plastic jars marked A1, A2. In para 4 she stated that postmortem held on dated-25-04-2022. In para 5 she has stated that Ext. Mark A1 contained Stomach and Gastric Content and Ext. Mark A2 contained some portion of lungs, heart, spleen and kidney. In para 6 she has stated that in result no metallic alkaloidal, glycosidal, pesticidal and volatile poison was found in the contents of Ext. Mark A1 and A2. In para 7 she has stated that this report was prepared by her and bears her signature and the countersignature of Mr. Himjay Kumar, Director-in-Charge. She identified it. It is marked as Exhibit P7/PW7.

26 During cross-examination by the defence, in para 8 PW7 Pooja Mehta has stated that she has experience with these

types of cases. She has performed approximately 2,500 trials. In para 9 she has stated that this report has been prepared by her. No team has been formed for this. In para 10 she has stated that she has not written in the report what is the density of kidney and heart in the sample received, because this is not related to their work. In para 11 she has stated that the species of decomposing bacteria was not investigated as it is also not related to their work. In para 12 she has stated that the jar in which the viscera was found for examination had the date of postmortem marked on it. In para 13 she has stated that the cause of death will be given by the doctor, it is not within their jurisdiction to tell. Lastly in para 14 she has stated that it is not true that she has not prepared this report scientifically.

DISCUSSION AND ANALYSIS OF EVIDENCE

27 On an overall appreciation of the evidence, the prosecution case rests on a chain of circumstantial evidence. No witness claims to have actually seen the accused murdering Ayush Kumar or throwing his body into the well. Therefore, the credibility of each witness has to be tested on the touchstone of whether their evidence consistently establishes the circumstances forming a complete chain pointing only towards the guilt of accused Dukhit Yadav.

28 **P.W.1 Rina Kumari** (Informant and mother of the deceased and also daughter of the accused) is the most

material witness. She has consistently stated that she last saw the deceased Ayush Kumar alive in the lap of her father accused Dukhit Yadav at about 12.00–12.30 A.M. Soon thereafter, the child went missing. On being questioned, the accused gave evasive replies instead of assisting in the search. The accused left the village at about 4–5 A.M. on the pretext of attending court while the child was still missing. Subsequently, information was received that the accused had disclosed to Bakrudal that he had thrown the child into the well, and ultimately the child's dead body was recovered from the well.

Her cross-examination does not shake these material facts. Though she admitted that she did not witness the actual murder, that admission only reflects truthfulness because the prosecution case itself is based on circumstantial evidence. The defence could not establish any material contradiction or motive for false implication. Her evidence regarding the last-seen circumstance and the suspicious conduct of the accused inspires confidence.

29 Then coming to the testimony of **P.W.2 Ashutosh Kumar**, the son of the accused and maternal uncle of the deceased, meaning thereby son of the accused Dukjit Yadav, is a natural witness. Despite being the accused's

own son, he supported the prosecution. He also deposed that Ayush was last seen in the lap of the accused, the accused gave evasive answers when questioned, refused to participate in the search, and fled from the village.

Being the son of the accused, he had no apparent reason to falsely implicate his own father in such a grave offence. His testimony therefore carries considerable evidentiary value. His admission that he did not actually see the child being thrown into the well does not weaken his credibility because he honestly stated only what he personally witnessed.

30 Similarly, **P.W.3 Leela Devi**, who is daughter-in-law of the accused and maternal aunt of the deceased Ayush, corroborates the prosecution regarding the last-seen circumstance, the disappearance of the child, the evasive conduct and subsequent abscondence of the accused, and the recovery of the body after information regarding the accused's disclosure. She admitted that she had not personally seen the murder and that part of her evidence regarding the confession was based on what she had heard. Accordingly, her evidence is admissible only to the extent of the facts personally witnessed by her and serves as corroboration of the prosecution case.

31 So far as testimony of **P.W.4 Abhay Kumar** is concerned, he is father of the deceased Ayush Kumar and son-in-law of the accused Dukhit Yadav and admittedly he was not present at the wedding and has clearly stated that his evidence is based upon what his wife narrated to him. Therefore, his testimony is hearsay regarding the occurrence and cannot be treated as substantive evidence to prove the actual incident. However, it corroborates the prompt conduct of the informant after the disappearance of the child.

32 Moving towards the testimony of **P.W.5 Awdhesh Kumar** Yadav (Investigating Officer). The Investigating Officer has proved the registration of the FIR, investigation, inspection of both places of occurrence, recovery of the dead body, arrest of the accused, addition of appropriate penal sections, and filing of the charge-sheet.

Though the defence highlighted certain lapses, such as omission to mention the exact place and time of recording some witness statements, failure to collect call detail records, and non-examination of persons residing near the place of occurrence, these are defects in investigation. Such lapses do not by themselves demolish an otherwise reliable prosecution evidence, particularly when supported by

trustworthy ocular and circumstantial evidence. It is settled law that defects in investigation cannot be a ground for acquittal if the substantive evidence is otherwise credible.

33 **P.W.6 Dr. Baban Kumar** has establishes that the body had remained dead for more than 48 hours, there were multiple external injuries, abrasions, avulsion of skin, scratch marks on the neck, facial congestion and petechial haemorrhage, significantly, no water was found inside the body, thereby ruling out accidental drowning.

Although the doctor reserved the final opinion regarding the precise cause of death pending the FSL report, the injuries on the neck and absence of water in the lungs strongly support that the child had died before his body being thrown into the well. Thus, the medical evidence is consistent with homicidal death and supports the prosecution case.

34 Lastly, **P.W.7 Pooja Mehta (FSL Expert)** merely rules out poisoning on the basis the FSL report confirming absence of metallic, alkaloidal, glycosidal, pesticidal or volatile poison in the viscera. She neither supports nor contradicts the prosecution regarding homicidal death by physical violence. Therefore, her evidence is neutral

but corroborates that poisoning was not the cause of death.

35 Thus, it is apparent that the testimonies of P.Ws.1, 2 and 3 are natural, consistent and mutually corroborative regarding the most incriminating circumstances:

- the deceased Ayush was last seen alive with accused Dukhit Yadav,
- the accused alone gave evasive explanations regarding the missing child,
- instead of helping in the search, he absconded from the village while the child was still missing,
- the child's dead body was subsequently recovered from a well, and
- the medical evidence is consistent with homicidal death and inconsistent with accidental drowning.

The defence has not elicited any material contradiction affecting the core of the prosecution story. The omissions pointed out in the investigation are procedural lapses and do not create a reasonable doubt regarding the credibility of the prosecution witnesses.

Applying the principles governing circumstantial evidences

36 The present case rests entirely on circumstantial evidence, there being no eyewitness to the occurrence. It is, therefore, necessary to examine the evidence in the light of the well-settled principles governing cases based on circumstantial evidence. The **Hon'ble Supreme Court in Sharad Birdhichand Sarda v. State of Maharashtra** authoritatively laid down the five golden principles, popularly known as the "Panchsheel", which must be satisfied before a conviction can be founded on circumstantial evidence. These principles are:

- (i) the circumstances from which the conclusion of guilt is to be drawn must be fully established,
- (ii) the facts so established must be consistent only with the hypothesis of the guilt of the accused,
- (iii) the circumstances should be of a conclusive nature and tendency,
- (iv) they should exclude every possible hypothesis except the one to be proved, and
- (v) there must be a complete chain of evidence which leaves no reasonable ground for a conclusion consistent with the innocence of the accused and must show that, in all human

probability, the act must have been committed by the accused.

37 It is equally well settled that the Court must consider the cumulative effect of all the proved circumstances and not examine each circumstance in isolation. Further, under section 106 of the Indian Evidence Act, once the prosecution establishes foundational facts, the failure of the accused to explain facts especially within his knowledge constitutes an additional incriminating circumstance. The conduct of the accused before, during and after the occurrence is also a relevant circumstance under Section 8 of the Indian Evidence Act. Likewise, in cases where the prosecution relies upon the doctrine of "last seen together", the prosecution must first establish that the deceased was last seen alive in the company of the accused and that the interval between such last seen and the discovery of death is so small as to exclude the possibility of any other person intervening. Once such foundational facts are proved, the accused is expected to explain the circumstances under which the deceased parted company with him.

38 Applying the aforesaid settled principles to the facts of the present case, this Court is required to examine whether the prosecution has successfully proved each incriminating circumstance, namely,

- (i) that the death of the child was homicidal,

- (ii) that the deceased was last seen alive with the accused,
- (iii) that the conduct of the accused immediately after the disappearance of the child was unnatural and incriminating,
- (iv) that the recovery of the dead body and other surrounding circumstances lend assurance to the prosecution version, and
- (v) whether these circumstances, when taken cumulatively, form a complete and unbroken chain pointing only towards the guilt of the accused and excluding every hypothesis consistent with his innocence.

Whether the Death of Ayush Kumar was Homicidal?

39 The first and foremost circumstance which the prosecution is required to establish is that the death of the deceased Ayush Kumar was homicidal or not. In the present case, the dead body of Ayush Kumar was recovered from a well on 25.04.2022, nearly two days after he had gone missing from the marriage function. The recovery of the dead body from the well stands

proved through the evidence of **PW-1 Rina Kumari, PW-2 Ashutosh Kumar, PW-5 Awadhesh Kumar Yadav, the Investigating Officer**, and the inquest proceedings. There is no dispute regarding the identity of the deceased.

The medical evidence assumes considerable importance. **PW-6 Dr. Baban Kumar**, who conducted the postmortem examination, found several antemortem external injuries on the person of the deceased. These included an abrasion measuring 3 cm × 2 cm on the right forehead, avulsion of skin on the right side of the neck and right upper abdomen, a tissue-deep wound on the right cheek, two linear scratch marks measuring about 4 cm on the left side of the neck, one linear scratch mark on the right side of the neck and petechial hemorrhage in the brain parenchyma. The doctor further found venous congestion of the face, bleeding from the nose and mouth and diffuse swelling of the entire body. These injuries have been duly recorded in the postmortem report (**Exhibit-6**).

The defence has laid considerable emphasis on the fact that **PW-6** reserved his final opinion regarding the precise cause of death pending receipt of the FSL report and, during cross-examination, stated that he could not state the

exact cause of death. However, this submission does not persuade this Court.

40 It is evident from the testimony of **PW-6** that although the final opinion regarding the exact mechanism of death was deferred, the doctor never suggested that the death was natural or accidental. On the contrary, the postmortem report clearly records multiple antemortem injuries, particularly over the neck and head, which unmistakably indicate application of external force before death. Significantly, **PW-6** also deposed that no water was found inside the body of the deceased. Had the child accidentally fallen into the well while alive, the presence of water in the lungs or air passages would ordinarily have been expected. The absence of water in the body substantially rules out death due to drowning and indicates that the deceased had already died before being thrown into the well. The **FSL report (Exhibit-7)**, proved through **PW-7 Pooja Mehta**, further rules out poisoning, as no metallic, alkaloidal, glycosidal, pesticidal or volatile poison was detected in the viscera. Thus, neither accidental drowning nor poisoning emerges as the cause of death.

41 The cumulative effect of the medical and forensic evidence unmistakably establishes that the child sustained multiple ante-mortem injuries before his body was disposed of in the well. The abrasions, avulsion of

skin, multiple scratch marks over the neck and petechial hemorrhage are wholly inconsistent with a natural death or a simple accidental fall into a well. The injuries on the neck are particularly significant as they are suggestive of violent compression of the neck. The injuries on the forehead and cheek also indicate the use of force. Looking to the age of the deceased, who was only about ten years old, such injuries were undoubtedly sufficient, in the ordinary course of nature, to endanger life and ultimately result in death. The mere fact that the doctor reserved his final opinion regarding the precise cause of death does not render the medical evidence inconclusive. It is a settled proposition of law that medical evidence is essentially corroborative in nature. Where the injuries found on the body and the surrounding circumstances unmistakably indicate homicidal violence, the Court is competent to conclude that the death was homicidal even if the medical expert has not assigned the exact physiological cause of death.

42 In **Solanki Chimanbhai Ukabhai v. State of Gujarat, AIR 1983 SC 484** the Hon'ble Supreme Court held that where the direct or circumstantial evidence is trustworthy, the absence of a definite medical opinion regarding the precise cause of death is not by itself sufficient to discard the prosecution case. Similarly, in **State of Uttar Pradesh v. Krishna Gopal, (1988) 4 SCC 302**, it was held that medical

evidence is merely an opinion and where the ocular or circumstantial evidence inspires confidence, minor deficiencies or absence of a categorical medical opinion cannot outweigh otherwise reliable evidence.

43 In the present case, the evidence on record excludes every reasonable possibility of accidental death. There is no material to suggest that the deceased accidentally fell into the well. Rather, the injuries found on his body, the absence of water in the body, the exclusion of poisoning by the FSL report and the subsequent recovery of the body from a secluded well cumulatively establish that the child had suffered violent bodily injuries before his body was thrown into the well in an attempt to conceal the offence. Accordingly, this Court has no hesitation in holding that the prosecution has successfully proved beyond reasonable doubt that Ayush Kumar died a homicidal death, and the defence suggestion that the child accidentally fell into the well is wholly unsupported by the medical, forensic and circumstantial evidence available on record. This circumstance, therefore, stands firmly established and constitutes the first important link in the chain of circumstances relied upon by the prosecution.

44 The prosecution has next relied upon the doctrine of "last seen together" as one of the most significant circumstances connecting the accused with the commission of the offence. The question that arises for consideration is whether the prosecution has been able to prove beyond reasonable doubt that the deceased Ayush Kumar was last seen alive in the exclusive company of the accused and, if so, whether the accused has discharged the burden cast upon him under Section 106 of the Indian Evidence Act.

45 The evidence of **PW-1 Rina Kumari**, the mother of the deceased, is categorical that on the intervening night of 22/23.04.2022, at about 12:00–12:30 A.M., during the marriage ceremony, she herself saw her minor son Ayush Kumar sitting in the lap of accused Dukhit Yadav. This part of her testimony has remained consistent throughout her examination. Nothing substantial has been elicited in her cross-examination to discredit her testimony on this material aspect. She had no occasion to falsely state that her own father was carrying her son unless it was true. Her evidence inspires confidence and appears to be wholly natural. The testimony of **PW-2 Ashutosh Kumar**, who is the son of the accused and maternal uncle of the deceased, lends complete corroboration to PW-1. He also deposed that at about 12:45 A.M. he had seen Ayush Kumar sitting in the lap of accused Dukhit Yadav during the

marriage ceremony. He further stated that when the child could not be found shortly thereafter, the accused merely stated that the child might be sleeping in the "Jalmasa". **PW-3 Leela Devi** has also corroborated the evidence of **PW-1 and PW-2** by stating that Ayush Kumar was with his maternal grandfather immediately before his disappearance.

46 The testimonies of these witnesses are consistent on the material particulars. Though they are related to the deceased as family members, their evidence cannot be discarded merely on the ground of relationship. It is a settled principle that relationship is not a ground for rejecting otherwise reliable evidence. On the contrary, a close relative who has no reason to shield the real culprit and falsely implicate another is often a natural witness. In the present case, the accused is none other than the father of PW-1 and PW-2 and the father-in-law of PW-3. It is difficult to conceive that the daughter and son would falsely implicate their own father in the murder of their minor child unless the circumstances unmistakably pointed towards him. No material has been brought on record to show that they had any compelling motive to falsely implicate the accused in such a grave offence.

47 The Counsel for the defence, Sri Jitendra Kumar has argued that nearly two to three hundred persons were

present at the marriage ceremony and no independent witness has been examined to support the prosecution version. This contention has been considered. Merely because independent witnesses have not been examined does not render the otherwise cogent and trustworthy testimony of the natural witnesses unacceptable. It is well settled that quality of evidence is more important than quantity. It is further argued on behalf of the defence that the place was crowded and therefore the possibility of the child going elsewhere cannot be ruled out. This submission also deserves rejection. The evidence consistently establishes that the deceased was last seen alive in the custody and lap of the accused shortly before his disappearance. Immediately thereafter the child went missing and despite an intensive search throughout the night he could not be traced. The body was ultimately recovered from a well. Thus, the interval between the child being last seen with the accused and his disappearance is extremely narrow, leaving little scope for intervention by any third person.

48 The doctrine of "last seen together" is now well settled. In **Bodhraj v. State of Jammu & Kashmir, AIR 2002 SC 316**, the Hon'ble Supreme Court held that where the time gap between the accused and the deceased being last seen together and the recovery of the dead body is so small that the possibility of any other person

being the author of the crime becomes improbable, the burden shifts upon the accused to explain the circumstances in which the deceased parted company with him. Similarly, in **State of Uttar Pradesh v. Satish, (2005) 3 SCC 114**, the Supreme Court held that where the deceased was last seen alive in the company of the accused and the accused failed to offer any explanation as to how and when they separated, such failure constitutes a strong incriminating circumstance when read with the other evidence on record.

49 In the present case, the prosecution has successfully established the foundational fact that the deceased was last seen alive in the company of the accused. Once this foundational fact stood proved, the burden under **Section 106 of the Indian Evidence Act** came into operation. It is true that Section 106 does not relieve the prosecution of its primary burden to prove the case beyond reasonable doubt. However, where a fact is especially within the knowledge of the accused, the burden of explaining that fact lies upon him. In **Trimukh Maroti Kirkan v. State of Maharashtra, (2006) 10 SCC 681**, the Hon'ble Supreme Court held that when the prosecution proves facts from which a reasonable inference can be drawn regarding the involvement of the accused, and the accused alone is in a position to explain the circumstances, his failure to

furnish any explanation becomes an additional link in the chain of circumstantial evidence.

50 In the instant case, the accused has not offered any explanation whatsoever as to how the deceased, who was admittedly sitting in his lap shortly before his disappearance, became separated from him. Even when questioned by the family members immediately after the child went missing, he merely gave an evasive reply that the child might be sleeping somewhere. In his examination under Section 313 Cr.P.C. also, no plausible explanation has been furnished regarding the disappearance of the child from his custody. Such silence on the part of the accused assumes great significance because the facts relating to the disappearance of the child after he was last seen with the accused were especially within his knowledge.

51 This Court is conscious that the circumstance of "last seen together" alone may not always be sufficient to sustain a conviction. However, when this circumstance is read conjointly with the subsequent conduct of the accused in leaving the village immediately after the disappearance of the child, his failure to participate in the search, the recovery of the dead body from the well, the homicidal nature of the death and the absence of any explanation from the accused, the circumstance of last seen together becomes a vital and highly incriminating

link in the chain of circumstances. Accordingly, this Court holds that the prosecution has proved beyond reasonable doubt that the deceased Ayush Kumar was last seen alive in the exclusive company of accused Dukhit Yadav immediately before his disappearance. The accused has completely failed to discharge the burden cast upon him under Section 106 of the Indian Evidence Act by offering any plausible explanation regarding the circumstances in which the child parted company with him. His failure to explain this incriminating circumstance furnishes an additional and significant link in the chain of circumstantial evidence pointing towards his guilt.

Conduct of the Accused under Section 8 of the
Indian Evidence Act

52 The prosecution has further relied upon the conduct of the accused immediately before and after the disappearance of the deceased child as an incriminating circumstance. Under **Section 8 of the Indian Evidence Act, 1872**, the conduct of any party to the proceeding, previous or subsequent to the occurrence, is a relevant fact if such conduct influences or is influenced by any fact in issue or relevant fact. Though conduct by itself may not be conclusive of guilt, it is a highly relevant circumstance which assumes considerable

significance when appreciated along with the other evidence on record.

53 In the present case, the evidence of **PW-1 Rina Kumari, PW-2 Ashutosh Kumar and PW-3 Leela Devi** is consistent that immediately after Ayush Kumar went missing at about 1:00 A.M., all the family members became anxious and started searching for the child throughout the village and nearby places. The evidence further establishes that when the accused, who had admittedly been last seen carrying the child in his lap, was asked regarding the whereabouts of the child, he merely replied that the child might be sleeping somewhere in the "Jalmasa" and did not accompany the family in searching for the missing child. On the contrary, at about 4:00 to 5:00 A.M., while the search was still continuing, the accused quietly left the village on the pretext of attending a court case.

54 This conduct, in the opinion of the Court, is wholly unnatural and inconsistent with ordinary human behaviour. The accused was not a stranger but the maternal grandfather of the deceased. A ten-year-old child had suddenly disappeared during the night from a marriage function. In such a situation, any reasonable and affectionate grandfather would naturally have remained with the family, actively participated in the search and extended every possible assistance until the

child was found. Instead, the accused neither made any sincere effort to locate the child nor expressed any anxiety regarding his disappearance. His decision to leave the village in the early hours of the morning while the child remained untraced is wholly incompatible with the conduct expected of an innocent person being maternal grandfather of the missing child.

55 The subsequent conduct of the accused is equally significant. **The Investigating Officer (PW-5)** has deposed that the accused was arrested only on 16.05.2022 after efforts were made to apprehend him. The evidence on record indicates that after leaving the village immediately following the disappearance of the child, the accused was not readily available to the investigating agency. Although abscondence by itself cannot be treated as conclusive proof of guilt, it is undoubtedly a relevant circumstance when considered in conjunction with the other incriminating circumstances. The **Hon'ble Supreme Court in State of Rajasthan v. Kashi Ram, (2006) 12 SCC 254**, has held that the conduct of the accused before and after the occurrence is a relevant fact under Section 8 of the Evidence Act. The Court observed that while abscondence alone cannot necessarily lead to an inference of guilt, it is certainly a circumstance which may lend assurance to the prosecution case when read with other established circumstances. Similarly, in

Matru v. State of Uttar Pradesh, (1971) 2 SCC 75,
the Supreme Court held that absconding is undoubtedly a relevant piece of evidence under Section 8 of the Evidence Act, though it is not by itself decisive of guilt because even an innocent person may sometimes abscond due to fear. However, where the prosecution has otherwise established a chain of incriminating circumstances, such conduct assumes considerable evidentiary value.

56 In the present case, the conduct of the accused is not confined merely to leaving the village. The accused was the person with whom the child was last seen alive. When questioned about the missing child, he offered only an evasive explanation that the child might be sleeping somewhere. He did not join the search, despite being the maternal grandfather. He left the village while the search was still in progress. Even thereafter, no explanation has been furnished by him either during the investigation or in his examination under Section 313 Cr.P.C. as to why he abandoned the family at such a crucial time or how the child disappeared after being in his company. His silence regarding these incriminating circumstances further strengthens the prosecution case. Further te accused has nowhere denied the fact that the child was in his lap at about 1.00 AM on the crucial day.

57 The conduct of the accused, viewed in the backdrop of the surrounding circumstances, cannot be regarded as normal or innocent. It is indicative of a guilty mind and is wholly incompatible with the conduct expected from a person whose minor grandson had suddenly gone missing. This circumstance assumes greater significance because it does not stand in isolation. It is corroborated by the evidence regarding the deceased being last seen alive with the accused, the subsequent recovery of the dead body from the well, the homicidal nature of the death and the complete absence of any explanation from the accused regarding the fate of the

child. Accordingly, this Court holds that the prosecution has successfully established the unnatural and incriminating conduct of the accused within the meaning of Section 8 of the Indian Evidence Act. Though such conduct by itself may not be sufficient to found a conviction, when read together with the other proved circumstances, it constitutes a strong and important link in the chain of circumstantial evidence, lending substantial assurance to the prosecution case and pointing unmistakably towards the guilt of the accused

**Recovery of the Dead Body and other surrounding
circumstance:**

58 The prosecution has further talked about the alleged extra-judicial confession made by the accused and the subsequent recovery of the dead body of the deceased Ayush Kumar from the well. It is, therefore, necessary to examine the evidentiary value of these circumstances. **PW-1 Rina Kumari, PW-2 Ashutosh Kumar, PW-3 Leela Devi and PW-4 Abhay Kumar** have consistently deposed that during the search for the missing child, they came to know that accused Dukhit Yadav had informed one Bakrudal (also referred to as Bakrudan) that he had killed the child and thrown him into the well. Thereafter, the police were informed, and on 25.04.2022, the dead body of Ayush Kumar was recovered from a well situated near the village. **PW-5, the Investigating Officer**, has proved that upon receiving information regarding the dead body lying in the well, he reached the spot, recovered the body, prepared the inquest report and sent it for postmortem examination.

59 At the outset, this Court notices that Bakrudal, the person to whom the alleged confession was made, has not been examined by the prosecution. Consequently, the statements of PW-1 to PW-4 regarding the confession are not based upon their direct knowledge but upon what they were informed by Bakrudal. Strictly speaking, this part of their testimony is hearsay evidence and cannot be treated as substantive evidence proving the making of an extra-judicial confession.

- 60 The law relating to extra-judicial confession is well settled. In **Sahadevan v. State of Tamil Nadu, (2012) 6 SCC 403**, the Hon'ble **Supreme Court** held that an extra-judicial confession, if voluntary, truthful and made to a person who inspires confidence, can form the basis of conviction. However, being a weak piece of evidence, it requires careful scrutiny and ordinarily seeks corroboration from other circumstances on record. Similarly, in **Balwinder Singh v. State of Punjab, (1995) Supp (4) SCC 259**, it was observed that an extra-judicial confession should be received with great caution and can be relied upon only when it inspires confidence and is proved through reliable evidence.
- 61 In the present case, since the person before whom the confession was allegedly made has not entered the witness box, this Court is of the opinion that the alleged extra-judicial confession cannot, by itself, be treated as an independently proved incriminating circumstance. To that extent, the prosecution has failed to prove the confession in accordance with law. However, the matter does not end there. The recovery of the dead body from the well is an independently established fact. **PW-5, the Investigating Officer**, has categorically deposed that on receiving information regarding the body lying in the well, he reached the spot, recovered the body and prepared the inquest report. This evidence has remained unshaken during cross-examination. The recovery is further corroborated by **PW-1, PW-2** and the medical evidence of **PW-6**, who conducted the postmortem examination on the body recovered from the said well.
- 62 The defence has not disputed that the dead body recovered from the well was that of Ayush Kumar. Nor has any suggestion been put that the recovery was fabricated or manipulated. The factum of recovery, therefore, stands proved beyond reasonable doubt. It is equally significant that the recovery of the dead body completely falsifies the defence suggestion that the child had accidentally wandered away or was merely missing. The body was found concealed inside a well situated about 500 metres away from the village. As already discussed while considering the medical evidence, the deceased had sustained multiple ante-mortem injuries and no water was found inside the body, thereby

excluding accidental drowning. The recovery of the dead body from such a place, coupled with the nature of injuries, unmistakably points towards an attempt to conceal the commission of the offence.

63 The **Hon'ble Supreme Court in Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116**, has held that each circumstance in a case based on circumstantial evidence need not independently prove the guilt of the accused; it is the cumulative effect of all the proved circumstances which is decisive. Likewise, in **Trimukh Maroti Kirkan v. State of Maharashtra**, it was held that even if one circumstance is not fully established, the Court is required to examine whether the remaining proved circumstances complete the chain of guilt.

64 Applying the aforesaid principles, this Court is of the considered opinion that although the alleged extra-judicial confession has not been legally proved because of the non-examination of Bakrudal, such deficiency is not fatal to the prosecution case. The prosecution does not rest solely upon the alleged confession. The evidence regarding the deceased being last seen alive in the company of the accused, the unnatural conduct of the accused in leaving the village immediately thereafter, his failure to explain the disappearance of the child despite the burden under Section 106 of the Evidence Act, the homicidal nature of the death, the abscondance of the accused from his village and thereafter the proved recovery of the dead body from the well together constitute an unbroken chain of incriminating circumstances. Therefore, while this Court does not place substantive reliance upon the alleged extra-judicial confession as an independent circumstance, the recovery of the dead body from the well stands firmly proved and constitutes a significant incriminating circumstance. It also establishes that after causing the death of the child, the body was disposed of in the well with the evident intention of concealing the offence. This circumstance lends substantial support to the prosecution case and is also relevant while considering the charge under Section 201 IPC.

Effect of Investigation Lapses and Defence Submissions

65 The learned defence counsel Sri Jitendra Kumar has vehemently contended that the prosecution case deserves to be rejected on account of several lapses in the investigation. It has been argued that the Investigating Officer failed to examine independent witnesses present at the marriage ceremony, did not collect the Call Detail Records (CDR) of the mobile number mentioned during investigation, omitted to record the dates and places where certain witness statements were recorded, did not examine persons residing near the well from where the body was recovered, and did not produce the final medical opinion after receipt of the FSL report. It has further been contended that the alleged extra-judicial confession has not been proved as Bakrudal was not examined and that the prosecution witnesses, being close relatives, are interested witnesses who have falsely implicated the accused due to family discord and property disputes.

66 This Court has carefully considered the aforesaid submissions. It is observed that the lapses pointed out by the defence are primarily deficiencies in the manner of investigation. It is now a settled principle of criminal jurisprudence that an accused cannot claim acquittal merely because the investigation was defective or some desirable steps were omitted by the Investigating Officer. To hold otherwise would amount to rewarding an offender for the negligence or omission of the investigating agency, which is impermissible in law. In **C. Muniappan v. State of Tamil Nadu, (2010) 9 SCC 567**, the Hon'ble Supreme Court held that defective investigation by itself cannot be a ground for acquittal if the prosecution otherwise succeeds in proving its case by reliable and cogent evidence. The Court is duty-bound to separate the truth from the deficiencies in the investigation and determine whether the substantive evidence on record inspires confidence. Similarly, in **Dhanaj Singh @ Shera v. State of Punjab, (2004) 3 SCC 654**, the Supreme Court observed that in every investigation there may be omissions or procedural irregularities, but unless such lapses go to the root of the prosecution case and create a reasonable doubt regarding the guilt of the accused, they cannot be made the sole basis for acquittal. Again, in **State of Karnataka v. K. Yarappa Reddy, (1999) 8 SCC 715**, it was held that if criminal Courts were to acquit accused persons solely because of

defective investigation, the confidence of society in the administration of criminal justice would be seriously eroded. The Court must independently assess the evidence available on record without being unduly influenced by lapses committed by the investigating agency.

67 Applying the aforesaid principles, this Court finds that although **PW-5** has admitted certain omissions during cross-examination, such as failure to examine persons residing near the place of recovery, failure to collect call detail records and omission to mention the place and date of recording certain statements, these deficiencies do not strike at the core of the prosecution case. None of these lapses demolishes the principal circumstances proved by the prosecution, namely that the deceased was last seen alive with the accused, that the accused displayed unnatural conduct by abandoning the search and leaving the village immediately thereafter, that the child met a homicidal death, and that the body was recovered from a well.

68 The defence has also argued that no independent witness from among the 200–300 persons present at the marriage ceremony has been examined. It is true that examination of independent witnesses would have strengthened the prosecution case. However, non-examination of independent witnesses is not invariably fatal where the testimony of natural witnesses is found trustworthy. The **Hon'ble Supreme Court in Dalip Singh v. State of Punjab AIR 1953 SC 364**, held that the evidence of a related witness cannot be discarded merely because of the relationship. If such evidence is otherwise credible and inspires confidence, it can safely be relied upon. The same principle has been reiterated in **State of Uttar Pradesh v. Krishna Master, (2010) 12 SCC 324**, wherein it was held that relationship is not a factor affecting credibility; rather, a close relative is often the last person to falsely implicate an innocent individual while sparing the real culprit.

69 In the present case, **PW-1** is the daughter of the accused and the mother of the deceased, while **PW-2** is the son of the accused and the maternal uncle of the deceased. It is highly improbable that a daughter and son would falsely implicate their own father in the murder of a ten-

year-old child merely to settle property disputes, particularly when such implication would entail the possibility of capital punishment or imprisonment for life. Except for vague suggestions regarding family disputes, the defence has not produced any convincing material to establish any strong motive for such false implication.

70 The defence has further argued that the child might have accidentally fallen into the well. This submission is wholly belied by the medical evidence. As already discussed, the postmortem reveals multiple antemortem injuries on the head, neck and other parts of the body, while the doctor has specifically stated that no water was found inside the body. The FSL report has also ruled out poisoning. Thus, the defence theory of accidental fall stands completely falsified by the scientific evidence.

71 The cumulative effect of the evidence on record demonstrates that the shortcomings in the investigation are peripheral and do not create any reasonable doubt regarding the truthfulness of the prosecution case. Accordingly, this Court holds that the investigation in the present case was not free from certain lapses and omissions. Nevertheless, such deficiencies do not affect the substratum of the prosecution case. The reliable testimony of the prosecution witnesses, corroborated by the medical and forensic evidence and the surrounding circumstances, remains unimpeached. The defence submissions are therefore devoid of merit and are insufficient to dislodge the otherwise complete chain of circumstantial evidence established by the prosecution. The investigation lapses, though deserving of criticism, do not confer any benefit upon the accused in the facts and circumstances of the present case

Whether the Chain of Circumstances is Complete?

72 Having considered the entire oral and documentary evidence on record, this Court is of the considered opinion that the prosecution has succeeded in

establishing each of the material circumstances beyond reasonable doubt and that all such circumstances, when taken cumulatively, form a complete and unbroken chain pointing only towards the guilt of the accused and excluding every hypothesis consistent with his innocence.

73 The most important circumstance proved by the prosecution is that the deceased Ayush Kumar was last seen alive in the company of accused Dukhit Yadav. The evidence of **PW-1 Rina Kumari, PW-2 Ashutosh Kumar and PW-3 Leela Devi** is consistent, cogent and trustworthy on this aspect. There is no material contradiction in their testimony. Their evidence inspires confidence and establishes that shortly before the disappearance of the child, he was sitting in the lap of the accused. The accused has not disputed his presence at the marriage ceremony nor has he furnished any explanation as to how the child parted company with him.

74 The second circumstance is the unnatural conduct of the accused. Instead of participating in the search for his ten-year-old grandson, who had suddenly disappeared during the night, the accused merely gave an evasive reply that the child might be sleeping somewhere and thereafter left the village at about 4.00–5.00 A.M. on the pretext of attending a court case. Such conduct is wholly

inconsistent with ordinary human behaviour and assumes significance under Section 8 of the Indian Evidence Act. His abscondance from his village after disappearance of the child and then subsequent arrest after efforts by the police after gap of about a month further lends assurance to the prosecution case.

75 The third circumstance is that the accused Dukhit Yadav failed to explain the disappearance of the child, although the facts relating thereto were especially within his knowledge. Once the prosecution proved that the deceased was last seen alive in the exclusive company of the accused, the burden shifted upon him under **Section 106 of the Indian Evidence Act** to explain how and under what circumstances the child became separated from him. The accused has maintained complete silence and has not offered any plausible explanation in his examination under Section 313 Cr.P.C. Such failure furnishes an additional and important link in the chain of circumstances.

76 The fourth circumstance is that the death of Ayush Kumar was homicidal. Though the doctor reserved his final opinion regarding the precise cause of death, the postmortem report reveals multiple ante-mortem injuries over the head, neck and other parts of the body, petechial haemorrhage in the brain, and significantly, absence of water inside the body, thereby ruling out

death by drowning. The FSL report further excludes poisoning. The medical and scientific evidence leaves no room for doubt that the child died as a result of homicidal violence before the body was thrown into the well.

77 The fifth circumstance is the recovery of the dead body from the well, which stands independently proved by the Investigating Officer and is corroborated by the medical evidence. The body was found concealed in a well situated away from the village. This circumstance clearly indicates an attempt to screen the offence and destroy evidence. It is true that the alleged extra-judicial confession has not been proved by examining Bakrudal, the person before whom it was allegedly made. This Court has, therefore, consciously excluded the said circumstance from substantive consideration. However, even after excluding the alleged confession, the remaining circumstances constitute a complete and coherent chain of evidence.

78 The defence has failed to probabilise any alternative hypothesis consistent with innocence. The suggestion that the child accidentally fell into the well stands completely demolished by the medical evidence, which establishes ante-mortem injuries and absence of water in the body including lungs. Similarly, the plea of false implication on account of family disputes remains a bare

suggestion unsupported by any convincing evidence. On the contrary, it is difficult to accept that a daughter and son would falsely implicate their own father in the murder of a minor child without any compelling reason. The defects pointed out in the investigation also do not create any reasonable doubt regarding the prosecution case. The settled position of law is that defective investigation cannot by itself be a ground for acquittal if the substantive evidence on record establishes the guilt of the accused.

79 The principles governing conviction on circumstantial evidence have been succinctly laid down by the **Hon'ble Supreme Court in Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116**. Applying the aforesaid principles to the facts of the present case, this Court is satisfied that the prosecution has proved beyond reasonable doubt the following chain of circumstances:

- (i) the deceased was last seen alive in the exclusive company of the accused,
- (ii) the accused failed to explain the disappearance of the child despite the burden under Section 106 of the Evidence Act,

- (iii) the conduct of the accused in abandoning the search and leaving the village immediately thereafter was wholly unnatural and incriminating,
- (iv) the deceased met a homicidal death,
- (v) the dead body was recovered from the well, demonstrating an attempt to conceal the offence; and
- (vi) the defence has failed to offer any plausible explanation consistent with innocence.

These circumstances are fully established, are consistent only with the guilt of the accused, exclude every reasonable hypothesis of innocence and, taken together, form a complete chain leading only to the irresistible conclusion that it was the accused and none else who kidnapped and murdered the child and thereafter caused disappearance of the evidence.

Whether the Accused is Guilty of the Offences under Sections 363, 364, 302 and 201 IPC?

80 In view of the findings recorded hereinabove, this Court is satisfied that the prosecution has succeeded in proving its case beyond all reasonable doubt. The evidence on record establishes that the accused took the minor child Ayush Kumar from the lawful custody of his mother without her consent. The child was thereafter never seen alive except in the company of the accused and was subsequently found dead. These facts clearly

establish the offence of kidnapping punishable under **Section 363 IPC.**

81 The surrounding circumstances further establish that the kidnapping was not an isolated act but was committed with the intention of causing the death of the child. The child disappeared immediately after being in the custody of the accused and was subsequently found murdered. The prosecution has, therefore, also proved the ingredients of **Section 364 IPC** beyond reasonable doubt.

82 The medical evidence, read together with the evidence relating to the last seen circumstance, the conduct of the accused, his failure to explain the incriminating circumstances under **Section 106 of the Evidence Act**, and the recovery of the dead body, unerringly establishes that the accused intentionally caused the death of Ayush Kumar. The injuries found on the body were sufficient in the ordinary course of nature to cause death, and the act of the accused squarely falls within the ambit of **Section 300 IPC, punishable under Section 302 IPC.**

83 The evidence further establishes that after committing the murder, the accused threw the dead body into a well situated away from the village with the obvious intention of concealing the offence and screening himself from legal punishment. Such conduct clearly attracts the ingredients of **Section 201 IPC.**

84 The cumulative effect of all the proved circumstances leaves no reasonable doubt regarding the complicity of the accused. The prosecution has established a complete chain of circumstantial evidence which excludes every hypothesis except the guilt of the accused. The defence has failed to create any reasonable doubt or offer any explanation consistent with innocence.

85 Hence, it is hereby

ORDERED

that **accused Dukhit Yadav is** found and held guilty for the offence committed **under Sections 363, 364, 302 and 201 of the Indian Penal Code. Dukhit Yadav** is already in custody.

Put up on 20-07-2026 for hearing on the point of sentence.

The judgment is pronounced in the open Court

Dictated and corrected by me

(Dictated)

(Kshiprachala Anjalee)
Anjalee)
Sessions Judge-II,
Danapur
Dated 06-07-2026

(Kshiprachala
Addl.
Addl. Sessions Judge-II,
Danapur
Dated 06-07-2026

FORM C LIST OF PROSECUTION/DEFENCE/ COURT WITNESSES

A. Prosecution

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)

PW-1	Rina Kumari	Informant cum mother of deceased cum daughter of the accused
PW2	Ashutosh Kumar	Brother of the Informant cum son of the accused
PW3	Lila Devi	Sister-in-law of the informant cum Daughter-in -law of the accused
PW4	Abhay Kumar	Husband of the informant cum father of deceased
PW5	Awadesh Kumar Yadav	Investigating Officer
PW6	Dr . Baban Kumar	Doctor
PW7	Pooja Mehta	Forensic Expert

B. Defence Witnesses, if any:

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
NIL	NIL	NIL

C. Court Witness, if any:

Rank	Name	Nature of Evidence
CW	NIL	NIL

LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS

A. Prosecution

Sr. No.	Exhibit	Description
1	P 1/PW1	Signature of the informant on the written report
2	P1/1/PW5	Endorsement on the written report by then SHO

		Prabha Kumari
3	P2/PW5	Formal FIR
4	P3/PW5	Application dated 28-04-2022
5	P4/PW5	Application dated 24-06-2022 addressing to Director, FSL,
6	P5/PW5	Charge-sheet.
7	P6/PW6	Postmortem Report
8	P7/PW7	FSL Report

B. Defence Exhibit, if any:

Sr No.	Exhibit	Description
1	NIL	NIL

C. Court Exhibit, if any:

Sl No.	Exhibit	Description
1	NIL	NIL

D. Material Objects:-

Sl. No.	Material Object Number	Description
NIL	NIL	NIL

**(Kshiprachala
Anjalee)
Addl. Sessions
Judge-II,
Danapur,
Dated 06-07-2026**

Hearing on point of Sentence on 20.07.2026

1. Vide judgement dated 06-07-2026 accused Dukhit Yadav has been convicted for the offence punishable u/s 363, 364, 302, 201 IPC.

2. Convict Dukhit Yadav has been produced from custody.

3. Heard the learned Additional Public Prosecutor and the learned counsel appearing on behalf of the convict on the question of sentence under Section 235(2) of the Code of Criminal Procedure.

4. The learned Additional Public Prosecutor submitted that the convict has committed a gruesome and heinous offence by kidnapping his own ten-year-old grandson, brutally causing his death and thereafter throwing the dead body into a well in an attempt to screen himself from legal punishment. It is submitted that the offence has shattered the faith of society, and considering the brutality of the act and the relationship between the convict and the deceased, no leniency deserves to be shown. He has also stated about the report of the Probation officer received vide letter no. 655/ dated 18-07-2027 as per which conduct of the accused in the society is reported to be adverse in nature.

5. Per contra, the learned defence counsel prayed for leniency, submitting that the convict is an elderly person having family responsibilities and has remained in custody for a considerable period. It was further submitted that the case rests upon circumstantial evidence and that no previous conviction

has been proved against the convict. It is, therefore, prayed that a lenient view be taken while awarding sentence.

6. This Court has given its anxious consideration to the rival submissions.

7. The offence committed by the convict is undoubtedly grave and abhorrent. The victim was an innocent child of about ten years and, more significantly, the convict was none other than his maternal grandfather. The relationship between a grandparent and a grandchild is one of trust, affection and protection. Instead of protecting the child, the convict betrayed that trust, kidnapped him, caused his homicidal death and thereafter attempted to destroy the evidence by throwing the body into a well. Such conduct exhibits extreme depravity and deserves stern condemnation. Additionally the report of Probation Officer, indicates that the convict has a tendency to engage in frequent quarrels and disturbance in the locality and does not enjoy a good reputation in society.

8. At the same time, while considering whether the present case falls within the category of the "rarest of rare" cases warranting capital punishment, this Court is guided by the principles laid down by the **Hon'ble Supreme Court in Bachan Singh v. State of Punjab and Machhi Singh v. State of Punjab**. The Court is required to balance the aggravating and mitigating circumstances and to ascertain whether the alternative punishment of imprisonment for life is unquestionably foreclosed.

9. In the present case, although the crime is heinous, the prosecution has not established any exceptional circumstances warranting imposition of the death penalty. The conviction rests upon a complete chain

No previous conviction of

the convict has been proved before this Court. The probation officers report does not inspire confidence regarding the reformation and rehabilitation of the convict. Having regard to the totality of the circumstances, this Court is of the considered view that the present case does not fall within the category of the "rarest of rare" cases. The ends of justice would be adequately met by awarding the sentence of imprisonment for life.

10. Accordingly, the convict Dukhit Yadav is sentenced

- **For the offence under Section 364 IPC, he is sentenced to undergo Rigorous Imprisonment for ten (10) years and to pay a fine of ₹20,000/-, and in default of payment of fine, to undergo Simple Imprisonment for one year.**
- **For the offence under Section 302 IPC, he is sentenced to undergo Imprisonment for Life and to pay a fine of ₹50,000/-, and in default of payment of fine, to undergo Simple Imprisonment for one year.**
- **For the offence under Section 201 IPC, he is sentenced to undergo Rigorous Imprisonment for three (3) years and to pay a fine of ₹10,000/-, and in default of payment of fine, to undergo Simple Imprisonment for six months.**
- **No separate sentence is passed under section 363 IPC in light of section 71 of the IPC.**

11. All the substantive sentences shall run concurrently.
12. Office to prepare Conviction Warrants of the convicts as per Rules.
13. The period of detention already undergone by the convict during investigation, inquiry and trial shall be set off under Section 428 of the Code of Criminal Procedure, 1973 (corresponding provision under the BNSS, if applicable).
14. Copy of the judgment to be immediately made available to the convicts free of cost by the office.
15. Sentence is pronounced in the open Court.
16. The convict is informed of his statutory right to prefer an appeal against this judgment and order before the Hon'ble High Court within the period prescribed by law.
17. **COMPENSATION** : From the perusal of record, it appears just and proper that the legal heirs of Deceased Child Ayush Kumar should be adequately compensated for permanent loss of their loved one. On trial, the Murder of Deceased Ayush Kumar has been proved and convict has been sentenced accordingly. After the stage of final hearing, it is obligatory on the part of the court to record a finding whether a case for grant of compensation has been made out and, if so, who is entitled to compensation. This court finds that **Rina Kumari, w/o Abhay Kumar, R/O Village-Keshwarpur, PS-Narayanpur, Districty-Bhojpur, mother of the deceased Ayush Kumar**

come under definition of “Victim” under Victim Compensation Scheme. Considering the gravity of offence and need of the mother for her permanent loss of love and affection of the deceased son as such this court finds it to be a fit case where compensation is recommended to be awarded to aforesaid legal dependent of the deceased Ayush Kumar as per sec 357A(2) of Cr.P.C. Office is directed to send the recommendation to Secretary, District Legal Services Authority, Patna for needful.

18. Let a copy of this judgment and the order on sentence be supplied to the convict free of cost forthwith.

19. The records be consigned to the Record Room after due compliance.

(Kshiprachala Anjalee)

**Addl. Sessions Judge-II,
Danapur
Dated 20-07-2026**