

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Death Reference (D.B.) No.04 of 2022

The State of Jharkhand ----- Appellant

Versus

Md. Rahet Seikh @ Kaluwa Seikh ----- Respondent

With

Cr. Appeal (D.B.) No.47 of 2023

Md. Rahet Seikh @ Kaluwa Seikh ----- Appellant

Versus

The State of Jharkhand ----- Respondent

CORAM : HON'BLE MR. JUSTICE RONGON MUKHOPADHYAY

HON'BLE MR. JUSTICE DEEPAK ROSHAN

(in D.Ref. No.04/2022)

For the Appellant : Mr. Pankaj Kumar, P.P.

For the Respondent : Mr. Raja Ravi Shekhar Singh, Advocate

(in Cr. Appl. No.47/2023)

For the Appellant : Mr. Raja Ravi Shekhar Singh, Advocate

For the Respondent : Mr. Pankaj Kumar, P.P.

Per R. Mukhopadhyay, J.

19/10.06.2024 Heard Mr. Raja Ravi Shekhar Singh, learned counsel appearing for the appellant and Mr. Pankaj Kumar, learned P.P.

2. In Cr. Appeal (DB) No.47 of 2023 the appellant is aggrieved by the judgment and order of conviction and sentence dated 01.12.2022 (sentence passed on 12.12.2022) passed by Shri Sanjay Kumar Dubey, Learned Special Judge, POCSO Act, Rajmahal in POCSO Case No.65 of 2021 whereby and whereunder the appellant has been convicted for the offences punishable under Sections 302, 376(2)(i) of the I.P.C. and Section 6 of the POCSO Act and has been sentenced to rigorous imprisonment for life and a fine of Rs. One Lakh under Section 6 of the POCSO Act and in the event of nonpayment of fine, simple imprisonment of one year shall be

served by him, rigorous imprisonment for life and a fine of Rs. One lakh for the offence under Section 376(2)(i) of the I.P.C. and in the event of non-payment of fine, simple imprisonment of one year shall be served by him and he has also been sentenced to death for the offence under Section 302 of the I.P.C.

3. The prosecution case arises out of the Fardbeyan of Balagat Sarfaraj recorded on 05.03.2015 at 00.30 hours at village Jonka in which it has been stated that his 6 year old daughter Tayyaba Anjum was everyday taken away by his neighbour Md. Rahet Seikh @ Kaluwa for playing and on completion of her play time he would return her back to her home. As per the daily routine yesterday i.e. on 4.3.2015 at 5.00 P.M. Md. Rahet Seikh had taken his daughter on his shoulder for playing. When the daughter of the informant did not return till late evening, he and his wife started searching for his daughter in the nearby places including the house of Md. Rahet Seikh but she could not be traced out. In course of search Md. Wasim and Imam Seikh had disclosed that his daughter was seen being taken away by Md. Rahet Seikh on his shoulder towards Simla Pokhar field and at this information the informant along with his relatives and villagers reached Simla Pokhar and in course of search the dead body of the daughter of the informant was found in the wheat field of Waris Seikh. There were marks of bruises on the neck and a black spot. The dress worn by the daughter of the informant was in a dishevelled state.

4. Based on the aforesaid allegations Rajmahal P.S. Case No.81 of 2015 was instituted against Md. Rahet Seikh @ Kaluwa under Sections 376/302 I.P.C. On completion of investigation, charge sheet was submitted and after cognizance was taken the case was committed to the court of sessions. Charge was framed under Sections 376/302 I.P.C. against the accused which was read over and explained to the accused to which he pleaded not guilty and claimed to be tried. The charge was amended on 08.10.2021 and an additional charge was framed under Section 6 of the POCSO Act. On committal of the case it was registered as S.T.

No.95 of 2015 but after the charge was amended the case was registered as POCSO Case No.65 of 2021.

5. The prosecution has examined as many as 12 witnesses in support of its case.

6. P.W. 1 Imam Seikh has stated that the incident is of 2 years back at 5.30 PM when he was returning from his field when he had seen Kaluwa going towards Simla Pokhar with the 6-7 years old daughter of the informant on his shoulder. There was an uproar in the evening that Tayyaba Anjum has become traceless at which he had gone to the house of Tayyaba Anjum and informed her parents about seeing Tayyaba going with Rahet Seikh. At this, several villagers went towards Simla Pokhar and adjacent to Simla Pokhar in the wheat field of Waris the dead body of the child was found. There were scratches in the neck of the child and blood was oozing out from her private parts.

In cross-examination, he has deposed that it was evening and darkness was descending. His field is about 1 KM ahead of Simla Pokhar and a lot of people travel on that road. He had not asked Kaluwa as to where he was taking the child. The commotion was heard at 7.00 P.M. and when he reached the house of the informant, several persons had already assembled by then. He has deposed that there is a pond in the southern side and field of Waris is on the northern side from the place where the dead body of the child was recovered. When the Police had come, his statement was recorded. He had stated that he had not witnessed the occurrence.

7. P.W. 2 Md. Tajdar Hussain has stated that on 4.3.2015 at about 5.30-5.45 P.M. he after working in the field was returning home and when he reached near Simla Pokhar, he saw Rahet Seikh going somewhere with Tayyaba Anjum on his shoulder. When asked, Rahet Seikh had disclosed that he was taking her to have peas. He came back home and at about 6.30-6.45 P.M. he had met the parents of Tayyaba Anjum who were searching for their daughter as she had not returned home. He then disclosed about

seeing Rahet Seikh going with their daughter towards Simla Pokhar. At this information the villagers and the parents of Tayyaba Anjum went towards Simla Pokhar and in course of search the dead body of Tayyaba Anjum was found lying in the wheat field of Waris. There were scratches on her neck and blood was oozing out from her private parts. When the Police had come, his statement was recorded.

In cross-examination he had deposed that the place of occurrence is at a distance of 1 and ½ K.M. from his house. He had not witnessed the incident. He does not go to the house of the informant and he does not have any relation with the informant. He had disclosed about seeing the accused going with the child when the parents of the child were searching for her.

8. P.W. 3 Md. Firoj has stated that he and the others were returning after offering Namaz when on hearing a commotion from the house of Balagat Sarfaraj he had gone to his house where he came to know that his daughter is missing. After some time Imam Seikh and a woman disclosed that Kaluwa was seen going towards Simla Pokhar with the child on his shoulder. At this disclosure he and the villagers went towards Simla Pokhar and in course of intense search in the field of Waris the dead body of the child was discovered. There was a black mark on the neck of the child and her dishevelled clothes indicated that perhaps she was subjected to rape. He had signed on the inquest report prepared by the Police. The accused Kaluwa had confessed about his involvement before the villagers.

In cross-examination he has deposed that on 4.3.2015 the Police had recorded his statement. The accused had also made confession before the Police. He had not witnessed the occurrence.

9. P.W. 4 Wasim Seikh has stated that the incident is of two years back when at 5.00-5.30 P.M. he was returning from his field when he had seen Rahet Seikh going towards the field with Tayyaba Anjum on his shoulder. As the father of Anjum was searching for her he had disclosed about seeing her going towards

the field with the accused. When everyone went towards the field they discovered the dead body of the child.

In cross-examination he has deposed that his statement was not recorded by the Police.

10. P.W.5 Md. Zakir Hussain has stated that the incident is of 4.3.2015 and he was in his house and on hearing a cry of alarm he came out and learnt that the daughter of Balagat was missing. In course of search two of the villagers namely Wasim and Imam Seikh had disclosed that when they were returning from the field, they had seen Kaluwa going towards Simla Pokhar with Tayyaba Anjum on his shoulder. At this, the villagers went towards Simla Pokhar in search of the child and in the field of Waris Seikh the dead body of the child was found lying. There were scratches on the neck of the child and the clothes were in a dishevelled state.

In cross-examination he has deposed that he had not seen the accused taking away the child. Apart from him the others who had taken part in search of the child were Firoj, Tajdar, Pratap (Mukhiya), Mantu and Imam.

11. P.W. 6 Munni Bewa has stated that on the date of occurrence she was collecting cow dung when near Simla Pokhar she had seen Kaluwa going with Anjum on his shoulder. When she asked him as to where he was taking the child, he has stated that he will be providing the child green peas to eat. The accused did not wait even when she said that he cannot find green peas on the place where he was taking the child. She returned home when she heard a commotion near the house of Anjum Khatoon that the child was missing at which she disclosed to the father of the missing child her encounter with the accused. She has stated that thereafter she and the others went in search of the child towards Simla Pokhar and in the wheat field her dead body was found.

In cross-examination she has deposed that when the Police had come to the village, her statement was recorded. The accused Kaluwa had not committed rape upon the victim in her presence.

12. P.W. 7 Rukhsana Khatoon is the mother of the deceased who has stated that as per daily routine her daughter Tayyaba Anjum was taken away by Rahet Seikh @ Kaluwa. When she did not return and it had become dark she and the other started searching for her daughter when Munni Bewa disclosed that Rahet Seikh had taken her daughter to Simla Math. On such disclosure they had gone to Simla Math where she had seen her daughter lying on the wheat field of Waris with her clothes besides her and marks of nail on her neck. Her daughter was already dead. It was Rahet Seikh who had committed such heinous offence against her daughter.

In cross-examination she has deposed that she is not a witness to the murder. She had not seen Rahet Seikh taking her daughter towards the field and the same was seen by Munni. There were signs of nails on the throat of her daughter and blood was seen on her mouth. She had not seen any other part of the body where blood was visible. The distance between Simla Pokhar and her house is about 1 ½ K.M. Several persons had assembled in her house.

13. P.W.8 Md. Alimulla Seikh @ Babul Seikh has stated that it was around 5.30 P.M. and he was standing on the road near his house when he had seen a child being taken away by Kaluwa on his shoulder towards Simla Math. Since darkness was falling the parents of the child were searching for her and when he came to know about this fact, he informed them about seeing Kaluwa taking the child with him towards Simla Math. Thereafter the dead body of the child was recovered.

In cross-examination he has deposed that the Police had recorded his statement. He had not witnessed the incident but had only seen the accused going with the daughter of the informant.

14. P.W. 9 Md. Balagat Sarfaraj is the informant and the father of the deceased who has stated that on 4.3.2015 his daughter Tayyaba Anjum aged about 6 years was called from her

house for playing by Kaluwa @ Rahet Seikh. Earlier also he used to take her and return back in the evening. When as per the normal routine she did not return in the evening, he and his wife started searching for her and in course of search they had gone to the house of Rahet Seikh. On being asked about the whereabouts of his daughter Rahet Seikh disclosed that he had left her at her home. When they continued with the search the matter came to the knowledge of the villagers and several persons assembled. In the meantime Imam Seikh, Wasim Seikh, Tajdar Hussain, Munni Bewa and Babul Seikh disclosed that they had seen Rahet Seikh going towards Simla Math with his daughter on his shoulder. When Rahet Seikh was confronted, he got nervous and started perspiring. Rahet Seikh kept quiet for some time and thereafter disclosed that he had murdered his daughter. Rahet Seikh was taken away by the Mukhiya Pratap Kumar Roy to his house. He and his wife as well as his other relatives and friends went towards Simla Math in search of their daughter and in the wheat field of Waris the dead body of his daughter was recovered. There were marks of scratches on her throat and blood was seen oozing out from her nose and private parts. The Police was informed who came at 12.30 A.M. and his Fardbeyan was recorded. He has identified his signature on the Fardbeyan which has been marked as Exbt.1/1. He has stated that his daughter was induced and taken to the wheat field of Waris by Rahet Seikh and after committing rape he had strangulated her to death.

In cross-examination he has deposed that his daughter was missing since 5.00 P.M. The house of Rahet Seikh is in front of his house. In his statement before the Police he had taken the name of Imam Seikh and Wasim Seikh as the only persons who had disclosed about seeing Rahet Seikh going with his daughter towards Simla Pokhar. He had not stated before the Police about the demeanour of Rahet Seikh when confronted with the missing of his daughter and his subsequent confession admitting to the commission of murder by him of his daughter.

15. P.W. 10 Md. Alimuddin Ansari had on 5.3.2015 conducted autopsy on the dead body of Tayyaba Anjum and had found the following :-

- (i) Multiple bruise and abrasion over face, interior part of neck and chest
- (ii) External genitalia No fresh bleeding or perineal tear but hymen teared with blood tinged. Vaginal swab taken & preserved for pathological test forensic laboratory.
- (iii) Frothing from both nostril which is blood mixed and wearing cloth dirty and Pyjama teared over back. Rigor mortis present in both upper and lower limb.

The postmortem findings on dissection are as follows :-

“On per vaginal examination hymen teared with blood tinged and permit only tip of little finger easily. Stomach only mucus present, Tongue-pale, Liver, spleen, both kidneys are congested. Urinary bladder partially filled with urine. Heart partially filled with blood. Lungs congested & ocdematouse and engorged. Trachea filled with blood mixed froth and tracheal ring collapsed.”

The cause of death was opined to be on account of cardio respiratory failure, secondary to asphyxia caused by throttling. He has proved the postmortem report which has been marked as Ext.2.

In cross examination he has deposed that if there is forceful penetration of genital of a fully grown man into the vagina of a six years old girl, then there must be perinial injury which was not found on the dead body. The vaginal swab has been sent to the laboratory to confirm the fact of rape and without the report he cannot say as to whether rape was committed upon the victim or not.

16. P.W. 11 Dwarika Ram was posted as Officer In-charge of Rajmahal Police Station and on 5.3.2015 Rajmahal P.S. Case No.81

of 2015 was instituted under Sections 376/302 I.P.C. and on the same day he had taken over investigation of the case. He has proved the Fardbeyan which has been marked as Ext.-3. He has proved the endorsement on the Fardbeyan which has been marked as Ext.3/1. He has also proved the formal F.I.R. which has been marked as Ext.4. After recording the Fardbeyan of the informant, he had inspected the place of occurrence which is at a distance of 1½ K.M. from village Jonka in the field of Md. Wasim Seikh situated at Simla Pokhar Math. wheat were found broken and limp at the place of occurrence. He had recorded the statement of Rukhshana Parween, Md. Wasim, Imam Seikh, Munni Bewa, Tajdar Hussain, Sarfuddin Seikh, Babul Seikh, Firoj Seikh and Md. Shahid. All have supported the case of the prosecution against the accused. He had obtained the post-mortem report. He had sent the vaginal swab of the deceased to the Patliputra Medical College, Dhanbad on the direction of the supervising authority and since the investigation was complete, he had submitted charge sheet.

In cross-examination he has deposed that he had taken the statement of the witnesses on 5.3.2015 itself. He had not prepared the inquest report.

17. P.W. 12 Shahid Hussain has stated that on the date of occurrence he was in his house when Munni had disclosed to him that Tayyaba Anjum has been raped and murdered at Simla Pokhar Math. He had gone to the place of occurrence. The Police had prepared a document in which he had put his signature.

In cross-examination he has deposed that he had stated before the Police that he had come to know about the incident on the disclosure of Munni.

18. The statement of the accused was recorded under Section 313 Cr.P.C. in which he has denied the accusations made against him.

19. It has been submitted by Mr. Raja Ravi Shekhar Singh, learned counsel appearing for the appellant that there is no eye-witness to the occurrence and the appellant has been implicated on

account of the last seen theory which has been deposed by P.W.1, P.W.2, P.W.4, P.W.6, P.W.7 and P.W.8. It has been submitted that the alteration of charge was not done by the POCSO Court. Mr. Singh has submitted that the F.I.R. has not been properly proved and the inquest report has also not been proved. It has been submitted that as per the F.I.R. at 5.00 P.M. the deceased was seen going with the appellant and the dead body was recovered at mid-night which is not on close proximity to each other and therefore the appellant could not have been implicated in the present case.

20. Mr. Pankaj Kumar, learned P.P. has submitted that the proximity test has been fulfilled as the recovery of the dead body was in close proximity to the disappearance of the child. It has been submitted that the chain of circumstances is complete and therefore the appellant has rightly been convicted and the sentence of death also should not be interfered with considering the gravity of the offence where a six years child was raped and murdered by the appellant.

21. We have heard the learned counsel for the respective sides and have also perused the lower court records.

22. Admittedly there are no eye-witnesses to the occurrence and the implication of the appellant seems to be on the basis of the circumstantial evidence of having been last seen with the deceased. It is to be seen therefore as to whether the last seen theory has been proved by the prosecution and the recovery of the dead body of the child was in close proximity to such last seen theory.

23. As per the Fardbeyan it seems to be a normal routine for the appellant to take away the daughter of the informant for playing and such innocuous act on a daily basis did not raise any suspicion in the minds of the parents of the deceased neither there was any objection on their part. The suspicion was actuated when on 4.3.2015 the daughter of the informant did not return home even when evening descended which led to a frantic search by the informant and his wife accompanied by several villagers. The search for the missing child was not making much headway but a

flicker of hope was raised as per the Fardbeyan when Md. Wasim and Imam Seikh had disclosed that they had seen the appellant going towards Simla Pokhar field with the child on his shoulder. This revelation veered the search towards Simla Pokhar Math where in the wheat field of Waris the dead body of the child was found with scratches on her throat and her clothes in disarray. Although the informant had named Md. Wasim and Imam Seikh as the persons who had seen the appellant going with the child but in his evidence as P.W.9 he has also taken the names of Tajdar Hussain, Munni Bewa and Babul Seikh. The evidence of Imam Seikh has been recorded as P.W.1 who has supported the version of he having seen the appellant going towards Simla Pokhar Math with the child on his shoulder. Similar is the version of Md. Wasim who has been examined as P.W.4. There seems to be no dearth of witnesses who had seen the appellant and the child notably amongst them being P.W.2 Tajdar Hussain and P.W.6 Munni Bewa. P.W.4 also claims to have seen the appellant going with the child though his name has not been mentioned by P.W.9. The appellant going with the child seems to be an accepted phenomena in the village which perhaps did not evoke any negative response from those witnesses, except however P.W.6 Munni Bewa who had asked the appellant as to where he was going with the child which was responded to by the appellant that he was taking her to have green peas. Though P.W. 6 had retorted that no green peas can be found on the way the appellant was going, but the appellant did not pay any heed and went away. As per P.W.2 the appellant had told him that he was going to have peas for the child. P.W.7 who is the mother of the deceased has stated that it was P.W.6 who had disclosed about seeing the appellant going towards Simla Pokhar Math with her daughter. The evidence of P.W.1, P.W.2, P.W.4 and P.W.6 clearly proves beyond any reasonable doubt that it was the appellant who was taking the child towards Simla Pokhar Math and from near the said area the dead body of the daughter of the informant was recovered.

24. There appears to an extra judicial confession made by the appellant before the P.W. 9 as though on being confronted with the whereabouts of the missing child, he remained silent initially but had subsequently admitted to have killed her. This confession al statement was not voluntary and seems to have been obtained under coercion and duress as at the initial stage when confronted by the informant and his wife he did not confess about the murder but when the villagers had gathered such statement was purportedly given by the appellant. Such extra judicial confession therefore would not have any bearing on the fate of the case.

25. In a case of circumstantial evidence based on last seen theory it has been held in the case of **Navaneethakrishnan v. State**, reported in **(2018) 16 SCC 161** as follows :-

“22. PW 11 was able to identify all the three accused in the court itself by recapitulating his memory as those persons who came at the time when he was washing his car along with John Bosco and further that he had last seen all of them sitting in Omni van on that day and his testimony to that effect remains intact even during the cross-examination in the light of the fact that the said witness has no enmity whatsoever against the appellants herein and he is an independent witness. Once the testimony of PW 11 is established and inspires full confidence, it is well established that it is the accused who were last seen with the deceased specially in the circumstances when there is nothing on record to show that they parted from the accused and since then no activity of the deceased can be traced and their dead bodies were recovered later on. It is a settled legal position that the law presumes that it is the person, who was last seen with the deceased, would have killed the deceased and the burden to rebut the same lies on the accused to prove that they had departed. Undoubtedly, the last seen theory is an important event in the chain of circumstances that would completely establish and/or could point to the guilt of the accused with some certainty. However, this evidence alone cannot discharge the burden of establishing the guilt of the accused beyond reasonable doubt and requires corroboration.

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27. The law is well settled that each and every incriminating circumstance must be clearly established by

reliable and clinching evidence and the circumstances so proved must form a chain of events from which the only irresistible conclusion about the guilt of the accused can be safely drawn and no other hypothesis against the guilt is possible. In a case depending largely upon circumstantial evidence, there is always a danger that conjecture or suspicion may take the place of legal proof. The court must satisfy itself that various circumstances in the chain of events must be such as to rule out a reasonable likelihood of the innocence of the accused. When the important link goes, the chain of circumstances gets snapped and the other circumstances cannot, in any manner, establish the guilt of the accused beyond all reasonable doubt. The court has to be watchful and avoid the danger of allowing the suspicion to take the place of legal proof for sometimes, unconsciously it may happen to be a short step between moral certainty and legal proof. There is a long mental distance between “may be true” and “must be true” and the same divides conjectures from sure conclusions. The Court is mindful of caution by the settled principles of law and the decisions rendered by this Court that in a given case like this, where the prosecution rests on the circumstantial evidence, the prosecution must place and prove all the necessary circumstances, which would constitute a complete chain without a snap and pointing to the hypothesis that except the accused, no one had committed the offence, which in the present case, the prosecution has failed to prove.”

26. In the case of **KanhaiyaLal v. State of Rajasthan** reported in **(2014) 4 SCC 715** it has been held as follows :-

“12. *The circumstance of last seen together does not by itself and necessarily lead to the inference that it was the accused who committed the crime. There must be something more establishing connectivity between the accused and the crime. Mere non-explanation on the part of the appellant, in our considered opinion, by itself cannot lead to proof of guilt against the appellant.*

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15. *The theory of last seen—the appellant having gone with the deceased in the manner noticed hereinbefore, is the singular piece of circumstantial evidence available against him. The conviction of the appellant cannot be maintained merely on suspicion, however strong it may be, or on his conduct. These facts assume further importance on account of absence of proof of motive particularly when it is proved that there was cordial relationship between the accused*

and the deceased for a long time. The fact situation bears great similarity to that in Madho Singh v. State of Rajasthan.”

27. Similarly in the case of **Anjan Kumar Sarma v. State of Assam** reported in **(2017) 14 SCC 359** it has been held as follows :-

“23. It is clear from the above that in a case where the other links have been satisfactorily made out and the circumstances point to the guilt of the accused, the circumstance of last seen together and absence of explanation would provide an additional link which completes the chain. In the absence of proof of other circumstances, the only circumstance of last seen together and absence of satisfactory explanation cannot be made the basis of conviction. The other judgments on this point that are cited by Mr Venkataramani do not take a different view and, thus, need not be adverted to. He also relied upon the judgment of this Court in State of Goa v. Sanjay Thakran¹³ in support of his submission that the circumstance of last seen together would be a relevant circumstance in a case where there was no possibility of any other persons meeting or approaching the deceased at the place of incident or before the commission of crime in the intervening period. It was held in the above judgment as under: (SCC p. 776, para 34)

“34. From the principle laid down by this Court, the circumstance of last seen together would normally be taken into consideration for finding the accused guilty of the offence charged with when it is established by the prosecution that the time gap between the point of time when the accused and the deceased were found together alive and when the deceased was found dead is so small that possibility of any other person being with the deceased could completely be ruled out. The time gap between the accused persons seen in the company of the deceased and the detection of the crime would be a material consideration for appreciation of the evidence and placing reliance on it as a circumstance against the accused. But, in all cases, it cannot be said that the evidence of last seen together is to be rejected merely because the time gap between the accused persons and the deceased last seen together and the crime coming to light is after (sic of) a considerable long duration. There can be no fixed or straitjacket formula for the duration of time gap in this regard and it would depend upon the evidence led by the prosecution to remove the possibility of any other person meeting the deceased in the intervening period, that is to say, if the prosecution is able to lead such an evidence that likelihood of

any person other than the accused, being the author of the crime, becomes impossible, 372 then the evidence of circumstance of last seen together, although there is long duration of time, can be considered as one of the circumstances in the chain of circumstances to prove the guilt against such accused persons. Hence, if the prosecution proves that in the light of the facts and circumstances of the case, there was no possibility of any other person meeting or approaching the deceased at the place of incident or before the commission of the crime, in the intervening period, the proof of last seen together would be relevant evidence. For instance, if it can be demonstrated by showing that the accused persons were in exclusive possession of the place where the incident occurred or where they were last seen together with the deceased, and there was no possibility of any intrusion to that place by any third party, then a relatively wider time gap would not affect the prosecution case.”

28. As we have noticed above it was undoubtedly the appellant who was last seen with the child as per the evidence of P.W.1, P.W. 2, P.W.4 and P.W. 6. The same though would evoke a strong circumstance, but that by itself would not be enough to conclusively prove the involvement of the appellant in committing rape and murder of the daughter of the informant. There has to be some other materials worthy of consideration to drive home the guilt of the appellant. There is absence of motive or any enmity between the appellant and the informant. There was a cordial relationship between the appellant and the family of the informant as the daily routine of the child being taken away by the appellant for playing would signify. The conduct of the appellant also does not arouse any suspicion as when the daughter of the informant did not come back the appellant was tapped and he was found present in the house and disclosed about leaving the child in the house. None of the witnesses have mentioned about any unnatural demeanour on the part of the appellant. The circumstances considered by the learned trial court does not evaluate the absence of any other materials except being last seen with the deceased. The offence no doubt is despicable and diabolical, but prudence would demand sifting of the evidence to discern any corroboration or support by any material facts and circumstances to obliterate

the false implication of the appellant. As stated by us, save and except the deceased being last seen with the appellant, no other circumstance has surfaced completing the chain of circumstances and drawing an inference about the culpability of the appellant. The proximity of the recovery of the dead body from the time the deceased was seen with the appellant also seems not to have been established and even the inquest report has not been exhibited.

28. We therefore on the basis of the discussions made herein above answer the reference in the negative and set aside the judgment and order of conviction and sentence dated 01.12.2022 (sentence passed on 12.12.2022) passed by Shri Sanjay Kumar Dubey, Learned Special Judge, POCSO Act, Rajmahal in POCSO Case No.65 of 2021.

29. This appeal is allowed.

30. Since the appellant is in custody, he is directed to be released immediately and forthwith, if not wanted in any other case.

(Rongon Mukhopadhyay, J.)

(Deepak Roshan, J.)

Shamim/-