

Annexure - I

<u>IN THE COURT OF ADDITIONAL SESSIONS JUDGE-I-Cum-FAST TRACK COURT FOR RAPE CASES, HAZARIBAGH</u>	
Present:- Onkar Nath Choudhary, Addl. Sessions Judge-I-Cum- FTC for Rape Cases, Hazaribagh Dated, Hazaribagh the 28 th January, 2025. District - Hazaribagh <u>S.T. Case No.432 of 2022</u> <u>CNR No.JHHB01008127-2022</u> (Arising out of Korrah P.S. Case No.96/2022 corresponding to G.R. Case No.1516/2022)	
Complainant/Informant	State of Jharkhand (Through the mother of the victim/deceased).
Represented By	Shri Rajesh Lal, Ld. Addl. P.P.
Accused	(A1). Vimal Kumar, aged about 24 years, S/o Mahavir Ram, R/o Bhuiyan Toli, Matwari, P.S. Korrah, District – Hazaribagh (A2). Lal Pratap Anokha alias Raja, aged about 21 years, S/o Suresh Ram, R/o Tatijhariya, Dharampur, P.S. Tatijhariya, District – Hazaribagh Accused persons
Represented By	For Accused No.1:- Sri Manoj Kumar Rana, Sri Mahendra Prasad, Sri Bikramaditya Tiwari For Accused No.2:- Sri Sourav Anshu, Provided by DLSA Ld. Advocates

Annexure – II

Date of Offence	06.05.2022
Date of FIR	07.05.2022
Date of Charge sheet	11.08.2022
Date of Framing Charges	25.11.2022
Date of Commencement of Evidence	18.01.2023

Date on Judgment is reserved	17.01.2025
Date of Judgment	28.01.2025
Date of Sentencing order, if any	31.01.2025

Accused Details:

Rank of Accused	Name of Accused	Date of Arrest/ Surrender	Date(s) of released on bail	Offence charged with	Whether acquitted or convicted	Sentence imposed	Period of detention undergone during trial for purpose of Section 428 Cr.P.C. (As on 31.01.2025)
A1	Vimal Kumar	07.05.2022	Not Applicable (He is in custody from the very beginning)	0.00	Convicted U/s. 302/34 & 201/34 of I.P.C.	(1) Life imprisonment for the offence U/s. 302/34 IPC and (2) RI for 3 years for the offence U/s. 201/34 of IPC	2 years, 8 months and 24 days
A2	Lal Pratap Anokha alias Raja	- do -	- do -	- do -	- do -	- do -	- do -

Annexure -III

List of Prosecution/Defence/Court Witnesses

A. Prosecution witness:

Rank	Name of Witnesses	Nature of Evidence
PW1	Informant herself	Material witness
PW2	informant’s younger daughter	Material witness
PW3	Manu Goswami	Independent & hearsay witness
PW4	Kedar Ram	Independent & hearsay witness
PW5	Mukesh Ram	Independent & hearsay witness
PW6	Dr. Rajesh Kumar Gupta	Who had conducted postmortem of the deceased
PW7	Father of the deceased/victim	Material witness

PW8	S.I. Uttam Tiwari	I.O. of this case

B. Defence Witness, if any: Nil

C. Court Witness, if any: Nil.

List of Prosecution/Defence/Court Exhibits

A. Prosecution Exhibits:

- (i). Ext.P-1/PW1 - Written report of the informant
- (ii). Ext.P-2/PW4 - Signature of Kedar Ram on arrest memo of accused A1
- (iii). Ext.P-3/PW4 - Signature of Kedar Ram on arrest memo of accused A2
- (iv). Ext.P-4/PW5 - Signature of Mukesh Ram on death inquest report
- (v). Ext.P-5/PW6 – Postmortem report of the deceased
- (vi). Ext.P-6/PW7 – Signature of father of the deceased on inquest report
- (vii). Ext.P7/PW8 - Signature of the I.O. on formal FIR,
- (viii). Ext.P8/PW8 - Endorsement made by the Officer-in-Charge on written report
- (ix). Ext.P9/PW8 - Carbon copy of inquest report.

B. Defence Exhibits: Nil

C. Court Exhibits: Nil

D. Material Objects: Nil

J U D G M E N T

1. In the present case the above-named accused persons Vimal Kumar (A1) and Lal Pratap Anokha alias Raja (A2) are facing allegations for the offences punishable U/s. 302/34, 376(D) & 201/34 I.P.C. Both of them are in judicial custody since 07.05.2022. The name of the victim, names of her relatives and particulars relating to identification of the victim is concealed herein to save the identity of alleged victim of rape and murder.

2. The brief facts of the prosecution case is that on 07.05.2022 the informant (mother of the victim) filed a written report in Korrah P.S. stating therein that she herself and her two daughters, aged about 20 years and 18 years work as house maids near Gandhi Maidan for earning livelihood. That on 06.05.2022 the informant's mother had visited her house so she had sent her two daughters to work

as maid in place of her. That at about 3.00 PM her younger daughter came to her house while crying and told her that when she and her elder sister(deceased) were returning home after working near Gandhi Maidan, the above-named two accused persons i.e. A1 & A2 were found sitting in Gandhi Maidan. It was further stated by her that A1 caught hold of her elder sister's (deceased) hand and started dragging her towards Dhobia Talao and when she tried to resist, A2 flashed a knife to threaten her and also threw her on the ground. It is alleged that both the accused persons A1 & A2 took away her elder sister (deceased) by dragging her. The informant then narrated the incident to her husband and then all the family members started searching the victim. That on 07.05.2022 at about 8.00 AM the informant came to know that a dead body of a girl is floating in Pakahi pond. The dead body was identified by the informant as her daughter by seeing her clothes. The matter was reported to Korrah P.S.. Police arrived and the dead body was taken out of the pond and thereafter it was sent for postmortem. The informant stated that her daughter was killed by A1 & A2 and both of them are residents of Bhuiyan Toli, Matwari. She also stated that both the accused persons forcibly took her deceased daughter and then raped her and after that she was killed and her dead body was thrown in the pond.

On the basis of aforesaid written report of the informant, an FIR was registered against the accused persons A1 & A2 U/s. 376D/302/201/34 of I.P.C. against A1 & A2 vide Korrah P.S. Case No.96/2022 dated 07.05.2022. On the same day both the accused persons were apprehended from the house. Postmortem was also conducted.

3. That after completion of investigation the I.O. submitted charge sheet against A1 & A2 vide Charge Sheet No.138/2022 date 02/08/2022 U/s. 376D, 302/201/34 of I.P.C. on 11.08.2022. That on the same day Ld. A.C.J.M., Hazaribagh took cognizance of the aforesaid offences against the above-named two accused persons. Thereafter the case was committed to the Court of Ld. Principal District & Sessions on 01.11.2022 and finally the case record was received by this Court, on transfer, on 09.11.2022.

4. That on 25.11.2022 charges U/s. 302/34, 376(D) & U/s. 201/34 of I.P.C. were framed against both the accused persons. Charges were read over and were

explained to them in Hindi to which they pleaded not guilty and claimed to be tried.

FINDINGS

5. During the course of prosecution evidence on behalf of prosecution total eight witnesses including doctor and I.O. have been examined. The informant was examined as PW1, The informant's younger daughter as PW2, Manu Goswami, an independent witness as PW3, Kedar Ram, an independent witness as PW4, Mukesh Ram, an independent witness as PW5, Dr. Rajesh Kumar Gupta, who had conducted postmortem of the deceased as PW6, Father of the deceased/victim as PW7 and S.I. Uttam Tiwari, I.O. of this case as PW8.

During the course of trial on behalf of prosecution total nine documents were exhibited during prosecution evidence. Ext.P-1/PW1 is the written report of the informant, Ext.P-2/PW4 is the signature of Kedar Ram on arrest memo of accused A1, Ext.P-3/PW4 is the signature of Kedar Ram on arrest memo of accused A2, Ext.P-4/PW5 is the signature of Mukesh Ram on death inquest report, Ext.P-5/PW6 is the postmortem report of the deceased, Ext.P6/PW7 is the signature of father of the deceased on inquest report, Ext.P7/PW8 is the signature of the I.O. on formal FIR, Ext.P8/PW8 is the endorsement made by the Officer-in-Charge on written report and Ext.P9/PW8 is the carbon copy of inquest report.

6. After closure of prosecution evidence statements of accused persons A1 & A2 were recorded on 14.12.2023. In their statements both A1 & A2 have denied the occurrence and has not stated anything in support of his innocence. They have only denied the allegations made by the witnesses. However A2 has stated that he has been falsely implicated by Mukesh Kumar due to animosity. They have stated that they want to produce witness in defence.

7. In order to prove its case prosecution has produced total 8 witnesses. Out of them PW1, PW2 & PW7 are the family members of the deceased whereas PW3, PW4, PW5 are independent witnesses and the persons of the said locality.

8. As far as testimony of the informant is concerned, I find that the informant (PW1) in her testimony has stated that the occurrence had taken place on 6th May and that she had three daughters. Out of them the youngest of them remained at house while other two worked as house maids and the age of the deceased daughter

was 20 years. She further states that she and her daughter used to go to work near *Ghurni* pond. On 6th her mother had come so she had sent her both the daughters to work in place of her. She further states that at about 3.00 PM in the evening her second daughter came back to the house while crying and when enquired upon she told that the two boys namely Vimal Kumar(A1) and Lal Pratap Anokha @ Raja (A2) caught hold of the deceased and took her with them and when she resisted she was pushed due to which she felled on the ground and that they also threatened with knife. PW1 further states that her daughter told her that both the boys had taken the deceased towards *Dhobia Talao*. The informant states that on hearing this she informed her husband and then both of them started searching her daughter. They searched for their daughter through out the night. In the night they also visited the police station. She further states that in the morning of 8th a dead body was found to be floated in *Pakahi Talab* which was later on identified as informant's daughter. Then she went to Korrah P.S. and filed the written complaint. She also states that she is fully confirmed that A1 & A2 after committing rape upon her daughter had killed her. During her examination as a witness she has identified both the accused persons, when they were produced through video conferencing. She also states that both the accused persons are resident of same *Muhalla* where she resides. PW1 proved her signature on the written report as Ext.P-1/PW1

During cross-examination she states that she knows A1 since his childhood as he is from the same locality. She further states that when the dead body was being taken out of the pond, she was present there and that the pant of the deceased was opened and her dresses were also torn. However, she states that she had not seen the incident of rape. She also states that on the date of incident her deceased daughter had left the house for work at 10.00 AM and that both the accused persons had dragged her deceased daughter towards the lane situated other sides of Gandhi Maidan and she cannot say that anybody had witnessed that occurrence or not.

9. PW2, younger sister of the deceased and the main witness of this case, states in her examination-in-chief that the occurrence had taken place on 06.05.2022 between 2.00 PM and 2.30 PM. She states that she and her deceased sister after completing maid work in a house were going to work in different house, at the end of Gandhi Maidan two boys namely Vimal Kumar(A1) and Lal Pratap Anokha @

Raja (A2) were found to be sitting there. She further states that both the boys followed her and her deceased sister and started dragging her deceased sister towards *Dhobia Talao* and when she went to save her sister, she was pushed and assaulted due to which she felled on the ground. However, she again got up and tried to rescue her sister but Lal Pratap Anokha @ Raja, A2 flashed a knife and threatened her to kill while Vimal A1 was dragging her sister by catching her sister's hand. PW2 further states that she started crying and rushed towards her house and narrated the incident to her mother and then she and her family members started searching for her sister but her sister was traceless. She also states that through out the night they searched for her sister. Even they visited the police station in the night but her sister could not be found. On the next day she came to know that her sister's dead body is floating in *Pakahi Talab*. Dead body was taken out by the police and it was sent for postmortem. PW2 while identifying both the accused persons in the Court, started crying in the Court while saying that these are the two persons who had raped her deceased sister and killed her.

During cross-examination she states that for the last 4 to 5 years she and her sister used to work as a house maid together and that her father and mother also work and she has not gone to school. She states that at the time of occurrence in the area of Gandhi Maidan where the occurrence had taken place there was no one present and that area was vacant. She again states that when the accused persons were dragging her sister, there was no one present in that area. She states that both the accused persons are resident of her Muhalla and both of them were seated together. She states that in the night also she and her family members had visited the police station. She states that at the time of occurrence she has shouted for help and while going to her house she was crying but did not narrated the incident to any other persons nor any person of her Muhalla asked her that why she crying.

10. PW3 Manu Goswami is an independent witness. He while supporting the prosecution case states that the occurrence is of 07.05.2022. He also states that he came to know that the deceased is traceless. He also searched the deceased but could not find her. He further states that younger sister of the deceased informed the villagers that Vimal Kumar(A1) and Lal Pratap Anokha @ Raja (A2) both of them forcibly dragged the deceased towards *Dhobia Talao*. PW3 further states that the

deceased was searched through out the night and he even lend his car for the purpose of searching the deceased. He further states that in the morning Raja was caught and he before the society told that the deceased is no more as he and Vimal has thrown her body in *Pakahi Talao* after killing her. He further states that he along with police also went to the *Pakahi Talao* where the body was found and later on dead body was sent for postmortem. PW3 identified both the both the accused persons, who were produced in the Court through video conferencing.

During cross-examination he states that he is deposing in the Court on the basis of conversations of father of the deceased and what accused had told before the community.

11. PW4, Kedar Ram, another independent witness, states that the occurrence had taken place on 06.05.2022. That mother of the deceased works as house maid and her two daughters also go for work with her. She states that younger daughter of the informant came running to him and informed that when she and her deceased sister was coming form work, both the accused persons Vimal Kumar and Lal Pratap Anokha came and caught hold of her sister and started dragging her towards *Dhobia Talao* and when she resisted, she was threatened with knife and was pushed. She further states that on Gandhi Maidan gate the deceased was searched by him and other persons through out the night but she was not found anywhere. On the next day i.e. on 7th he met Lal Pratap Anokha @ Raja A2 and when he asked about the deceased from him, he told that “*rat me uska game baza diya ham aur uska llash Pakahi Talao me hai.*” Then Raja told that “*maine aur vimal ne kiya hai*”. Then he informed the police and police arrested both the accused persons and he put his signature on arrest memo of Vimal which is Ext.P-2/PW4. Thereafter he put his signature on the arrest mem of Lal Pratap Anokha which is Ext.P-3/PW4. In para 2, PW4 states that in his presence both the accused persons confessed and stated that they had raped the deceased one by one and thereafter killed her and thrown her body in the pond. He further states that police had recovered the naked body of the deceased. PW4 identified the accused.

During cross-examination he again says that when the accused persons had confessed about their guilt in his presence, then the villagers were also present there. He again during cross-examination by the counsel of the accused A2

reiterated that when the accused confessed about their guilt in his presence at that time of 25 to 30 people were also present there and amongst them Mukesh, Mantu Ram, Santosh Ram and Rajesh Ram were there. He also states that at that time accused was not assaulted by any one.

12. PW5, another independent witness, states in his examination-in-chief that the occurrence had taken place on 06.05.2022 when he was in his house, younger sister of the deceased came crying and told that her sister was taken away by Raja, A2 and Vimal, A1 by dragging and that the deceased was searched through out the night but she was not found. He further states that in the next morning he and other persons met Vimal and Raja, A1 & A2, who were coming towards them and when he and other persons asked them that where is the deceased on which both the accused persons told that they have killed the deceased and have thrown her body in *Pakahi Talao* and then police was called and dead body was recovered. He proved his signature on carbon copy of the death inquest report as Ext.P-4/PW5.

During cross-examination PW5 states that on the day of incident at about 10.00 AM in the morning he had seen the deceased going towards Gandhi Maidan along with her younger sister. He came to know about discovery of the body of the deceased from pond on the next day i.e. on 8th. That prior to his arrival at the pond, a mob of about 50 persons were also present there.

13. PW7 is the father of the deceased and husband of the informant. He in his testimony while supporting the informant's version states that the occurrence had taken place on 06.05.2022 and that on the said date his two daughters, the deceased, elder daughter and his younger daughter had gone to work as they worked near Dhobia Talao. That two boys A1 & A2 were sitting on the next end of Gandhi Maidan. That when her both daughters were returning after doing their work between 1.00 PM to 2.30 PM A1 caught hold of hands of the deceased and started pulling her and when her elder daughter tried to save her, then A2 took out a knife and threw her younger daughter on the ground and threatened her. Thereafter his younger daughter came to his house and narrated the story to his wife (informant) and then the informant told him about the occurrence. Then he informed about the matter to Mukhiya. He further states that he along with other villagers and Mukhiya started searching his daughter and on the next day when both the boys

were caught and inquired upon, then they accepted that after raping his elder daughter they had killed her and thrown her body in Pakahi Talao. Then he went to Pakahi Talao where police also arrived and police took out the body and he put his signature on inquest report which has been exhibited as Ext.P-8/PW7.

During cross-examination he states that he had informed the Mukhiya on 06.05.2022 at 5.00 P.M. He further states that in Gandhi Maidan from 10.00 AM to 11.00 PM there is always rush. Further he states in para 11 that on the date of occurrence he had gone to police station at 7.00 P.M. along with his family and people of society namely Kedar Ram, Mannu Goswami but no FIR was taken. Officer-in-Charge assured him that the girl would be found.

14. PW6 is Dr. Rajesh Kumar Gupta, who had conducted postmortem report of the deceased. He in his testimony states that on 07.05.2022 he was posted as Medical Officer at S.B.M.C. Hospital and at about 2.00 PM he conducted postmortem of the dead body i.e. of the deceased, who was aged about 20 years and postmortem was done by the Medical Board constituted vide Letter No.792/07-05-22/Superintendent SBMCH, Hazaribagh and that there were three doctors in the board namely Dr. Rajesh Kumar Gupta, Dr. Subhash Prasad and Dr. Shivani Yadav. The dead body was brought by Choukidar 1/8 Pushpa Devi, Korrah, Ramchander Ram and Mukesh Ram. On postmortem it was found that:-

(i) Rigor mortis was absent in upper limbs. However, it was present in lower limbs and there was decomposition of - (i) Abdomen, (ii) Marbling of veins present, (iii) Sodden appearance of hands and feet, (iv) Postmortem staining over back and upper part of body on front and there was bleeding mark on left nostril. At the same time no skin was found in hand.

He further states that on dissection of larynx – bilaterally, posterior upper part of larynx showing reddish haematoma. Wall – Deep congested, content – some water. He opined that nature of injury – Antemortem, grievous and responsible for death in due course and the said injury was due to compression over neck.

On examination by the lady doctor – No sign of injury at private part was found nor presence of spermatozoa in vaginal smear was observed and no spermatozoa was seen in vaginal smear also. Uterine size appears to be normal on postmortem. The lady doctor opined that no direct evidence of sexual assault but

possibility of sexual assault cannot be ruled out. PW6 again opined that death was caused due to asphyxia due to compression over neck and death has occurred approximately between 12 to 36 hours of the postmortem. He also states during cross-examination that physical violence may be found due to compression over neck. Postmortem has been proved as Ext.P-5/PW6

15. PW8 S.I. Uttam Tiwary is the I.O. of this case. He in his testimony states that on 07.05.2022 he was Officer-in-Charge of Korrah P.S. and he had himself taken over the charge of investigation of this case. He proved his signature on formal FIR as P-7/PW8 and endorsement on written report as P-8/PW8. He states that before taking over the charge of investigation, on information he had gone to Pakahi Talao situated in Babugaon where it was found that dead body is floating as upside down. The body was taken out and death inquest report was prepared which has been proved as P-9/PW8. He further states that the informant, who is mother of the deceased gave written complaint to him. Thereafter the body was sent for postmortem and he took over the charge. Thereafter he recorded restatement of the informant and visited the place of occurrence which is situated at a distance of 3 KM from Pakahi Talao. He further states that he recorded statement of younger daughter of the informant, husband of the informant and Mannu Goswami. He then arrested A1 on 07.05.2022 and that arrest memo has been proved as P-10/PW8. Thereafter A2 was arrested by him and he proved the arrest memo of A2 as P-11/PW8. He further states that confessional statement of A1 was recorded in which he has confessed that he has committed the offence and that he and A2 raped upon the deceased and then she was killed and her body was thrown in the pond. He proved the confessional statement of A1 as P-12/PW8. He has also recorded the criminal history of A2 which is mentioned in the case diary. Then he submitted charge sheet vide No.138/22 dated 02.08.2022 U/s. 376(D), 302, 201/34 of I.P.C.

During cross-examination he states that he has received information about the occurrence on 07.05.2022 at about 8.45 AM and Sanha was recorded but it has not been mentioned at case diary. He further states that at 8.45 AM written complaint of the informant was not before him and that written report of the informant was received by him before preparation of death inquest report by him. He also states that he did not seize the cloth of the deceased. He also states in para

23 that Gandhi Maidan is the place where rush is always there and it is a busy place and that around Gandhi Maidan there are several shops and several hotels. A.K. International Hotel is also situated near Gandhi Maidan.

16. After closure of prosecution evidence statements of accused persons A1 & A2 were recorded on 14.12.2023. In their statements both A1 & A2 have denied the occurrence and has not stated anything in support of his innocence. They have only denied the allegations made by the witnesses. However, they have stated that they want to produce defence witness. However, A2 has stated that he has been falsely implicated by Mukesh Kumar due to animosity.

17. The defence case as gathered from defence suggestion to the prosecution witnesses, statements of the accused persons and the argument laid down by Ld. counsel for the accused persons is that they have been falsely implicated in this case and that there is no eye-witness on the record. Just on the basis of suspicion they have been made accused in this case. Even chain circumstantial evidence is also not completed to prove the charge against the accused persons. There is no evidence on the record to connect the murder of the informant's elder daughter, the deceased, with any of the accused persons. The only evidence on the record on the basis of which both the accused persons have been arrested is oral version of the younger daughter of the informant that both the accused persons allegedly dragged the deceased towards Dhobia Talao and on resistance made by the younger daughter of the informant, she was threatened with knife and the accused persons allegedly dragged the deceased towards Dhobia Talao. There is no corroboration to this piece of oral evidence made by PW2, the sister of the deceased. That no incriminating article has been seized either from the person of the accused persons or from their respective houses. It is also argued that available materials on the record even if presumed to be true are not sufficient to conclude the fact that accused persons raped and murdered the deceased.

18. Ld. Addl. PP for the State argues that younger daughter of the deceased is the eye-witness to the occurrence when the accused persons had dragged the deceased towards Dhobia Talao and when the deceased's younger sister tried to resist, she was threatened by knife. It is submitted by the Ld. Addl. PP that this is a case of circumstantial evidence and all the circumstances point towards the involvement of

both the accused persons in rape and murder of the deceased. It is further submitted that the deceased was last seen with both the accused persons when both the accused persons were dragging the deceased towards Dhobia Talao. Ld. Addl. PP further states that there is sufficient circumstantial evidence and extra judicial confession of the accused persons to show regarding involvement of the accused persons in this rape-cum-murder case.

19. Upon careful perusal of the evidence both oral and documentary laid by the prosecution it is clear that FIR was instituted against the A1 & A2 and on completion of investigation police submitted charge sheet against both of them U/s. 376(D), 302/201/34 of I.P.C. So far the offence U/s. 376D of I.P.C. is concerned, the postmortem report of the deceased does not show any sign of rape prior to her death. As the victim died in the incident, hence, there is no question of examination of the victim, and admittedly the dead body was found on the next day of the occurrence of taking away of the deceased by both the accused persons and since then neither the accused persons were seen by any one nor the victim/deceased. At the same time there is no eye-witness of the incident of rape. The allegation of rape has been made on the basis of extra judicial confession of the accused persons before the witnesses.

20. Hence, it is hereby held that the prosecution has not been able to prove its case U/s. 376D of I.P.C. against the accused persons beyond the shadow of reasonable doubts. Therefore, accused A1 & A2 are hereby held not guilty of committing the offence U/s. 376(D) of I.P.C. and they are acquitted from the above mentioned charge leveled against them.

21. So far the charge of offences U/s. 302/34 & 201/34 of I.P.C. is concerned, admittedly it is a case based on circumstantial evidence. As the victim was found on the next day, the entire case of prosecution is based on circumstantial evidence. Before a case against an accused based on circumstantial evidence can be said to be fully established, the following conditions must be fulfilled, as laid down in by the Hon'ble Supreme Court in **Hanumat v.State of M.P. [1953] SCR 1091** and in **Sharad Birdhichand Sarda v. State of Maharashtra, AIR (1984) SC 1622**.

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

2. The facts so established should be consistent with the hypothesis of guilt and the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,
3. The circumstances should be of a conclusive nature and tendency,
4. They should exclude every possible hypothesis except the one to be proved, and
5. There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

These five golden principles constitute the panchsheel of the proof of a case based on circumstantial evidence. The Hon'ble Supreme Court has held that while dealing with circumstantial evidence, the onus was on the prosecution to prove that the chain is complete and the infirmity of lacuna in prosecution cannot be cured by false defence or plea.

22. This case is based on the **“Last seen theory”** as it is an admitted case of prosecution that the deceased was taken by A1 and A2 on 6.5.22, and on the next day her dead body was found.

23. In this case PW2, the younger daughter of the deceased is the main witness, who in her testimony clearly states that A1 & A2 came behind them (the witness herself and the deceased) when they were going to work as maid in other houses and that the accused persons started dragging her Didi towards Dhobia Talao and when she tried to catch her, she was pushed on the ground but she again tried to save her Didi (deceased). Then A2 flashed a knife and threatened her that she would be killed. Then she came crying to her house and narrated the matter to her mother. PW1 is the informant and mother of the deceased and PW2. PW1 too in her statement states that her second daughter (PW2) came crying to home at 3.00 PM and told that her Didi had been taken away by A1 & A2 and when she tried to save her, she was pushed on the ground and again when she tried to save her, knife was flashed by them and she was threatened. PW1 also states that the accused persons had taken away her daughter towards Dhobia Talao. Then she narrated the incident to her husband, who is PW7. On the other hand, PW7(father of the deceased) also corroborated the version of PW2, the eye-witness and the last person who had seen

the accused persons dragging the deceased towards Dhobia Talao. PW7 in his testimony also states that her younger daughter came to house and told his wife that A1 & A2 took the deceased while dragging her and A2 also flashed a knife in order to threatened PW2. PW7 further states that then he narrated the story to the Mukhiya and other villagers they started searching for the deceased. The evidence regarding the fact that A1 & A2 took away the deceased while dragging her and threatening PW2 is also corroborated by other witnesses as other witnesses such as PW3, PW4 & PW5, who are villagers of the informant. These evidence clearly show that the deceased was last seen with both the above-named accused persons A1 & A2 and that they were hostile towards the deceased as they were dragging her towards *Dhobia Talao*.

As far as death of the deceased is concerned, it has been clearly stated by informant (PW1), her younger daughter (PW2), informant's husband (PW7) and other villagers/persons from the same locality i.e. PW3, PW4 & PW5 that at around 8.00 AM on the next day i.e. 07.05.2022 the dead body of the deceased in necked state was seen by them in *Pakahi Talao*. All the witnesses also states that on information police team also arrived and the body was taken out of *Pakahi Talao*. The body was identified as the deceased i.e. elder daughter of the informant, by father of the deceased (PW7). PW7 proved the death inquest report as Ext.P-6/PW7.

24. Regarding extra judicial confession of A1 & A2 that both of them have killed the deceased has been stated by PW3, who in his testimony states that in the morning A2 was caught, who told that the girl (deceased) is no more as he and A1 has killed her and thrown her body in *Pakahi Talao*. On the other hand PW4 also states in his testimony that on 7th (07.05.2022) when he met with A2 and asked about the girl, the he told that -"*Raat me Uska game Baja Diya Hai, Uska Laash Pakahi Talao Mai Hai*". PW4 further states that when he asked who other were involved. Then he told that A1 was also with him. He further states that he then informed the police. Then both A1 & A2 were arrested by the police. PW4 proved his signature on the arrest memo of A1 & A2 as P-2/PW4 and P-3/PW4 respectively. PW5, another villager also states that both A1 & A2 were seen by him in the morning on the next day and they were called by him and asked about the

deceased and they told that they have killed the deceased and thrown her body in *Pakahi Talao*. At the same time I find that both the accused persons in their respective statements recorded under section 313 of CrPc have simply denied the specific questions on their extra judicial confession before the witnesses. They do not say anything to explain these adverse circumstances against them.

25. As far as medical evidence is concerned, PW6, the doctor clearly states that on dissection of neck part - larynx – bilaterally, posterior upper part of larynx showing reddish haematoma. Wall of larynx was deep congested and contained some water. Regarding nature of injury PW6 states that it was antemortem and grievous and responsible for death in due course and the said injury was due to compression over neck and the cause of death has been said to be asphyxia due to compression over neck and that death was caused approximately between 12 to 36 hours as per rigor mortis and decomposition. Here in this case postmortem was conducted at 2.00 PM on 07.05.2022 and the girl was last seen with both the accused persons by PW2, younger sister of the deceased at around 3.00 PM on 06.05.2022. This evidence also corroborates that after A1 & A2 took away the deceased with them, she was killed by pressing her neck which is proved by postmortem report which is Ext.P-5/PW6 and also by the testimony of the doctor (PW6).

26. Though it has come in the evidence that PW2 only saw the accused persons dragging her elder sister while threatening her but she had not seen the accused persons killing the victim as she was threatened with a knife and she went to her house crying but the circumstances but the circumstances as stated by the witnesses in their respective testimonies coupled with the fact of presence of extra judicial confession of both the accused persons before PW3, PW4 & PW5. It is clear that both the accused persons A1 & A2 after kidnapping the deceased killed her by pressing her neck. On the other hand, when this incriminating circumstances were put before both the accused persons during recording of statement U/s. 313 Cr.P.C., they have not given any plausible explanation to those incriminating evidence against them. Both of them have simply denied this allegation. The extra judicial confession does not appear to be due to any threat or coercion. The said statement of A1 and A2 was given by them before the witnesses and not police. This fact has

also not been controverted by the defence during cross-examination.

27. To sustain conviction on basis of circumstantial evidence it is necessary that all link in the way of circumstances must be complete leading to the only hypothesis for guilt of accused. Elaborating on the principle of “last seen alive”, a three judge bench of **Hon’ble Supreme Court**, in the case of [Satpal v. State of Haryana \(Criminal Appeal No. 1892 of 2017\)](#) has cautioned that unless the act of last seen is corroborated by some other evidence, the fact that the deceased was last seen in the vicinity of the accused, would by itself, only be a weak kind of evidence. The Hon’ble Court further held:

“Criminal jurisprudence and the plethora of judicial precedents leave little room for reconsideration of the basic principles for invocation of the last seen theory as a facet of circumstantial evidence. Succinctly stated, it may be a weak kind of evidence by itself to found conviction upon the same singularly.

But when it is coupled with other circumstances such as the time when the deceased was last seen with the accused, and the recovery of the corpse being in very close proximity of time, the accused owes an explanation under Section 106 of the Evidence Act with regard to the circumstances under which death may have taken place.

28. If the accused offers no explanation, or furnishes a wrong explanation, absconds, motive is established, and there is corroborative evidence available inter alia in the form of recovery or otherwise, forming a chain of circumstances leading to the only inference for guilt of the accused, incompatible with any possible hypothesis of innocence, conviction can be based on the same. If there be any doubt or break in the link of chain of circumstances, the benefit of doubt must go to the accused. Each case will therefore have to be examined on its own facts for invocation of the doctrine”.

29. The following chain of events have been fully established by the prosecution evidence in this case:-

(a). That on the evening of 06.05.2022 at 3.00 PM PW2 had seen the accused A1 & A2 dragging the deceased towards *Dhobia Talao* and when PW2 tried to save her elder sister, she was threatened with a knife by A2.

(b). The deceased went missing since then i.e. from the evening of 06.05.2022

(3.00 PM),

(c). That her dead body was recovered from *Pakahi Talao* on the next day at 8.00 A.M.

(d) There is no medical evidence of drowning of the deceased.

(e). Extra judicial confession of A1 & A2 disclosing that they have killed the deceased and thrown the body in *Pakahi Talao* on 07.05.2022.

(f). Postmortem report of the deceased shows that she died due to Asphyxia (strangulation) and the injury was antemortem.

(g). No plausible explanation by the accused persons to the incriminating circumstances showing there guilt.

30. The above mentioned facts have been well established by the prosecution. The victim was last seen with the accused persons in the afternoon at 3.00 PM on 06.05.2022 and she was found murdered on the very next day morning on 07.05.2022. The extra judicial confession of both the accused persons A1 & A2 before PW3, PW4 & PW5 clearly shows that prosecution has completely proved the entire chain of circumstance to establish that they were accused persons A1 & A2 who had taken away the deceased on motive of rape her (although rape is not proved) and committed the murder of the deceased and disposed the dead body in *Pakahi Talao*. The circumstance, from which the conclusion of the guilt of the accused persons has been fully established by the prosecution. The facts of the case and the surrounding circumstance proved the only hypothesis of the guilt of the accused persons A1 and A2, in furtherance of common intention and tried to destroy the evidence by dumping the dead body in a pond. Thus the chain of circumstance is complete.

31. In this facts and findings of the case it is clear that prosecution has been able to prove its case that accused persons A1 & A2 in furtherance of common intention of each other committed the murder of victim and tried to destroy the evidence by dumping the dead body in a pond.

32. Accordingly this Court held that prosecution has been able to bring home the charge and proved its case U/s. 302/34 and 201/34 of I.P.C. against the accused persons A1 & A2 beyond the shadow of all reasonable doubts. It is, therefore,

ORDERED

That the accused persons A1 & A2 Vimal Kumar and Lal Pratap Anokha

alias Raja are held guilty for committing the offence U/s. 302/34 and 201/34 of I.P.C. Both the accused persons are in custody. Put up on 31.01.2025 for hearing on the point of sentence.

Judgment dictated, corrected and pronounced by me in open Court today.

(Onkar Nath Choudhary)
Addl. Sessions Judge-I-cum
FTC for Rape Cases, Hazaribagh
Dated, 28.01.2025

(Onkar Nath Choudhary)
Addl. Sessions Judge-I-cum
FTC for Rape Cases, Hazaribagh
Dated, 28th January, 2025