

**HIGH COURT OF TRIPURA
A_G_A_R_T_A_L_A**

Crl. A(J) No. 11 of 2021

Sri Rupam Das @ Rupan, son of Sri Gopal Das, village-East Dukli, P.S.
East Agartala, District: West Tripura, PIN-799003.

.....Appellant

-VERSUS-

The State of Tripura.

..... Respondent.

**B_E_F_O_R_E
HON'BLE JUSTICE DR. T. AMARNATH GOUD
HON'BLE MR. JUSTICE S. DATTA PURKAYASTHA**

For Appellant(s)	:	Mr. S. Kar Bhowmik, Sr. Advocate. Mr. A. Bhattacharjee, Advocate. Mr. N. Das, Advocate.
For Respondent(s)	:	Mr. R. Saha, Addl. P.P.
Date of hearing	:	10.12.2025
Date of delivery of judgment and order	:	06.01.2026
Whether fit for reporting	:	YES

JUDGMENT & ORDER

[Dr. T. Amarnath Goud, JJ]

Heard Mr. S. Kar Bhowmik, learned senior counsel assisted by Mr. A. Bhattacharjee, learned counsel appearing for the appellant also heard Mr. R. Saha, learned Addl. P.P. appearing for the respondent-State.

[2] This is an appeal filed under Section-374 of Cr. P.C. against the judgment and order dated 09.01.2019 passed by the learned Addl. Sessions Judge, West Tripura, Agartala in case No. ST (T-I) 55 of 2016 convicting the appellant under Section-302 of IPC and sentenced him to suffer RI for life and to pay a fine of Rs.25,000/- and in default, to suffer SI for further one year. Further, convicted the appellant under Section-392 of IPC and sentenced to suffer RI for 10 years and to pay a fine of Rs.10,000/-, in default to suffer SI for further six months. More so, the appellant was

convicted under Section-201 of IPC and sentenced to suffer RI for one year and to pay a fine of Rs.5,000/- with default stipulations.

[3] The miniaturized version of the prosecution in short is that on 09.02.2016 at about 1330 hours one Sabita Ghosh, W/O- Radha Mohan Ghosh aged 55 years of East Dukli under PS East Agartala, West Tripura laid an FIR to O/C MG Bazar TOP, which was reduced into writing by O/C MG bazar TOP himself, alleging *inter alia* that on that day at about 9 am the informant was present at her residence when she could know through whispering that one Smt. Gouri Chakraborty, W/O- Dulal Chakraborty of that area has committed unnatural death. Knowing the fact the informant immediately rushed to the residence of Dulal Chakraborty and found the dead body of said Gouri Chakraborty was lying on the floor with bleeding injury on her person. The informant could perceive that somebody has committed murder of said Gouri Chakraborty. Later on police came and started investigation along with dog squad and started thorough searching of that area and in course of searching on the northern side of rubber garden on the northern western side of the pond found some sign of fresh blood.

[4] That time police asked one Kajal Banik to search the pond after getting down on the pond. In course of search by Kajal Banik the dead body of the son of said Gouri Chakraborty namely, Debabrata Chakraborty was found with deep neck cut injury on his person. Seeing the dead body of Debabrata Chakraborty, the informant and the others could perceive that on the earlier day night somebody with preplan have committed murder of said Debbabrata Chakraborty and his mother with sharp cutting weapons. Hence, the informant laid the FIR. As I have already stated the ejahar of the informant was scribed by OC MG Bazar TOP himself and after receipt of the same necessary entry was made in the GD Entry book and the same was forwarded to O/C East Agartala PS and accordingly, O/C East Agartala PS registered East Agartala PS case No. 09 of 2016 under Sections-302/201 of IPC and the OC himself took up the investigation of this case as an I.O.

[5] During investigation the IO caused arrest of accused Rupam Das and Prasenjit Paul and forwarded them before the Court, arranged for conducting inquest over the dead body of the deceased Gouri Chakraborty and Debabrata Chakraborty, visited PO and prepared hand sketch maps of the PO with separate indexes (in total ten sheets), seized 7 number blue colour Hawaii Chappal from the pond of one Pradip Sarkar at East Dukli, seized some blood stained earth, seized one blood stained banana leaf sample by preparing seizure list on 09.02.2016 at about 1305 hours, seized one red color gamcha belonging to the deceased on 09.02.2016 at about 1300 hours.

[6] As per instruction of O/C, SI Naro Gopal Deb on 10.02.2016 seized viscera of deceased Debabrata Chakraborty along with liver, spleen, kidney etc, in separate container, one multi color gamcha which was wrapped on the neck of deceased Debabrata Chakraborty, one black colour full track suit belonging to the deceased Debabrata Chakraborty with one brown colour full sleeve inner (wearing apparel of deceased) by preparing seizure list at AGMC & GBP Hospital morgue. Further WSI Mamtaj Hasina on 10.02.2016 at about 1605 hours seized viscera preserved in bottle No. 1, stomach with contents, small intestine with contents in another bottle, seized liver section, spleen, kidney etc by the seizure list of Gouri Chakraborty. The IO further on 18.02.2016 at about 1115 hours in the house of Gopal Das seized one original ROR in the name of Gopal Das by preparing seizure list. Conducted search in the house of Babul Borua on 19.02.2016.

[7] On 11.02.2016 the IO also seized one blank wrapper of modern Dalmoot standing in the name of 'Maran Chandra Saha' for 60 grm packet, one empty bottle of 2 ltrs. wrapping with Eco fresh sticker, two numbers one time water glass by preparing seizure list from the pond of Pradip Sarkar as per identification of Rupam Das. On 13.02.2016 the IO also seized one gold made bangel, ear ring, one pair bangle, some coins, cash money amounting to Rs. 1,30,000/-, Rs. 1500/-, Rs. 2000/-, one gold made chain, one pair Sakha, two pairs of silver made finger ring, one pair Churi, coin Rs.

10,000/- from the house of Dulal Chakraborty in presence of witnesses by preparing seizure list. On 14.02.2016 the IO from the pond of Dulal Chakraborty seized one bank (bhar) made of soil containing coins of different denominations amounting to Rs. 7171/-, one blood stained knife on 14.02.2016 at about 1300 hours from the Kaccha latrine of one Sabita Das, W/O- Sri Gopal Das of East Dukli by preparing seizure list in presence of witnesses. Seized one iron made piece (used for sharpening tools) with bamboo made handle by preparing seizure list on 14.02.2016 at about 1345 hours at East Dukli nearby one Bijoy Kutir from the bottom of one Pichli tree. The IO also on 11.02.2016 from the dwelling hut of one Chitta Ranjan Paul at about 1610 hours seized one pair sports shoe measuring 7 No. worth Rs. 750/- mixing with mud. Also seized one pair sports shoe measuring 7 No. belonging to Prasenjit Paul, seized one jeans full pant belonging to Prasenjit Paul, seized one Pulsar motorbike bearing registration No. TR01W-4601 by the same seizure list.

[8] On 11.02.2016 at about 1535 hours the IO also seized one full shirt with white strip having some sign of blood and a trouser with coffee colour by preparing seizure list belonging to accused Rupam Das from the house of Sabita Das, W/O- Gopal Das at East Dukli. Released the gold made ornaments and cash money on execution of Zimma Nama in favour of Dulal Chakraborty, collected PM examination reports of deceased, report of SFSL, DNA profile report, collected certificate of videographer regarding conducting of videography and examined some witnesses and recorded their statements under Section-161 of Cr.P.C., recorded the disclosure statement of accused and after completion of investigation the IO being prima facie satisfied laid charge sheet against accused Rupam Das @ Rupan under Sections-302/201/34 of IPC with Section-14 of the Foreigners Act and Section-3 of (Entry into Indian) Passport Act, 1920 and under the same provisions of law against another accused Gopal Sutradhar showing him as absconder in the charge sheet. The IO also submitted another prayer before the Court for discharging accused Prasenjit Paul as during investigation no incriminating evidence revealed against the said accused.

[9] On receipt of charge sheet learned CJM, West Tripura, Agartala transferred this case to the court of Learned JM 1st Class, Court No-1, West Tripura, Agartala who by order dated 09.06.2016 took cognizance of offence against accused Rupam Das @ Rupan and Sri Gopal Sutradhar @ Malay @ Hanker under Sections-302/201/34 of IPC with added Section-14 of Foreigners Act, 1946 and Section-3 of Entry into India (close Passport Act, 1920) and by order dated 17.02.2016 splitted up this case under Sections-317(2) of Cr.P.C. and after compliance of the provision of Section-207 of cr.P.C. Finally committed this case to the Court of learned Sessions Judge, WestTripura, Agartala for trial of accused Rupam Das.

[10] Learned Sessions Judge, West Tripura, Agartala after receipt of the case record transferred this case to the Court of the then learned Addl. Sessions Judge, Court No-3, West Tripura, Agartala for disposal as per law and thereafter, the then learned Addl. Sessions Judge by order dated 10.08.2016 framed charge under Sections-302/392/120(B)/201 of IPC read with Section-34 of IPC and also under Section-3 of the Passport (Entry Into India) Act, 1920 and under Section-14 of the Foreigners Act against the accused Rupam Das @ Rupan and the same was explained to him orally in Bengali to which he pleaded not guilty and claimed to be tried.

[11] During trial prosecution in this case has adduced in total 29 numbers of witnesses and the prosecution also tendered and relied upon some documentary evidences to prove the charge against the accused which were marked as exhibits in this case.

[12] Having heard both the parties and on perusal of the material evidence on record, the learned Court below has observed as under:

“*****6. However, considering the nature and gravity of the offence and the facts and circumstances of the case I would like to impose following sentences upon the convict Rupam Das @ Rupan. Hence, it is ordered that the convict Rupam Das @ Rupan shall suffer rigorous imprisonment for life and to pay a fine of Rs. 25,000/- (Rupees Twenty Five Thousands) in default to suffer SI for 1 (one) year for commission of offence punishable under Section 302 of IPC. Also I sentenced the convict Rupam Das @ Rupan under Section 392 of IPC to suffer rigorous imprisonment for a period of 10 (ten) years and to pay a fine of Rs. 10,000/- (Rupees Ten Thousands) in default to suffer SI

for further period of 6 (six) months for commission of offence punishable under Section 392 of IPC, and Also for commission of offence punishable under Section 201 of IPC further I sentenced the convict Rupam Das @ Rupan to suffer rigorous imprisonment for 1 (one) year and to pay a fine of Rs. 5,000/- (Rupees Five Thousands) in default to suffer SI for a further period of 3 (three) months. All the aforesaid sentences shall run concurrently.

7. The convict Rupam Das @ Rupan already was in custody during the period of investigation and trial w.e.f. 12.02.2016 to 24.10.2017 and w.e.f. 08.06.2018 to till date. So the period of detention undergone by the convict in custody during the investigation and trial shall be set off from the quantum of sentence under Section 428 of Cr.P.C.

8. A copy of this judgment duly certified be given free of cost to the convict Rupam Das @ Rupan under Section 363 of Cr.P.C.

9. A copy of this judgment also shall be forwarded to the District Magistrate, West Tripura, Agartala under Section 365 of Cr.P.C.

10. The Court Inspector, Sadar Police Court be asked to keep all the alamats of this case for safe custody until further order.

11. But this case shall remain pending against another accused Gopal Sutradhar who is still absconding. Process has already been issued against him.

12. This case is thus partly disposed of on contest.*****”

[13] The appellant herein, being aggrieved by and dissatisfied with the same, has preferred this present appeal before this Court for ends of justice.

[14] Learned senior counsel appearing for the accused appellant has submitted that the learned Court below has committed gross error in passing the impugned judgment and order of conviction. The charge was not framed according to law causing grave prejudice to the appellant since the charge did not give sufficient notice to the appellant.

[15] The learned Court failed to appreciate the fact that PW-1, Smt.Sabita Ghosh, the informant of the case was a hearsay witness and during her cross examination she admitted that she stated that in her statement under Section-161 Cr.P.C, it was written that the body of Gouri Chakraborty was on the floor, as such her evidence should have been discarded by the learned Court below.

[16] PW-7, Sri Subhajit Sutradhar in his cross examination stated that another accused of the case namely Prasenjit Paul always used to visit the house of Debabrata Chakraborty. That from the evidence on record it would be luminous that it was this Prasenjit Paul, who was the master mind behind the whole crime, but most unfortunately he was not charge sheeted in the instant case. PW-13 Sri Debasish Das, the Deputy Collector and Magistrate in his examination in chief stated that on 14.02.2016 police recorded the confessional statement of the appellant in the P.S. During his cross examination the witness admitted that in his presence the dead body was not searched, as such his statement important regarding leading to discovery was not admissible. This important point was not considered by the learned Court below.

[17] PW-14, Sri Billamangal Sutradhar, neighbour of Dulal Chakraborty, in his examination in chief stated that accused Rupam Das took one Knife from him 7/8 before the date of offence. The same knife was seized from the house of accused Rupam Das by police. He further stated that when he handed over the knife, it was of full size, but during identification of the Knife, (Ext M.O.-2) the same was broken from its head. During cross examination, seeing the seized M.O.2 the witness admitted that in local tongue the same is also called Kachi. As such there was discrepancy regarding the seized knife being the weapon of offence, since the seized knife was different. As such the learned Court below should have discarded the evidence of this witness.

[18] It has been further contended that PW-15 Dr. Pranab Choudhury, who was one of the autopsy surgeon during his examination in chief stated that on receipt of viscera toxicological analysis report, ethyl alcohol was found in the viscera of deceased Debabrata Chakraborty. During the whole investigation and trial, prosecution did not throw any light as to how alcohol was found in his stomach and under what circumstances, making the Judgment and order of conviction bad in law and liable to be set aside. PW-20 Sri Sagar Debnath in his examination in chief stated as he was

coming to his house from a fair (mela) at 9.30 PM he saw Prasenjit Paul, Gopal Sutradhar and Rupam Das were going towards the pond of Pradip Sarkar with Debabrata Chakraborty. During his cross examination the witness stated that in his locality there was no street light. During his cross examination he further admitted that he stated to police that he was going towards North from Southern side. However in the Court he stated that he was going from Southern side from North. He further admitted that there is no path near his house from North to South. That as such it is evident that the witness was not speaking the truth, making his version doubtful.

[19] PW-21 Sri Chitta Ranjan Paul during his examination in chief stated that from his house sport shoes, jeans pant and one Pulsar bike was seized. During cross examination he admitted that there were marks of blood on the Jeans pant and the said pant belonged to his son Prasenjit Paul. Despite of aforesaid hard evidence against Sri Prasenjit Paul, most illegally he was not charge sheeted thereby vitiating the whole trial. PW-22 Sri Swapan Deb in his examination in chief stated that about one year back the I.O. seized sports shoes, jeans pant and one Pulsar bike in his presence. During cross examination the witness admitted that the aforesaid seizure was made from the house of Chitta Ranjan Paul and the materials belonged to his son Prasenjit Paul. He further stated during seizure Prasenjit Paul was in police custody. Despite of such hard evidence, said Prasanjit Paul was not charge sheeted as an accused in the present case.

[20] The learned Court below failed to appreciate the fact that PW-26 Suman Kumar Chakraborty, in his examination in chief stated that ethyl alcohol was detected in the viscera of said Debabrata Chakraborty. During the whole investigation and trial prosecution did not throw any light as to how alcohol was found in his stomach and under what circumstances, making the Judgment and order of conviction bad in law and liable to be set aside. PW-28 Sri Dulal Chakraborty who is the father and husband of the 2 victims, in his examination in chief stated that on 14.02.2016 police seized one earthen made pot from the possession of appellant Rupam Das. It is

submitted that the pot was in-fact recovered from the pond and not from the possession of the appellant.

[21] Mr. Bhowmik, learned senior counsel further argued that PW-29 Sri Satyendra Basu Roy Choudhury, who is the I.O. of the case, in his cross examination admitted that he did not cite Gopal Das a witness who purportedly produced the blood stained wearing apparels of Rupam Das before him making the prosecution case doubtful.

[22] Mr. Bhowmik, learned senior counsel appearing for the appellant in support of his case has placed his reliance on some decisions of the Hon'ble Apex Court in Rohtash Kumar v. State of Haryana, reported in (2013) 14 SCC 434, Barku Bhavrao Bhaskar v. State of Maharashtra, reported in (2013) 14 SCC 745, Bhim Singh and Another v. State of Uttarakhand, reported in (2015) 4 SCC 281, Ashok v. State of Maharashtra, reported in (2015) 4 SCC 393, V. K. Mishra and Another v. State of Uttarakhand and Another and Rahul Mishra v. State of Uttarakhand and Another, reported in (2015) 9 SCC 588.

[23] Mr. R. Saha, learned Addl. P.P. appearing for the respondent-State has submitted that the prosecution in this case has been able to prove the charge leveled against the accused Rupam Das beyond reasonable doubt and submitted that the accused by the trend of cross-examination of the witnesses of the prosecution could not raise any doubt to discard the evidence on record of the prosecution. Learned Addl. P.P. further submitted that although in the case at hand there is no direct eye witness of the alleged occurrence of offence. But from the evidence of PW 20, i.e., only one solitary witness it is clearly established that prior to the alleged occurrence, the accused was found with the deceased along with other accused persons were proceeding towards the pond of Pradip Sarkar from where the dead body of deceased Debabrata Chakraborty was recovered. The accused by the trend of cross-examination could not discard that portion of evidence, i.e., "last seen together".

[24] Learned Addl. P.P. further submitted that the disclosure statement of the accused is also very much applicable for decision of this case and at the instance of the accused the weapon of offence was recovered by which the crime was committed and the accused himself in presence of Magistrate (PW-13) and other witnesses stated that he has committed the crime of murder of deceased Debabrata Chakraborty and Gouri Chakraborty along with another and thrown the body of deceased Debabrata Chakraborty at the pond and furthermore at the instance of said accused the seized coins were recovered from which it is clearly established that with a view to commit the crime of robbery in the dwelling hut of Dulal Chakraborty (PW-28) he himself and another absconding accused have committed the crime and this part of evidence according to learned Addl. P.P. is well proved in view of the provision provided under Section-27 of the Evidence Act.

[25] Learned Addl. P.P. in course of hearing further submitted that the report of bloodstained cloth of the accused clearly matches with the blood of the deceased Debabrata Chakraborty and from the evidence of PW-25 Subhankar Nath, Deputy Director of SFSL who went to PO after telephonic information of SP (West) and examined the dead body of the deceased Gouri Chakraborty and Debabrata Chakraborty and examined the house of deceased Gouri Chakraborty and in his presence also the dead body of Debabrata Chakraborty was recovered and the weapon of offence (knife) was recovered from the Septic tank in the house of accused Rupam Das and also the earthen pot from where Rs. 7171/- (coins) was recovered and he examined Exhibits E2, F, G1, G2, G3, G4, L2, O, P, Q, R, S and after DNA examination he found Exhibit S matches with other exhibits. The accused by the trend of cross-examination could not raise any doubt or cloud to disbelieve the evidence of said PW-25 also.

[26] Further according to Learned Addl. P.P. the evidence of PW-26 Mr. Suman Kumar Chakraborty, Deputy Director cum Assistant Chemical Examiner and PW-27 Dr. Sabyasachi Nath, Senior Scientific Officer of SFSL are also very much applicable for decision of this case and the

evidence of PW-15 Dr. Pranab Choudhury and two others who conducted autopsy over the dead body of deceased Gouri Chakraborty and Debabrata Chakraborty opined that after holding PM examination they came to the finding that the cause of death in respect of deceased Debabrata Chakraborty was hemorrhagic shock resulting from injuries present over the neck which were caused by sharp cutting weapon and in respect of injury No. 1 and 2 they opined that those were fatal and sufficient enough to cause death in ordinary course of nature individually as well as collectively and after examination of the weapon they also opined that the two numbers of external injury found on the neck of the deceased as mentioned in the post mortem report of late Debabrata Chakraborty were possible by the said weapon (Exhibit MO-2) or similar type of weapon. In respect of another deceased Gouri Chakraborty after holding PM examination the cause of death was combined effect of asphyxia caused by ligature strangulation and head injury caused by impact of blunt force and were homicidal in nature and those injuries as mentioned in the report were sufficient enough to cause death in ordinary course of nature individually and as well as collectively and all the injuries mentioned in the report were ante mortem in nature and fresh in duration and finally in summing up of argument Learned Addl.P.P. referred the following citations:

Trimukh Maroti Kirkan v. State of Maharashtra, reported in (2006) 10 SCC 681, *Vithal Eknath Adlinge v. State of Maharashtra*, reported in (2009) 11 SCC 637, *Dalbir Singh v. State of Haryana*, reported in (2008) 11 SCC 425, *Kedar Singh and Ors. V. State of Bihar*, reported in AIR 1999 SC 1481, *State of Maharashtra v. Suresh*, reported in (2000) 1 SCC471, *Perumal Raja alias Perumal v. State, represented by Inspector of Police, Mehbood Ali and Another v. State of Rajasthan*, reported in (2016) 14 SCC 640, *Barku Bhavrao Bhaskar v. State of Maharashtra*, reported in (2013) 14 SCC 745, (2015) 4 SCC 281, (2015) 9 SCC 588 and (2012) 5 SCC 777.

[27] The Hon'ble Apex Court in *Trimukh Maroti Kirkan v. State of Maharashtra*, reported in (2006) 10 SCC 681 has observed as under:

“22. Where an accused is alleged to have committed the murder of his wife and the prosecution succeeds in leading evidence to show that shortly before the commission of crime they were seen together or the offence takes place in the dwelling home where the husband also normally resided, it has been consistently held that if the accused does not offer any explanation how the wife received injuries or offers an explanation which is found to be false, it is a strong circumstance which indicates that he is responsible for commission of the crime. In *Nika Ram v. State of Himachal Pradesh* AIR 1972 SC 2077 it was observed that the fact that the accused alone was with his wife in the house when she was murdered there with 'khokhri' and the fact that the relations of the accused with her were strained would, in the absence of any cogent explanation by him, point to his guilt. In *Ganeshlal v. State of Maharashtra* (1992) 3 SCC 106 the appellant was prosecuted for the murder of his wife which took place inside his house. It was observed that when the death had occurred in his custody, the appellant is under an obligation to give a plausible explanation for the cause of her death in his statement under Section 313 Cr.P.C. The mere denial of the prosecution case coupled with absence of any explanation were held to be inconsistent with the innocence of the accused, but consistent with the hypothesis that the appellant is a prime accused in the commission of murder of his wife. In *State of U.P. v. Dr. Ravindra Prakash Mittal* AIR 1992 SC 2045 the medical evidence disclosed that the wife died of strangulation during late night hours or early morning and her body was set on fire after sprinkling kerosene. The defence of the husband was that wife had committed suicide by burning herself and that he was not at home at that time. The letters written by the wife to her relatives showed that the husband ill-treated her and their relations were strained and further the evidence showed that both of them were in one room in the night. It was held that the chain of circumstances was complete and it was the husband who committed the murder of his wife by strangulation and accordingly this Court reversed the judgment of the High Court acquitting the accused and convicted him under Section 302 IPC. In *State of Tamil Nadu v. Rajendran* (1999) 8 SCC 679 the wife was found dead in a hut which had caught fire. The evidence showed that the accused and his wife were seen together in the hut at about 9.00 p.m. and the accused came out in the morning through the roof when the hut had caught fire. His explanation was that it was a case of accidental fire which resulted in the death of his wife and a daughter. The medical evidence showed that the wife died due to asphyxia as a result of strangulation and not on account of burn injuries. It was held that there cannot be any hesitation to come to the conclusion that it was the accused (husband) who was the perpetrator of the crime.”

[28] In *Vithal Eknath Adlinge v. State of Maharashtra*, reported in (2009) 11 SCC 637, the Hon'ble Apex Court has observed as under:

“8. So far as the last seen aspect is concerned it is necessary to take note of two decisions of this Court. In 276152 it was noted as follows:

22. 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. In this case there is positive evidence that the deceased and the accused were seen together by witnesses PWs. 3 and 5, in addition to the evidence of PW-2.”

[29] In *Dalbir Singh v. State of Haryana*, reported in (2008) 11 SCC 425 it has been held that:

“7. In *Anwar Hussain v. The State of U.P. and Anr.* (AIR 1981 SC 2073) it was observed that even if there is insufficient light, a witness can identify a person, with whom he is fairly acquainted or is in intimate terms, from his voice, gaits, features etc. Therefore, there is nothing to discard the evidence of PW8 so far as his claim to have recognized the appellant is concerned.”

Regarding disclosure statement recorded under Section-27 of the Indian Evidence Act, in *Kedar Singh and Ors. V. State of Bihar*, reported in AIR 1999 SC 1481, it has been observed that:

“3. We have gone through the judgment under appeal. We have also gone through the statement of PW-2, Narayan Singh. The only blemish pointed out against this eye witness is that situated as he was he could not have witnessed the occurrence. It has been maintained that it was a dark night and that the temple whereat an electric bulb of high power was said to be on could not be enough to identify the assailants. The Courts below have given sufficient reason to dispel such argument. Examining it again, it is noticeable that the deceased and PW-2 were within a short distance of each other going on the pathway when the deceased was surrounded by the accused persons in order to be assaulted. At that time PW-2 may have been stunned when firing was resorted to by Tuna Singh and his two acquitted co-accused as it was done at the spur of the moment. That apart, the act of Shivjee Singh in immobilising the deceased while lying down and let Kedar Singh chop off his head should have been an act comparatively slower and by that time, PW-2 could have gathered his wits and identify the assailants. It has also to be observed that even on a full dark night there is never total darkness. There can be other means to identify another through the shape of his body, clothes, gait, manner of walking etc. etc. Identification possible by voice too. That apart, we have the positive evidence that the temple light was on with the aid of which PW-2 claims to have identified the assailants. It is noteworthy that the occurrence took place at about 8.00 p.m. a time in the month of September when normally a place of worship becomes a visiting point. Thus neither can the presence of PW 2 at the spot be doubted nor can his ability to identify the assailants be questioned when he was stated to be 50 yards away from the temple and by the means of the light he could have certainly identified the assailant, his perception having sharpened. We thus are of the view that he was rightly believed by the Courts below.”

[30] Regarding medical and forensic evidence in *Barku Bhavrao Bhaskar v. State of Maharashtra*, reported in (2013) 14 SCC 745, the Hon'ble Apex Court has held as under:

“8. The circumstances which were examined by the trial Court were formulated and noted by the High Court, which were five in number. The circumstances were:

- “(i) Rakhi being last seen in the company of the accused.
- (ii) Extra-judicial confession of the accused.
- (iii) Discovery of the blood stained shirt at the instance of the accused which bears blood stains of the same group as that of the deceased.
- (iv) Discovery of the dead body at the instance of the accused.
- (v) Motive.”

Both the Courts have discussed each one of the circumstances in depth. The ultimate conclusion was that the circumstances were incapable of being explained on any other reasonable hypothesis, except that the guilt of the appellant, were totally inconsistent to draw an inference of innocence of the appellant.

14. As far as the other circumstance, namely, about the blood stains found on the clothes of the appellant was concerned, it was contended that though the blood group found on the clothes of the appellant was 'A' and that the blood group of the deceased was also 'A', it was submitted on behalf of the appellant that the blood group of the appellant was not tested. While examining the said contention, the High Court has taken pains to note that when at the instance of the appellant, his shirt was recovered under Exts.16 and 17 and when the appellant was physically examined, it was found that there were absolutely no injuries on the body of the appellant and, therefore, the question of the blood stains from the body of the appellant to get transmitted to his shirt was ruled out. It was, therefore, held that the blood stains found on the appellant's shirt, considered along with the factum of the appellant having led the prosecution to discover his blood stained clothes and the body of the deceased put together, the blood stains found in the shirt of the appellant, could have been only that of the deceased and none else. The said conclusion arrived at by the High Court was fully justified and no fault can be found with the said conclusion. As regards the blood stains found on the shirt of the appellant, except the ipsi dixit submission made on this aspect, no other submission was made and there was no valid explanation offered on behalf of the appellant as to how the blood stains came to be found on his shirt, which was recovered at his instance, in the presence of the panch witnesses.”

[31] In view of overall analysis and having gone through the observations made by the learned Court below, for coming to a definite conclusion, let us revisit the evidence once again.

[32] PW-1 Smt. Sabita Ghosh is the informant of this case who laid the FIR. Before the Court on oath she deposed that on 09.02.2016 she was at

her house when she heard from the people of the locality that wife of Dulal Chakraborty has been killed. She went to the PO and found the dead body of Gouri Chakraborty in blooded condition and her body was pull on the blood. She heard that son of Dulal Chakraborty has also been killed. According to her on that day dog squad came and some mark of blood found near the pond of one Pradip Sarkar. After that they proceeded towards the pond where in the corner of northern western side, she saw the dead body of Debabrata Chakraborty. She saw cut injury on the front side on the neck of the deceased Debabrata Chakraborty and seeing the condition of the body she came to the conclusion that someone has killed them. She made the oral ejahar before O/C Golbazar Outpost and put her signature on the ejahar. The witness identified the ejahar with whole contents marked Exhibit 1 as a whole. She further stated that police prepared the surathal report of Gouri Chakraborty and she put her signature on the surathal report as witness and identified her signatures on the surathal report marked Exhibit 2/1 and 2/1A respectively.

[33] PW 2 Sri Santu Bhattacharjee deposed that Surathal report of deceased Gouri Chakraborty was prepared in his presence on 09.02.2016 and he put his signature on the surathal report as a witness and identified his signatures marked exhibit 2/2 and 2/2A. He was declined to cross-examine by the accused.

[34] PW 4 Sri Kajal Kumar Banik deposed that on the day of alleged incident he was at his house and on that day he also went to the pond of Pradip Sarkar in the locality of Thakurbari when police officer called dog squad. During search in the pond, body of Debabrata Chakraborty was found with cut injury mark on his neck. As per direction of investigating officer he brought the dead body of deceased Debabrata Chakraborty from the pond when Darogababu conducted inquest over the dead body of the deceased and identified his signature on the surathal report marked Exhibit 3/2. He further stated the IO of this case has seized some materials on 09.02.2016 by preparing seizure list wherein he put his signature as a

witness. The witness identified his signature on the seizure list dated 09.02.2016 marked Exhibit 4/1.

[35] PW 8 Constable, Dipak Marak deposed that on 09.02.2016 he was posted at MG Bazar TOP and on that day he brought the body of Debabrata Chakraborty to the morgue of GB Hospital for PM examination and after PM examination the body of Debabrata Chakraborty was handed over to him and he took the viscera articles and report and handed over the same to the IO of this case at East Agartala PS on 10.02.2016. The witness identified his signature on the seizure list prepared by IO marked Exhibit 5/1.

[36] PW 10 Constable, Laxmi Rani Debbarma deposed that on 09.02.2016 she was posted at East Agartala Women PS. On that day she along with constable Shipra Chakraborty brought the dead body of Gouri Chakraborty to GB morgue for the purpose of holding post mortem examination. The PM examination was held on 10.02.2016 and the doctor handed over the viscera to them and thereafter they handed over the viscera and other articles to SI Mamtaj Hasina who after that prepared the seizure list and seized the viscera and other articles and obtained the signature of witness on the seizure list marked as Exhibit 6/2.

[37] PW 11 Rinku Ghosh deposed that on 14.02.2016 he was called by police and accordingly, he went when so many persons of that locality were present and he further stated that wife and son of Dulal Chakraborty were killed. He along with other persons went to the pond of Dulal Chakraborty along with accused Rupam Das and on the basis of statement made by Rumpam Das the pond was searched and from the pond one soil made bank (Bhar) was recovered and from the Bhar a sum of Rs. 7171/- was seized by police. The coins and notes were taken out from the pond and the bhar was seized at about 12 pm on 14.02.2016. After that police officer seized all the coins and notes by preparing seizure list and obtained the signature of the witness on the seizure list. The witness identified his signature marked as Exhibit 7/1. The witness further identified the seized

coins marked Exhibit MO-1. He also stated that the seized currency notes and coins were belonging to Dulal Chakraobrtty. He further stated on the statement of Rupam Das one knife was recovered from the septic tank of Rupam Das when Rupam Das disclosed before him and other persons that he killed Debu and his mother by the knife. The knife was 14 inch length. The knife was also seized by IO by preparing seizure list and the witness identified his signature on the seizure list marked as Exhibit 8/1 and identified the seized knife marked Exhibit MO-2. He also stated that accused Rupam Das informed before him and other persons of that area that there is one Reta (instrument for sharpening the knife) which was also recovered near by a tree on the information of Rupam Das.

[38] PW 13 Debasis Das deposed that on 14.02.2016 he was posted in the office of SDM, Sadar as DCM. On that day as per instruction of SDM, Sadar and requisition of East Agartala PS he went to East Agartala PS when he saw accused Rupam Das at PS. That day accused Rupam Das confessed that he committed murder of Gouri Chakraborty and Debabarata Chakraborty and provided information regarding the disposal of dead body of Debabrata Chakraborty and also regarding the instruments used in the commission of offence and also regarding some coins. Further according to this witness as per information of accused Rupam Das one hand broken knife was recovered from the septic tank of accused Rupam Das in his presence and Bhar (Bank) also recovered containing coins in presence of him and there were total coins of Rs. 7171/-. One Reta also recovered as per information of Rupam Das. The witness identified his signature on the seizure list relating to Bhar and coins which is respectively marked as Exhibit 7/3 and also identified his signature on the seizure list regarding seizure of knife marked Exhibit 8/3 and further identified his signature on the seizure list regarding seizure of Reta marked Exhibit 9/3. Further stated that accused Rupam Das made a confessional statement before him and identified the confessional statement in two sheets recorded by police personnel and his signature on the same marked Exhibit 10/1 and 10/2 and

also confirmed Exhibit MO-1, MO-2 and MO-3 and also identified the accused in the court in the dock.

[39] PW 15 Dr. Pranab Choudhury deposed that on 10.02.2016 he along with Dr. Ranjit Kr. Das and Dr. Pradipta Narayan Chakraborty conducted post mortem over the dead body of Debabrata Chakraborty in connection with East Agartala PS GD entry No. 16 dated 09.02.2016 arising out of East Agartala PS case No. 09/2016. According to this witness at the time of conducting PM examination they have found the following injuries on the person of deceased Debabrata Chakraborty. After holding the post mortem examination they opined cause of death in this case was hemorrhagic shock resulting from injuries present over the neck which are caused by sharp cutting weapon. Injury Nos. 1 and 2 are fatal and sufficient enough to cause death in ordinary course of nature individually as well as collectively. The injuries mentioned in the report are ante mortem in nature and fresh in duration. However, viscera have been preserved to rule out any concomitant intoxication. Manner of death is homicidal.

[40] The witness further stated that on 16.05.2016 after receipt of visceral toxicological analysis report No. SFSL 132/16/TOX/52/15/16/2798 dated 28.04.2016 issued by Tripura State Forensic Lab. Govt. of Tripura and result of chemical analysis, ethyl alcohol has been detected in the vesra of the deceased. Final opinion there was associated presence of ethyl alcohol in the viscera. On 16.02.2016 they received two numbers of reports from Sri S. Basu Ray choudhury O/C of East Agartala PS regarding opinion of the seized weapon. After examination of the weapon they opined based on post mortem findings of the deceased and physical examination of the said weapon they were of the opinion that the two numbers of external injuries found on the neck of the deceased as mentioned in the post mortem report of late Debabrata Chakraborty PM No. 157/2016 were possible by the said weapon or similar type of weapon.

[41] PW 15 further stated that on the same day they conducted another post mortem over dead body of Gouri Chakraborty in connection with same case number and on examination they found following injuries:

A broad faint ligature mark having a maximum width of 5 cm placed transversely is present on the front of both sides of middle part of neck. The upper margin of this mark is situated 4 cm below the tip of right mastoid process, 5 cm below the chin, 4 cm below the tip of left mastoid process and its lower margin is situated 5 cm above the supra sternal notch in midline. This mark is prominent on the right side of neck over an area of .8 cm x .02 cm is present horizontally 50 cm below the angle of mandible and 4.5 cm away from midline. On reflection of the neck skin haemorrhage is present in the muscles of the neck on the submental and submandibular region on either side. Underlying jaw bone is fractured in midline at the center of chin. Bruising is present in the right side carotid sheath and lower part of sternocleidomastoid muscle near its clavicular attachment. Other neck structures are healthy mucosa of the larynx is congested. One reddish colored abrasion .5 cm x .5 cm is present on the left side of the face just in front of the tragus of left ear. One reddish colored abrasion 1.8 cm x .09 cm is present on the left side of back of trunk which is situated 18 cm below the tip of shoulder and 14 cm away from the midline. One radish colored abrasion .5 cm x .5 cm is present on the dorsum of the right big toe which is situated just at the base of nail bed. The injury mentioned above is ante mortem in nature and fresh in duration.

[42] After holding the post mortem examination they opined the cause of death in this case was combined effect of asphyxia caused by ligature strangulation and head injury caused by the impact of blunt force and are homicidal in manner. These injuries are sufficient enough to cause death in ordinary course of nature individually and as well as collectively and all the injuries mentioned in the report are antemortem in nature and fresh in duration. However, viscera have been preserved to rule out any concomitant intoxication. Opinion regarding commission of rape before

death was kept pending till the vaginal swab analysis report is made available from SFSL Narsingarh, Agartala.

[43] PW 16 Sri Rana Chatterjee SI of Police deposed that on 09.02.2016 he was posted at MG Bazar Outpost under East Agartala PS. On that day he accompanied by SI S. Basu Roy Choudhury went to East Dukli to the house of Dulal Chakraborty. In the house of Dulal Chakraborty the dead body of wife of Dulal Chakraborty was found and he saw the dead body and as per direction of O/C East Agartala PS he has recorded the statement of Sabita Ghosh who made the oral ejahar before him. He identified his signature and hand writing marked Exhibit 1/1 and further stated that the oral ejahar was later on treated as FIR and O/C himself took up investigation of this case. He prepared the seizure list of the material recovered from the house in the dwelling hut of Chitta Ranjan Paul at Madhya Dukli relating to two sports shoe, one jeans and one motor bike bearing No. TR01W4601. He identified the signature on the seizure list marked as Exhibit 16 and also identified another seizure list for the material seized from the dwelling hut of Sabita Das, W/O- Sri Gopal Das relating to Full shirt containing bloodstained and one trouser belonging to Rupam Das. The witness further identified his signature on the seizure list marked Exhibit 17.

[44] PW 17 Kanti Das is a seizure list witness. He stated that in his presence one bottle of 2 liters water, two disposable glasses and one empty packet of snacks were seized before him and he identified his signature on the seizure list dated 11.02.2016 marked as Exhibit 18/1. He further stated that he was also the seizure witness of the materials seized from the house of Chitta Ranjan Paul. The witness identified his signature on the seizure list marked Exhibit 16/1. He further stated that he was also the seizure list witness of the articles seized from the house of Sabita Das and identified his signature on the seizure list marked as Exhibit 17/1. He also stated that he was present at the time of disclosure statement of accused Rupam Das and he made his signature on the disclosure statement prepared by IO and

identified his signature on the margin of disclosure statement made by accused Rupam Das marked as Exhibit 19/1.

[45] PW 27 Dr. Sabyasachi Nath deposed that on 29.02.2016 he was posted as Sr. Scientific Officer in the office of SFSL. On that day one sealed parcel containing some exhibits were received from toxicology division of their laboratory in connection with East Agartala PS case No. 09/2016 and accordingly, he examined the exhibits w.e.f. 05.04.2016 to 07.05.2016. after sub sampling of the exhibits in Biology/ Serology division some exhibits marked as Exbt. E2, F, G1, G2, G3, G4, L2, O, P Q, R and S were forwarded to DNA typing division of our laboratory for further examination and report. The exhibits examined in Biology/ Serology division include exhibits E1, E2, F, G1, G2, G3, G4, L1, L2, M1, M2, M3, N, O, P, Q, R, S, T and U. on examination of the exhibits the results obtain is that 1. blood stain of human origin could be detected in the exhibits F, G1, G2, G3, G4, O,P, Q, R, S and T.

[46] Now in coming to the conclusion of the case we are to see how far the prosecution has been able to prove the guilt of the accused by showing circumstantial evidence and last seen together and also other connected evidences on record. There is no dispute on record in this case that on the alleged unfortunate day two murders were committed for which deceased Gouri Chakraborty and Debabrata Chakraborty had lost their lives. Admittedly in this case from the evidence on record no exact time could be ascertained when the murders were actually committed but it is the admitted position from the evidence on record that the alleged incident took place on 08.02.2016 in the night. In this regard there is no counter evidence on record from the side of the alleged accused meaning thereby there is no dispute on record in respect of death of the deceased persons on that relevant date and time.

[47] From the evidence on record of the witnesses of the prosecution it is clearly established that accused Rupam Das had friendship with deceased Debabrata Chakraborty including another absconding accused

Gopal Sutradhar and for that they frequently used to visit the house of the deceased time to time. It is also the admitted position that at the time of alleged occurrence excepting deceased Gouri Chakraborty no other persons were present in the house and from the evidence of PW 28 it appears that on that relevant day at about 7.30 pm he came out from his house and went to East Dukli and then went to Golbazar and after that he went to Laxmi Narayan Temple and stayed therein in the night and from his evidence further it appears that he closed the temple at about 9.30 pm and after that he tried to talk to his wife (deceased Gouri Chakraborty) over phone but found her phone "switched off". That means the alleged incident took place either prior to 9.30 pm on 08.02.2016 or thereafter.

[48] Now to link the accused person with the alleged crime this Court has to see how far the evidence of PW 20 is relevant for determination of this case to substantiate "last seen together". Because here in the case at hand only this PW 20 has seen the accused persons to proceed towards the pond of one Pradip Sarkar with deceased Debu from where the dead body of deceased Debabrata Chakraborty was recovered and excepting the said witness there is no other witness of the prosecution who have seen the accused with the deceased on the alleged day of occurrence just prior to the alleged occurrence. This witness PW 20 Sagar Debnath in his evidence very specifically stated that when he was coming back to his house from a mela (fair) on the day of alleged occurrence at about 9.30 pm he saw the present accused and other two accused persons were proceeding towards the pond of Pradip Sarkar with Debabrata Chakraborty (deceased). Although accused Prasenjit was later on discharged after investigation by police and from the pond of said Pradip Sarkar the dead body of deceased Debabrata Chakraborty was recovered by PW 4 Kajal Kr. Banik. The accused by the trend of cross-examination could not raise any doubt to disbelieve the aforesaid fact and there was no suggestion from the side of accused that there was no scope on the part of the witness to identify the accused at the time of proceeding towards the pond of Pradip Sarkar with the deceased on that relevant point of time. Although he stated that there was no street light

in the locality and furthermore, there was also no contrary evidence from the side of the accused that due to darkness it was not possible for the said witness to identify the accused to proceed towards the pond of Pradip Sarkar along with other accused and also with the deceased on the relevant point of time. So from the evidence on record this Court is of the considered view that the prosecution has been able to establish beyond any doubt that prior to the alleged occurrence the accused was found available with the deceased Debabrata Chakraborty at the time of proceeding towards the pond of Pradip Sarkar.

[49] Now in respect of disclosure statement of the accused learned defence counsel although tried to satisfy the Court that the same was not proved as per the provision of the Evidence Act. In this regard we are to say that from the evidence of PW 11 Sri Rinku Ghosh, PW 12 Sri Gobinda Chandra Mandal, PW 13 Sri Debasish Das, DCM, PW 17 Sri Kranti Das and PW 18 Sri Goutam Das, it appears to us that in their presence the accused admitted that he committed the murder and at his instance the seized weapon of offence, i.e., Exhibit MO-2, Exhibit MO-1 and Exhibit MO-3 were recovered and seized by police in presence of witnesses. The accused by the trend of cross-examination could not raise any circumstance to disbelieve the evidence on record of the said witnesses and furthermore, if we go through the evidence of PW 14 Billa Mangal Sutradhar, he in his examination in chief specifically stated that at about 7/8 days back prior to the day of alleged occurrence accused Rupam Das took one knife from him which was seized by the police from the house of accused Rupam Das and he identified Exhibit MO-2. Although he stated that when he handed over the knife to accused that time it was of full length but after identifying Exhibit MO-2 before the Court he stated that it was broken from the side of the head. It may so happen that after the commission of offence the said knife had been broken by the accused with an ill intention. Other seizure lists witnesses very specifically supported the story of the prosecution regarding seizure of alams as stated above which have been marked as exhibits in this case and from the evidence of the Medical Officers who

conducted autopsy and the scientific experts it is clearly established that the deceased Debabrata Chakraborty was murdered through Exhibit MO-2 which was used by the accused at the time of alleged occurrence and after the commission of offence the accused thrown the weapon of offence in the Kaccha latrine in his house and scientific examination conducted by the experts in respect of the exhibits as we have already stated found matching with the blood stain in the trouser of AP Rupam Das with the wearing apparel of the deceased and blood stained found near the pond of Pradip Sarkar and banana leaf and from the PM examination report in respect of the deceased Debabrata Chakraborty it is clearly established that the injuries found in his neck was caused by sharp cutting weapon and from the report of Gouri Chakraborty it appears that the cause of death was combined effect of asphyxia caused by ligature strangulation and head injury and from Exhibit MO-1 it is also clearly established that the accused along with another committed the crime to commit robbery of valuable articles like cash, jewelery etc. from the house of Dulal Chakraborty (PW 28) who is a priest by profession of Laxmi Narayan Temple.

[50] From the evidence on record as stated above it appears to us that the evidence of PW Nos. 11, 12, 13, 17 and 18 cannot be disbelieved or discarded because in their presence the accused admitted that he committed the crime and in their presence he traced out the stolen bhar (bank) and seized weapon of offence (Exhibit MO-2) and Reta (Exhibit MO-3) and the seizure lists witnesses of the prosecution very specifically supported the seizure of alams leading to discovery which draws the attention of the court the relevant provision of Section-27 of the Evidence Act.

[51] Thus, from the discussions made above it appears to us that the prosecution in this case has been able to establish beyond reasonable doubt the involvement of the accused with the alleged crime. As such the accused Rupam Das @ Rupan in our considered view has committed the offence in this case and he is found guilty. Accordingly, it is crystal clear that there is no reason as to why the continuity of the chain of circumstances and the

complaint made against the accused-appellant to be disbelieved. All the witnesses supported the entire case of the prosecution with regard to commission of offence by the accused-person. The citations as has been placed by the learned senior counsel on behalf of the appellant, has no relevance to the facts and circumstances of the present case.

[52] For the reasons stated above, we do not find any infirmity in the findings arrived at by the learned Addl. Sessions Judge while convicting and sentencing the accused-appellant. Accordingly, the judgment and order of conviction and sentence as declared by learned Addl. Sessions Judge is affirmed and upheld and thus, the present appeal preferred by the convict-appellant shall stand dismissed.

[53] As a sequel, miscellaneous application(s), pending if any, shall also stand closed.

S. DATTA PURKAYASTHA, J

DR.T. AMARNATH GOUD, J

A.Ghash

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