



HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

CRA No. 06/2018

c/w

Conf. No. 10/2015

Reserved on : 29.01.2026

Pronounced on : 26.02.2026

Uploaded on :27.02.2026

**Whether the operative part or full
judgment is pronounced:**

Tirath Singh S/o Sh. Swami Raj
R/o Kach Nalthi, Tehsil Bhaderwah,
District Doda

.... Appellant(s)

Through: - Mr. Meharban Singh, Advocate

V/s

State of Jammu & Kashmir through
Commissioner/Secretary, Home Deptt.
Civil Secretariat Srinagar/Jammu

....Respondent(s)

Through: - Mr. Raman Sharma, AAG (Sr. Advocate)
with Ms. Jagmeet Kour, Advocate

CORAM: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE

JUDGMENT

Per:Parihar-J

01. The appellant stands convicted by Sessions Judge, Bhaderwah, vide judgment dated 18.11.2015 “the trial Court” for offences punishable under Sections 302/363 RPC in FIR No. 98/2013 of Police Station Bhaderwah, and has been sentenced to capital punishment along with ancillary sentences. The prosecution case, in brief, is that on 03.07.2013 at about 6:00 PM, the minor daughter of PW-Rakesh Kumar, a student of 5th Class, went to a nearby Tourism Canteen to fetch Kurkure but did not return home. Upon search, PW-Rakesh Kumar reached the canteen where PW-Mohd. Sharif, the shopkeeper, allegedly informed him that the appellant had purchased Kurkure and a cold drink for the child and had taken her



along despite being told to send her home. The complainant thereafter lodged a written report on 04.07.2013 alleging kidnapping. Despite search efforts, the child could not be traced until 13.07.2013, when the police received information regarding a dead body lying behind bushes near Himant Kach Nallah. The body was recovered in a decomposed state and identified as that of the missing child by PW-Jaswant Singh, her grandfather.

02. According to the prosecution, the body had undergone advanced decomposition. After recovery, the appellant was arrested from Nalti Bhaderwah and allegedly admitted to the commission of the offence during interrogation. Upon completion of investigation, charge-sheet under Sections 363/302 RPC was filed. It was alleged that on 03.07.2013, the appellant enticed the child, took her to a secluded place, sexually assaulted her, strangled her to death, and disposed of the body in bushes. The post-mortem report noted that the lower genital region was eaten by maggots due to decomposition. Upon receipt of the FSL report, the medical officer opined that the cause of death was manual strangulation, with time since death estimated between one to two weeks.

03. The appellant, when charged, denied the allegations and claimed false implication, asserting that the complainant bore animosity due to a land dispute and had fabricated the case to exert pressure. He maintained that he had participated in the search for the missing child and had no role in the incident.

04. The prosecution relied primarily on the testimonies of the father, mother, and grandfather of the deceased, and PW-Mohd. Sharif as the “last



seen” witness. The trial Court, upon appreciation of evidence, held that the appellant was last seen with the deceased on the evening of 03.07.2013 purchasing Kurkure and cold drink for her and taking her towards bushes near the Nallah. The decomposed body was recovered on 13.07.2013. The Court found that the appellant had absconded and had not offered a satisfactory explanation regarding his conduct. Though the trial Court observed that sexual assault could not be conclusively proved due to decomposition of the body, it inferred intention to commit sexual assault from the surrounding circumstances and held the appellant guilty of kidnapping and murder. Considering the brutality of the act and the tender age of the victim, capital punishment was imposed.

05. Learned counsel for the appellant, however, contended that the prosecution witnesses were close relatives and not eyewitnesses to the occurrence. Material contradictions were highlighted: the father stated that the child had gone to purchase Kurkure, whereas the mother stated she had gone to collect empty plastic bottles. The grandfather admitted he had not seen the appellant with the deceased. It was argued that the last seen theory was unreliable, particularly as PW-Mohd. Sharif’s statement was recorded after twenty two (22) days, and he himself admitted uncertainty regarding the identity of the child until shown photographs. Other employees present at the canteen were not examined and there was no independent corroboration.

06. Further, discrepancies were pointed out regarding the place and condition of recovery of the body. One witness stated the body was lying in front of bushes, another stated it was in a cave near the Nallah. The



complainant claimed the body was without clothes, whereas the seizure memo mentioned a red salwar. Identification was based solely on clothes despite decomposition, and no DNA profiling was conducted. There was no fingerprint examination to support manual strangulation. The medical officer conceded that the initial report did not mention manual strangulation, and the final opinion was rendered only after receipt of the FSL report.

07. It was also argued that the time gap of about ten to eleven days between the alleged last seen circumstance and the recovery of the body renders the theory of last seen weak, as the possibility of third-party intervention cannot be ruled out. The investigation was stated to be deficient and lacking in scientific corroboration.

08. *Per contra*, learned counsel for the respondent supported the impugned judgment, submitting that the trial Court had properly appreciated the evidence and that the appellant has been in custody since 29.07.2013.

09. PW-Mohd. Sharif, in his deposition, stated that on 03.07.2013 at about 6:45 PM, the appellant came to the canteen with the deceased, purchased eatables for her, and left towards bushes despite the girl appearing nervous. He identified the deceased only after seeing her photograph the next morning. In cross-examination, he admitted presence of tourists and other employees and conceded that he did not inform anyone about the girl's condition. PW-Pinky Devi stated that her daughter had gone to collect empty bottles and that the accused later met them and offered monetary help. She identified the body from clothes. PW-Jaswant



Singh stated that the body was found in a cave near the Nallah and admitted he had not seen the accused on the day of the incident. PW-Rakesh Kumar stated that the accused met him while he was searching for his daughter and offered financial help. He identified the body as that of his daughter. The Medical Officer, PW-10 Dr. Shakil-Ur-Rehman, noted decomposition and deep bruises on the neck and subsequently, opined that the cause of death was manual strangulation, though he admitted that the first report did not specifically record strangulation but only bruises on the neck.

10. Having heard learned counsel for both sides and perused the trial Court record, we proceed to examine the rival submissions in light of the settled principles governing cases based purely on circumstantial evidence. It is trite that where the prosecution case rests on circumstantial evidence and the theory of “last seen together”, the chain of circumstances must be so complete as to unerringly point towards the guilt of the accused and exclude every hypothesis consistent with innocence.

11. The law on the subject stands crystallized by the Constitution Bench in **Sharad Birdhichand Sarda v. State of Maharashtra, 1984 (4) SCC 116**, wherein the Hon’ble Supreme Court laid down the five golden principles (panchsheel) governing conviction on circumstantial evidence. It was held that (i) the circumstances must be fully established; (ii) they must be consistent only with the hypothesis of guilt; (iii) they must be conclusive in nature; (iv) they must exclude every possible hypothesis except that of guilt; and (v) there must be a complete chain of evidence leaving no reasonable ground for a conclusion consistent with innocence. The



distinction between “may be proved” and “must be proved” was further emphasized in **Shivaji Sahabrao Bobade v. State of Maharashtra, 1973 (2) SCC 793** underscoring that suspicion, however strong, cannot substitute proof.

12. Similarly, in **Padala Veera Reddy v. State of Andhra Pradesh AIR 1990 SC 79**, the Hon’ble Apex Court reiterated that the circumstances relied upon must be cogently and firmly established and must form a chain so complete that there is no escape from the conclusion that the crime was committed by the accused and none else.

13. Applying these principles to the case at hand, the prosecution primarily relies upon the circumstance that the deceased child was last seen in the company of the appellant on 03.07.2013 at about 5:30–6:00 PM. The testimony of PW-Mohd. Sharif assumes pivotal significance. He categorically deposed that the deceased visited his canteen along with the appellant, who purchased eatables for her and thereafter proceeded towards a bushy area despite being advised to let the child return home. His statement under Section 164 Cr.P.C. lends further assurance to his testimony. The contention of the defence that the witness was examined belatedly does not, by itself, render his evidence unreliable, particularly when the delay stands explained and finds support from the complaint (EXTP-1) lodged promptly by the father, where it is specifically narrated that parents of deceased were informed by said witness of the deceased having been seen by him in the company of appellant. In this regard, the principle laid down in **Shyamal Ghosh v. State of West Bengal, AIR 2012 SC 3539** that delay in examination of a witness is a variable factor



depending on circumstances is apposite. PW-Mohd. Sharif has also testified that he could not be examined under Section 164-A Cr.P.C, as after the incident, he had been to his native village and after coming back, he was taken for making of statement under Section 164-A Cr.P.C. This fact is also explained by I.O.

14. The prosecution has further established that the dead body of the child was recovered on 13.07.2013 from an isolated cave area near a nala, approximately half an hour's walking distance from the place where she was last seen with the appellant. The autopsy report (EXTP-SUR) opined the time since death as one–two weeks, which corresponds with the date of disappearance. The medical evidence clearly establishes that the cause of death was manual strangulation. The body, though decomposed, was identified by the grandfather and another witness on the basis of clothes worn by the child. While the Investigating Agency failed to obtain DNA comparison or properly match hair samples recovered from the cave, such lapses, as consistently held by the Hon'ble Supreme Court, do not *ipso facto* demolish the prosecution case when otherwise reliable evidence is available.

15. The defence has stressed the time gap of ten days between the “last seen” circumstance and the recovery of the body, contending that the possibility of intervention by a third person cannot be ruled out. It is true that in **Mohibur Rahman v. State of Assam, AIR 2002 SC 3064**, the Apex Court acquitted an accused where the sole circumstance of last seen was not supported by other connecting links. However, the Court in that very decision upheld conviction of a co-accused where additional



incriminating circumstances existed. Likewise, in **Prakash v. State of Rajasthan, AIR 2013 SC 1474**, conviction was sustained where last seen evidence, coupled with recovery and identification of articles, formed a complete chain. The fact that tourists were present or that other employees were not examined does not render the evidence of PW-Mohd. Sharif otherwise, credible testimony unreliable. Non-examination of every possible witness is not fatal where the evidence of the witness examined inspires confidence.

16. In the present case, the “last seen” circumstance does not stand in isolation. It is accompanied by (i) the appellant’s unexplained absence from the village immediately after the child went missing; (ii) his failure to join the search operations, though his brothers participated; (iii) recovery of the body from the direction towards which he was seen proceeding with the child; and (iv) medical evidence consistent with homicidal death within the relevant time frame. The appellant’s plea of false implication due to land dispute remains a bald assertion unsupported by any defence evidence nor has he been able to extract any such relevant material from the cross-examination of material witnesses.

17. The fact that the appellant allegedly offered monetary assistance to the father of the deceased during the search instead of expressing genuine concern, is a conduct that may be taken into account under Section 8 of the Evidence Act. More significantly, his whereabouts from 04.07.2013 till his arrest on 15.07.2013 remained unexplained. The fact as to where he was during this crucial period was especially within his knowledge. In such circumstances, the trial Court rightly invoked Section 106 of the Evidence



Act. While Section 106 of the Act does not relieve the prosecution of its primary burden, it permits the Court to draw an adverse inference where the accused fails to explain facts peculiarly within his knowledge, once the prosecution has established foundational facts. The trial Court rightly observed that sexual assault could not be conclusively proved due to decomposition of genital organs. However, failure to establish sexual assault does not detract from the charge of murder. The essential requirement was to prove that the death was homicidal and that the appellant was responsible. The circumstances on record satisfy that requirement beyond reasonable doubt.

18. Thus, the prosecution has successfully proved the following incriminating circumstances:-

1. The deceased was last seen in the company of the appellant on 03.07.2013 in the evening hours.
2. The appellant failed to satisfactorily explain his conduct and absence immediately thereafter.
3. The dead body was recovered from an isolated area consistent with the direction in which the appellant was seen proceeding with deceased.
4. The medical evidence establishes homicidal death within a time frame matching the disappearance.

19. During the course of hearing, counsel for the appellant had placed reliance on **Criminal Appeal No. 2973 of 2023** titled **Manojbhai Jethabhai Parmar (Rohit) versus State of Gujarat** and **AIR 2002 SC 3164** with the argument that the prosecution case had missing links which it had not been able to establish before the trial Court, so merely on the



strength of circumstance of last seen together, the appellant could not have been convicted. We have examined both the authorities, on which reliance is placed and find both operate in different circumstances. The delay in examination of PW-Mohd. Sharif has been successfully explained by the prosecution and at the cost of repetition, we have already discussed this aspect and do not find to reiterate it again. Though it is laid in **AIR 2002 SC 3164 (supra)** that if the explanation offered for the delay in examination is plausible and acceptable, the Court accepts the same as plausible. There is no reason to interfere with the conclusion. In that case also, the Hon'ble Apex Court had found that if there is any delay in examination of particular witness, it cannot be taken as a routine that the prosecution version becomes suspect. It all depends upon facts and circumstances of the particular case and cannot be used as a thumb rule to dislodge the prosecution. In fact, the reliance placed on *AIR 2002 SC 3164* goes against the arguments of counsel for the appellant.

20. When these circumstances are cumulatively assessed in light of the principles laid down in *Sharad Birdhichand Sarda (supra)* and subsequent authorities, they form a chain so complete that it leaves no reasonable hypothesis consistent with innocence. The defence suggestions remain speculative and unsupported by evidence. The lapses in investigation, though regrettable, do not create a dent in the otherwise cogent and consistent prosecution case.

21. Accordingly, the theory of last seen together, reinforced by conduct evidence, recovery, medical opinion, and failure of the appellant to explain incriminating circumstances within his special knowledge, stands proved



beyond reasonable doubt, satisfying the stringent tests governing conviction based on circumstantial evidence.

22. The question that remains is whether the sentence of death awarded by the trial Court should be confirmed. The governing principle is that death penalty is to be imposed only in the “rarest of rare” cases, when the alternative option of life imprisonment is unquestionably foreclosed. While the murder of a girl child is undoubtedly a grave and heinous crime and constitutes a significant aggravating circumstance, sentencing requires a balanced consideration of both aggravating and mitigating factors.

23. In the present case, the conviction rests entirely on circumstantial evidence. There is no direct eyewitness account of the occurrence. The medical evidence, though establishing homicidal death, does not disclose extraordinary brutality beyond the act of strangulation itself. Sexual assault was not proved. There is no material to show that the appellant is a habitual offender or that he poses a continuing threat to society. The record does not indicate prior criminal antecedents.

24. While the offence is undoubtedly serious and deserving of severe punishment, it cannot be said that the case falls within that narrow category where life imprisonment would be wholly inadequate and the alternative option foreclosed. The ends of justice would be served by imposing imprisonment for life.

25. Accordingly, while the conviction of the appellant under Sections 302 and 363 RPC is maintained, the sentence of death awarded by the trial Court, is commuted to imprisonment for life. The appellant shall undergo imprisonment for life for the offence under Section 302 RPC, along with



the sentence awarded for the offence under Section 363 RPC, as directed by the trial Court. The reference for confirmation of death sentence is answered in the negative to the extent indicated above. The appeal is partly allowed to the extent of modification of sentence. Record of the trial Court be sent back alongwith copy of this judgment with direction to the trial Court for further compliance.

(SANJAY PARIHAR) (SANJEEV KUMAR)
Judge Judge

JAMMU
RAM MURTI
26.02.2026

