IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.639 of 2018

Arising Out of PS. Case No.-99 Year-2017 Thana- AHIYAPUR District- Muzaffarpur

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Sanjay Bhagat Son of Sri Ramphal Bhagal, Resident of Village- Mustafapur, Police Station- Ahiyapur, District- Muzaffarpur.

... ... Appellant/s

Versus

The State of Bihar

... ... Respondent/s

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with

CRIMINAL APPEAL (DB) No. 600 of 2018

Arising Out of PS. Case No.-99 Year-2017 Thana- AHIYAPUR District- Muzaffarpur

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Lala Miya @ Yasin S/o Safik Miya, R/o Vill.- Mustafapur, P.S.- Ahiyapur, District- Muzaffarpur.

... ... Appellant/s

Versus

The State of Bihar

... ... Respondent/s

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Appearance :
(In CRIMINAL APPEAL (DB) No. 639 of 2018)
For the Appellant/s : Mr. Ramakant Sharma, Sr. Adv.
Mr. Abhay Kumar, Adv.
For the Respondent/s : Mr. Binay Krishna, APP
(In CRIMINAL APPEAL (DB) No. 600 of 2018)
For the Appellant/s : Mr. Ramakant Sharma, Sr. Adv.
Mr. Abhay Kumar, Adv.
For the Respondent/s : Mr. Sri Sadanand Paswan, APP
For the Informant : Md. Anisur Rahman, Adv.

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
and
HONOURABLE MR. JUSTICE ANSUL
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ANSUL)

Date : 04-02-2026

Heard learned senior counsel for the appellants, learned counsel for the informant, and the learned counsels for the state.

2. Since in both these cases, the same order of judgment

dated 09.04.2018 and order of conviction dated 10.04.2018 is under challenge and since both the appeals arise out of the same Adhiyapur P.S. case no. 99 of 2017 in connection with trial no. 21 of 2017, they have been heard together and are being disposed of by this common judgment and order.

3. This appeal has been preferred by the appellants for setting aside the impugned judgment of conviction and order of sentence dated 09.04.2018 and 10.04.2018 respectively passed by learned 1st Additional Sessions Judge-cum-Special Judge POCSO, Muzaffarpur in Sessions Trial No. 21 of 2017 arising out of Ahiyarpur P.S. Case No. 99 of 2017 , whereby the appellants have been convicted under Sections 376(A)/34 , 302/34 of the Indian Penal Code (for short 'I.P.C.') and Section 3(1)(w) of the SC/ST (POA). For the offences under section 376(A)/34 of the I.P.C., the appellants have been sentenced with imprisonment for life and a fine of Rs. 50,000/- each and for the offence under Section 302/34 of the I.P.C., they have been sentenced to undergo imprisonment for life and fine of Rs. 50,000/- each and have been further sentenced to undergo R.I. of 3 years and fine of Rs. 5,000/- each for the offence under section 3(1)(w) of the SC/ST (POA). Furthermore, in default of payment of fine, they have been sentenced to undergo R.I. for

one year each. All the sentences were directed to run concurrently, and one half of the amount of fine was directed to be given to the informant.

4. The prosecution case as stated by the informant namely, Ashok Ram (P.W.7) in his *fardbeyan* dated 15.02.2017 is that on 14.02.2017 at about 9:00 P.M., he had returned to his home from his field and was sleeping after having dinner. At around 10:00 P.M. on the same night Sanjay Bhagat and Lala Miya, both the appellants, came at the door of the informant and called him by his name. Upon an inquiry made by the informant, both disclosed their names. The informant despite the same did not come out of the house. Thereafter both the appellants entered the house of the informant and took away his daughter namely, Renu Kumari @ Bhutia by pressing her mouth, carrying her on the shoulder. Upon seeing this, Sunita Kumari (P.W. 6), who is the wife of the informant, came and told him that Sanjay Bhagat and Lala Miya were taking away their daughter. Then the informant and his wife raised *hulla* and searching for the girl at night with the help of local people. They also went to the house of both the appellants but they were nowhere to be found. Later when he came to home after searching the girl at his level, he was informed by the local

people that a dead body of a 7–8-year-old girl was thrown away in the lichi field of one Jamruddin Miyan. On this information he reached at the aforesaid place with his wife and they identified the girl as his daughter. The informant has alleged that he and his daughter, who was eight years of age belong to *Mahadalit* family, and that Sanjay Bhagat and Lala Miya took away his daughter and raped and killed her. Based on the aforesaid *fardbeyan*, an F.I.R. bearing no. 99 of 2017, dated 15.02.2017 was lodged.

5. During the course of trial, altogether nine witnesses were examined in support of the prosecution case, which are as under:

P.W.-1	Parwati Devi
P.W.-2	Sone Lal Ram (Maternal Uncle of the deceased)
P.W.-3	Ram Sevak Ram
P.W.-4	Ram Surat Kumar
P.W.-5	Raghubansh Ram
P.W.-6	Sunita Devi (Mother of the deceased)
P.W.-7	Ashok Ram (Informant) (Father of the deceased)
P.W.-8	Dr. Vijay Kumar (Doctor)
P.W.-9	Ravindra Kumar (I.O.)

6. Apart from the oral evidence, the documentary evidences were also exhibited on behalf of the prosecution, which are as follows: -

Exhibit- 1	Signature of Sunita Devi on *Fardbeyan*
Exhibit- 1/1	Signature of Ashok Ram on *Fardbeyan*

Exhibit- 2	Postmortem Report
Exhibit- 3	Formal F.I.R.
Exhibit- 4	Chargesheet

7. After completion of prosecution evidence, the statement of the appellants was recorded under section 313 of the Code of Criminal Procedure, in which the appellants denied the allegations and stated that they are innocent and have falsely been implicated in the present case.

8. The trial court has, upon appreciation of the evidence adduced at the trial, found the appellants guilty of the offences and have sentenced both the accused persons to imprisonment for life as noted above, by its impugned judgment and order.

9. We have considered the submissions of the parties and perused the materials on record.

10. The P.W. - 1 Parwati Devi, who is a neighbor of the informant, in her deposition has stated that at around 10:00 P.M. on the day of occurrence , she saw Lala Miya carrying away the victim on his shoulder and he was accompanied by Sanjay Bhagat and they took the daughter of the informant with them. She further stated that on her *hulla* , Sunita Devi and Ashok Ram came out and they started searching for their daughter with the help of local people. Later the girl was found dead. In cross-examination she stated that she raised *hulla* and then only others

came to know, there is nothing in the cross-examination to discredit this witness.

11. P.W. - 2, Sone Lal Ram is maternal uncle of the victim and was also a witness to the FIR. He also stated that on *hulla*, he came out and saw in the torch light that Lala Miya and Sanjay Bhagat were taking Renu away. He admitted in his cross-examination that he came to know about the occurrence from his sister.

12. P.W. -3, Ram Sevak Ram was declared hostile.

13. P.W. - 4 is a witness who had just seen the dead body of the victim and knows nothing about the said killing.

14. P.W. - 5 is a hearsay witness who has not added anything to the case.

15. P.W. - 6, Sunita Devi, is the mother of the deceased victim girl and a witness to the FIR also. She has supported the case of the prosecution in its entirety. She has stated in her cross examination that when Lala Miya lifted her child she was sleeping there. She has also stated that accused persons had entered the house after breaking the door and that the broken door was shown to the police inspector.

16. P.W. - 7 is the father of the victim and the informant. He has also supported the case of the prosecution in its entirety. He supports the version of P.W.- 6, and he says that the victim

was sleeping with her mother and he was sleeping in another room, and in the meanwhile the appellants came and took his daughter away. He has further stated that he was woken up by his wife when Lala Miya lifted the child. In his cross-examination he has stated that Sanjay Bhagat did not lift the child, but he was accompanying Lala Miya.

17. P.W. - 8 is the doctor who conducted the post-mortem examination of the deceased, and he found two bruises on the neck, lacerated wound on the lower part of the vagina, the hymen of the victim girl ruptured and the cause of death as mentioned in the post mortem report is asphyxia because of strangulation.

18. P.W. - 9 is the investigating officer of the case and he has also supported the prosecution case. Strangely though the case of the defence is that at least P.W. - 2 improved his version or that other witnesses also improved their versions, no contradiction at all was taken from the investigating officer.

19. The defence has examined three witnesses i.e. D.W.-1 Suresh Ram and D.W. - 2 Md. Jubair and D.W. -3 Sakila Khatoon. The defence witnesses no. 1 and 2 did not challenge the kidnapping and killing of the victim girl but only tried to create a motive by stating that there was a prior dispute between

the parties regarding business of lichi. Strangely enough no suggestion at all has been given to any of the witnesses about the dispute over lichi business and thus this creation of motive falls flat on its face.

20. The D.W. - 3 Sakila Khatoon seems to be giving a character certificate to the appellants and has nothing to add in terms of defence of the prosecution.

21. After the deposition of the prosecution witness, the deposition of the accused persons was recorded where it was clearly asked about them entering the house of the Ashok Ram and kidnapping and carrying away his daughter and the fact that they later raped and killed her and the same has been denied by them.

22. The primary argument of the learned senior counsel for the appellant, Mr. Ramakant Sharma is that the story as propounded in the FIR on the version of the informant that the child was lifted while sleeping besides her mother and that on chase nobody could locate or catch the accused persons seems improbable. It is to be understood that the crux of the case or the version of the FIR is to be exposed by cross-examining the witnesses merely by pointing out the contents of the FIR. Sadly, there is no cross-examination of the witnesses to discredit them

on the point of either taking away of the child or the attending situation at the given point of time.

23. The case of the prosecution in its bare bones would show that the deceased was last seen with the accused persons. The time lag between taking away and recovery of the dead body is about 10 hours and that too at night. In the statement under Section 313 Cr.P.C. the accused were pointedly asked regarding taking away of the girl, but they have not responded to the same nor they have examined any witnesses stating that they had not taken away the girl. No such suggestions seem to have been given to any witnesses and thus this would establish the factum of last seen.

24. Once the factum of last seen is established, section 106 of the Evidence Act would come into play. The same would cast the reverse burden of proof on the accused to explain the cause of death of the deceased. In absence thereof in any case the accused must provide at least a minimum explanation regarding their knowledge of the offence leading to the death of the victim. The accused persons have not done anything to discharge the burden except baldly denying the occurrence.

25. This brings us to the second point that no witness has been cross examined on the point of last seen in any substantial

manner. The case of the informant is that some of the witnesses have improved their version during trial i.e. their statement is different from what they had given to the police. Sadly, the counsel for the accused persons have not taken the pain of cross examining the witnesses on this point.

26. The Trial Court also has a duty in such a situation as held in ***Bablu Kumar Vs. The State of Bihar*** reported in ***(2015) 8 SCC 787*** as well as ***Munna Pandey Vs. The State of Bihar*** reported in ***(2024) 18 SCC 728,*** to not act as a mere spectator but participate in the proceedings in search of the truth. It is well empowered under section 165 of the Evidence Act; to ask any question to any witnesses at any point of time to ascertain the truth and the court has failed in its duty as given to it under section 165 of the Evidence Act.

27. This court in its anxiety to arrive at the truth has gone through the entire case diary and has seen that no mode or manner of killing the deceased is there in the case diary and the needle falls only on these two accused persons. Not even remotest suspicion has been expressed by any witness regarding any other person or any other mode or manner of killing of the deceased.

28. Furthermore, the homicidal death of the deceased is

not in dispute, as the post-mortem clearly establishes the same which is as follows:

> "*The post mortem examination done on the dead and following antemortem injury were found:*
> *(I) Bruise ½" x ¼" on left*
> *(ii) Bruise 1/4" x 1/4" on right side of neck.*
> *(iii)Lacerated wound 1/4" x 1/4" on the lower part of vagina.*
> *(iv) Hymen was ruptured.*
> *On the disection of neck, subcutaneous tissue and muscle of neck was lacerated. Trachea was congested with fracture of tracheal ring.*
> *Opinion: The deceased died due to Asphyxia as a result of antemortem strangulation.*
> *Time Since Death:- Within 12–24 hrs.*
> *N.B.:- Vaginal swab was taken from in and around vagina and sent to Pathology Dept. S.K.M.C., Muzaffarpur vide memo No. 122/17 dt. 12.02.17 F.M.T. Dept., S.K.M.C., Muzaffarpur."*

29. Another fact that could not be disputed is that the accused persons were last seen with the deceased between 09:00 P.M. and 10:00 P.M. on the preceding night. In the morning on the next date within a period of 10 hours the dead body was recovered. The last seen, time lag and absence of any other theory or explanation for the killing of the deceased unerringly point towards the guilt of the accused persons and nothing else.

30. In support of the foregoing discussion, it would be relevant to refer to a decision of the Hon'ble supreme court in the case of ***Chetan vs State of Karnataka*** reported as ***(2025) 9***

SCC 31 in which the court has held as under: -

> *" 86. In this regard, the learned Senior Counsel has relied on the decision of this Court in State of Goa v. Sanjay Thakran [State of Goa v. Sanjay Thakran, (2007) 3 SCC 755 : (2007) 2 SCC (Cri) 162] wherein this Court held that: (SCC p. 775, paras 31-32)*
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> *"31. Before we analyse the evidence of PW 11 Dinesh Adhikari, who was working as a domestic help in the bar and restaurant Iguana Miraj, PW 14 Calvert Gonsalves, who was said to be in the company of A-1 and D-1 on the evening of 27-2-1999 outside the lounge of the restaurant and PW 6 Amit Banerjee, who was working as Receptionist of Hotel Seema, we would refer to certain decisions of this Court on the point of "last seen together". It is a settled rule of criminal jurisprudence that suspicion, however grave, cannot be substituted for proof and the courts shall take utmost precaution in finding an accused guilty only on the basis of circumstantial evidence. This Court has applied the abovementioned general principle with reference to the principle of last seen together in Bodhraj v. State of J&K [Bodhraj v. State of J&K, (2002) 8 SCC 45 : 2003 SCC (Cri) 201] as under: (SCC p. 63, para 31)*
>
> *'31. The last seen theory comes into play where the time-gap between the point of time when the accused and the deceased were seen last alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. It would be difficult in some cases to positively establish that the deceased was last seen with the accused when there is a long gap and possibility of other persons coming in between exists. In the absence of any other positive evidence to conclude that the accused and the deceased were last seen together, it would be hazardous to come to a conclusion of guilt in those cases.'"*

32. In Ramreddy Rajesh Khanna Reddy [Ramreddy Rajesh Khanna Reddy v. State of A.P., (2006) 10 SCC 172 : (2006) 3 SCC (Cri) 512] this Court further opined that even in the cases where time-gap between the point of time when the accused and the deceased were last seen alive and when the deceased was found dead is too small that possibility of any person other than the accused being the author of the crime becomes impossible, the courts should look for some corroboration."

87. However, it may be noted that this Court also observed in the aforesaid decision of Sanjay Thakran [State of Goa v. Sanjay Thakran, (2007) 3 SCC 755 : (2007) 2 SCC (Cri) 162] that it cannot be said in all cases that the evidence of last seen together is to be rejected merely because the time-gap is for a considerable long period, as stated in para 34 of the aforesaid decision which is reproduced herein as below: (SCC p. 776)

"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 strait-jacket formula for the duration of time-gap in this re-

gard 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, 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."

(emphasis supplied)

88. In the present case, as stated above, PW 28, Dr S.V. Havinal, the medical officer who conducted the post-mortem examination on the dead body during his cross-examination stated that it is not correct to say that the person might have died 5 days before the post-mortem examination. He stated that he might have died 3 to 4 days before the post-mortem examination. Thus, the prosecution case that the deceased was shot dead on the night of 10-7-2006 before his dead body was discovered on 13-7-2006 does not appear to militate against the last seen theory in view of the medical evidence that death occurred about 3/4 days prior. Thus, it cannot be said that the time-gap is for a considerable long period."

31. Similarly, in the case of ***State of Rajasthan v. Kashi Ram*** reported as ***(2006) 12 SCC 254,*** the Hon'ble apex court has held in paragraphs hereunder:-

> *19. Before adverting to the decisions relied upon by the counsel for the State, we may observe that whether an inference ought to be drawn under Section 106 Evidence Act is a question which must be determined by reference to proved. It is ultimately a matter of appreciation of evidence and, therefore, each case must rest on its own facts.*
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> *20. In Joseph v. State of Kerala [(2000) 5 SCC 197 : 2000 SCC (Cri) 926] the facts were that the deceased was an employee of a school. The appellant representing himself to be the husband of one of the sisters of Gracy, the deceased, went to St. Mary's Convent where she was employed and on a false pretext that her mother was ill and had been admitted to a hospital took her away with the permission of the sister in charge of the Convent, PW 5. The case of the prosecution was that later the appellant not only raped her and robbed her of her ornaments, but also laid her on the rail track to be run over by a passing train. It was also found as a fact that the deceased was last seen alive only in his company, and that on information furnished by the appellant in the course of investigation, the jewels of the deceased, which were sold to PW 11 by the appellant, were seized. There was clear evidence to prove that those jewels were worn by the deceased at the time when she left the Convent with the appellant. When questioned under Section 313 CrPC, the appellant did not even attempt to explain or clarify the incriminating circumstances inculpating and connecting him with the crime by his adamant attitude of total denial of everything. In the background of such facts, the Court held: (SCC p. 205, para 14)*

"Such incriminating links of facts could, if at all, have been only explained by the appellant, and by nobody else, they being personally and exclusively within his knowledge. Of late, courts have, from the falsity of the defence plea and false answers given to court, when questioned, found the missing links to be supplied by such answers for completing the chain of incriminating circumstances necessary to connect the person concerned with the crime committed (see State of Maharashtra v. Suresh [(2000) 1 SCC 471 : 2000 SCC (Cri) 263]). That missing link to connect the accused-appellant, we find in this case provided by the blunt and outright denial of every one and all the incriminating circumstances pointed out which, in our view, with sufficient and reasonable certainty on the facts proved, connect the accused with the death and the cause for the death of Gracy."

21. In Ram Gulam Chaudhary v. State of Bihar [(2001) 8 SCC 311 : 2001 SCC (Cri) 1546] the facts proved at the trial were that the deceased boy was brutally assaulted by the appellants. When one of them declared that the boy was still alive and he should be killed, a chhura-blow was inflicted on his chest. Thereafter, the appellants carried away the boy who was not seen alive thereafter. The appellants gave no explanation as to what they did after they took away the boy. The question arose whether in such facts Section 106 of the Evidence Act applied. This Court held: (SCC p. 320, para 24)

"In the absence of an explanation, and considering the fact that the appellants were suspecting the boy to have kidnapped and killed the child of the family of the appellants, it was for the appellants to have explained what they did with him after they took him away. When the abductors withheld that information from the court, there is every justification for drawing the inference that

they had murdered the boy. Even though Section 106 of the Evidence Act may not be intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt, but the section would apply to cases like the present, where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding death. The appellants by virtue of their special knowledge must offer an explanation which might lead the Court to draw a different inference."

22. In Sahadevan v. State [(2003) 1 SCC 534 : 2003 SCC (Cri) 382] the prosecution established the fact that the deceased was seen in the company of the appellants from the morning of 5-3-1985 till at least 5 p.m. on that day when he was brought to his house, and thereafter his dead body was found in the morning of 6-3-1985. In the background of such facts the Court observed: (SCC p. 543, para 19)

"Therefore, it has become obligatory on the appellants to satisfy the court as to how, where and in what manner Vadivelu parted company with them. This is on the principle that a person who is last found in the company of another, if later found missing, then the person with whom he was last found has to explain the circumstances in which they parted company. In the instant case the appellants have failed to discharge this onus. In their statement under Section 313 CrPC they have not taken any specific stand whatsoever."

23. It is not necessary to multiply with authorities. The principle is well settled. The provisions of Section 106 of the Evidence Act itself are unambiguous and categoric in laying down that when any fact is especially within the knowledge of a person, the burden of proving that fact is upon him. Thus, if a

person is last seen with the deceased, he must offer an explanation as to how and when he parted company. He must furnish an explanation which appears to the court to be probable and satisfactory. If he does so he must be held to have discharged his burden. If he fails to offer an explanation on the basis of facts within his special knowledge, he fails to discharge the burden cast upon him by Section 106 of the Evidence Act. In a case resting on circumstantial evidence if the accused fails to offer a reasonable explanation in discharge of the burden placed on him, that itself provides an additional link in the chain of circumstances proved against him. Section 106 does not shift the burden of proof in a criminal trial, which is always upon the prosecution. It lays down the rule that when the accused does not throw any light upon facts which are specially within his knowledge and which could not support any theory or hypothesis compatible with his innocence, the court can consider his failure to adduce any explanation, as an additional link which completes the chain. The principle has been succinctly stated in Naina Mohd., Re. [AIR 1960 Mad 218 : 1960 Cri LJ 620]

24. There is considerable force in the argument of counsel for the State that in the facts of this case as well it should be held that the respondent having been seen last with the deceased, the burden was upon him to prove what happened thereafter, since those facts were within his special knowledge. Since, the respondent failed to do so, it must be held that he failed to discharge the burden cast upon him by Section 106 of the Evidence Act. This circumstance, therefore, provides the missing link in the chain of circumstances which prove his guilt beyond reasonable doubt. "

32. The duty imposed on the appellants to prove their innocence when standing trial in an offence of murder arising

from the doctrine of last seen has been judicially emphasized in a plethora of cases, few of which have been discussed above. Considering the judgments relied upon and the foregoing discussions , this court is of the view that it is the duty of the accused persons in such damnifying circumstances to give an explanation relating to how the deceased met her death and in the absence of such explanation, a trial court and even an appellate court will be perfectly justified in drawing the necessary inference that the accused persons must have killed the deceased.

33. The appellants in the fact and circumstances of the case at hand, had the duty to provide an explanation regarding how the deceased met her death, however they have failed to give a satisfactory explanation. Also considering the fact that the time gap between the point of the time when the accused persons and the deceased were last seen and when the deceased was found dead is so small that the possibility of any other persons other than the accused persons killing the deceased becomes bleak. Therefore, we do not find a case for interference as the prosecution has proved its case beyond reasonable doubt. Hence, there is no infirmity in the impugned judgment of conviction and sentence dated 09.04.2018 and 10.04.2018

respectively passed by the trial court.

34. Accordingly, in the facts and circumstances discussed above, this appeal stands dismissed.

(Ansul, J)

I agree

(Bibek Chaudhuri, J)

Siddharth Soni/-

AFR/NAFR	NAFR
CAV DATE	04.02.2026
Uploading Date	04.05.2026
Transmission Date	04.05.2026