

IN THE HIGH COURT AT CALCUTTA

Criminal Application

Appellate Side

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

CRA 50 of 2020

Samir Das @ Kabla

Versus

The State of West Bengal

For the appellant : Mr. Jayanta Narayan Chatterjee, Adv.

: Ms. Jayashree Patra, Adv.

: Ms. Sreeparna Ghosh, Adv.

: Mr. Sayanti Santra, Adv.(apt. by
High Court Legal Services Authority)

For the State : Mr. Prasun Kumar Datta, ld. APP

: Mr. Santanu Deb Roy, Adv.

: Mr. Md. Kutubuddin, Adv.

Heard on : 21st November, 2022

Judgment on : 12th December, 2022

Md. Shabbar Rashidi, J.:

1. The appeal is directed against the judgment of conviction dated 18.04.2007 and order of sentence dated 19.04.2007 passed by the learned additional Sessions Judge first fast track court, Arambagh, in Sessions Trial No. 28 (10) of 2006 corresponding to sessions case No. 06 of 2006, convicting the appellant under section 302/324 of the Indian Penal Code.
2. The facts giving rise to the instant appeal is that on 30.09.2001, Mohanalal Das, lodged a complaint with Pursurah police station to the effect that on 30.09.2001, at about 6/6:30 PM in the evening, the de-facto complainant received a news that his wife Dipali Das aged about 14 years and his youngest son, Parimal Das were lying on the road in injured condition on the back side of the house of Prafulla Manna. Upon receipt of such news the de facto complainant, rushed to the place of occurrence with his

second brother Hiralal Das and found his wife lying on the road in bleeding condition with injuries on her face and neck. He further stated that his son had injuries on his head and body by a sharp cutting weapon. The de facto complainant also came to know from his son got on 30.09.01 at about 6.25 PM, when he and wife of the de facto complainant were returning home from the house of Kalyan Das, after watching TV, Kebla @ Samir Das restrained their way at the back side of the house of Prafulla Mana and knocked down on the road. He also assaulted with a sharp cutting weapon on her face and throat. As the son of de facto complainant, tried to protect his mother, Kebla alias Samir Das also assaulted his son with the sharp cutting weapon. For the aforesaid assault the wife of de facto complainant and his son sustained bleeding injuries and his wife became unconscious. Thereafter, the wife and son of the de facto complainant were brought to their house and after that his son was taken to Arambagh Sadar hospital for treatment whereas, his wife was sent to Srirampur hospital but his wife expired

on her way to Srirampur hospital. The son of the de facto complainant was admitted in Arambagh Hospital and the dead body of his wife was lying in Srirampur hospital.

3. On the basis of such a written complaint Pursurah police station case No. 69 dated 30.09.01 under section 341/326/302 of the Indian penal code against accused, Kebla alias Samir Das was started.
4. The police took up the investigation and on completion of investigation, submitted charge sheet under sections 341/324/302 of the Indian penal code. The offence, being exclusively triable by the Court of sessions, the case was committed to the Court of sessions upon compliance of the provisions under section 207 of the code of criminal procedure.
5. Accordingly, upon the appearance of the accused and on the basis of materials in the CD, charges under section 341/324/302 of Indian Penal Code were framed against the accused which were duly read over and explained to him to which the accused pleaded not guilty and claimed to be tried.

6. In order to bring home the charges leveled against the accused, prosecution examined 29 witnesses in all. In addition, the prosecution also adduced documentary evidences.
7. PW 1 is the senior scientific officer, biological division of F.S.L. at Calcutta. He has stated that on 15.2.02, some articles were received by his office in connection with Pursurah Police Station Case No. 69 of 2001 duly forwarded by Learned S.D.J.M, Arambagh, Hooghly, for examination. PW1 conducted the said examination and prepared a report to that effect. He has proved the report (Ext.1). He further stated that portions of the articles were sent to the serologist to the government of India for determining the origin and group of blood on such article and that his office received the report from the serologist. He has also proved the report of the serologist (Ext.2).
8. The de-facto complainant himself deposed as PW2. He stated that accused Kabla alias Samir Das is his nephew. He further stated that on 30.8.2001 at about 6.00 pm his wife Dipali Das and son Parimal Das had gone to the house

of Kalyan Das to watch TV. A boy came to his house and reported that his wife was murdered and her body was lying near the house of Prafulla Manna. PW2 went there and his wife was brought to the house and thereafter, she was sent to Srirampur Hospital and was declared dead. Her dead body was sent to Arambagh S. D. Hospital for post-mortem. Parimal was admitted at Arambagh S. D. Hospital for his treatment. He lodged a written complaint with the police. PW 2 proved his signature on the First Information Report (Exhibit 3/1), though, he could not recollect the name of the scribe. Police conducted inquest on the dead body of his wife and PW2 proved his signature on the inquest report (Exhibit 4/1). In his short cross examination, nothing favorable could be extracted by the defense.

9. Brother of de facto complainant was examined as PW3. In his deposition, PW3 stated that about 3 ½ years ago, in the evening, when he was in his shop, he came to know that his sister-in-law was sick. Upon his return after closing his shop at around 8.00/8.30 pm, he saw his

sister-in-law lying in the verandah of his house. He informed the matter to local police station. He however, could not say who assaulted her. He was not examined by the police in connection with the case. He proved his signature on the seizure list dated 30.09.01 (Exhibit 5/1) and that on the inquest report (Exhibit 4/2). PW3 also stated that he scribed the written complaint as per the instructions of one of the brothers of his deceased sister-in-law and proved his signature thereon (Exhibit 3). The witness was declared hostile by the prosecution. In course of his cross examination by the prosecution, PW3 denied having made any statement before the police regarding the incident. However, contrary to his statement in the examination-in-chief, in cross examination for the defense, PW2 could not recollect at whose instructions, he wrote down the written complaint. He stated that he got the news of incident at 7.00 pm, came back to his house at 8.00 pm and reported the incident to local police at 8.40 pm.

10. The person near whose house the occurrence took place, has deposed as PW4. He identified the accused in the

dock. He has stated that on 30. 09.01 at about 6.15/6.30 p.m. Dipali was returning home from the house of Kalyan Das after watching TV. He also stated that his house was situated between the houses of Kalyan Das and Dipali. At 6.15/6.30 p.m. while he was teaching his son, PW 4 heard of groaning sound. Coming out, he saw Dipali injured in bleeding condition. He informed the matter to the house of Dipali. PW 4 also stated that he saw blood oozing out from the nose of Dipali as well as from her person. The inmates of the house of Dipali gathered there. At about 9 PM police came to the spot and called PW 4 and he narrated the incident. Police seized some blood soaked earth and two pairs of chappals under a seizure list. He proved his signature on the seizure list (Exhibit – 5/2). He also proved his signature on the inquest report dated 01.10.01 (Exhibit-4/3). PW 4 has also stated in his deposition that he heard that accused Kabla tried to develop illicit relations with Dipali Das. Dipali reported the matter to her husband who in turn reported the same to his brothers for which his brother's admonished him. For this reason Kabla got angry

and attacked Dipali, out of grudge. In his cross examination, PW 4 stated that he did not see the occurrence of his own eyes.

11. PW 5 is a neighbor at whose house the deceased and her son are stated to have visited, just prior to the incident, for the purpose of watching TV. He has stated that he had a jewellery shop at Sodhpur. On 30.09.01 in the evening he was at his jewellery shop. He was informed over telephone from his house that mother of Parimal was murdered and Parimal had entered in to his house. He directed his family members to confine Parimal and not let him leave the house. It was around 6/6.30 p.m. PW 5 returned to his house at about 8.30 p.m. He however, did not hear anything else regarding the occurrence and he did not make any statement before the police.

12. This witness was declared hostile by the prosecution and he has denied having made any statement before police. In his cross-examination by the defense, PW 5 stated that he did not see the occurrence of his own eyes. He also could not say who narrated the incident to him.

13. Wife of PW 5 deposed as PW6. She identified the appellant as nephew of her brother-in-law. She also stated that on 30.09.01 at about 3.00/3.30 pm, Parimal and his mother Dipali came to the house of PW6 to watch TV. At about 6.15 pm they left there for their own house. Parimal suddenly returned back to her house in injured condition and told her that his mother was killed by Kebla. He also reported that Kabla injured him. PW6 made Parimal to sit in her house and closed the door of her house. She also informed the matter to her husband over telephone and nursed Parimal. Thereafter, uncle of the Parimal came there and took him away. This witness was also declared hostile by the prosecution and in her cross-examination on behalf of the prosecution; she denied having made any statement before the police.

14. PW 7 was a Sub Inspector of police. He happens to be a seizure list witness in whose presence, some blood stained wearing apparels were seized. PW 7 proved his signature on the seizure list dated 02.10.2001 **(Exhibit**

6/1). The seized articles were not produced in the court on the date of his examination.

15. The victim Parimal Das deposed as PW 8. He identified the appellant. He stated that on 30.09.01 at about 3.00/3.30 PM, he along with his mother Dipali had gone to the house of Kalyan Das to watch TV programme. At about 6.15/6.30 p.m. PW 8 left the house of said Kalyan Das with his mother for his own house. It was drizzling then. He also stated that when they reached at the back of the house of Prafulla Mana, the appellant Kabla suddenly came out from the cowshed of Prafulla mana with a knife and a Katari and hit his mother on the top portion of the nose with a Katari. As PW 8 tried to save his mother he was also assaulted for which he sustained injury on the middle finger of his left hand. Kabla also assaulted PW 8 with the Katari on his head. PW 8 fell down and became unconscious. Kabla assaulted his mother with Katari and knife on her abdomen. Thereafter, PW 8 rushed into the house of Kalyan Das and narrated the incident to Smt. Pratima Das and sought for help she closed the door and

applied medicine on his injured fingers. Thereafter, uncle of PW 8 came there and took him to his house. The village doctor Tuntuni Mete came to see him and was advised to be taken to hospital. Mother of this witness was admitted at Srirampur Hospital and he was taken to Arambagh Hospital. He remained there for a day and came back for cremation of his mother.

16. PW 8 also stated that the appellant Kabla used to look into his house from the cowshed separated by a brick wall. They appellant was in the habit of peeping into his room from the cowshed whenever his mother used to change her clothes. He also stated that one day while so peeping through, Kabla lighted his gas lighter. PW 8 asked as to who was there, Kebla fled away. The matter was reported to the elders for which, Kabla was rebuked and punished. It was stated that Kabla murdered his mother out of grudge. He also tried to kill PW 8. He proved his signature on the statement recorded before the learned Magistrate (Exhibit. 7/1 series).

17. One of the covillagers has deposed as PW9. He is a hearsay witness. He heard that accused Kabla killed Dipali, the wife of his covillager Mohan Lal Das, by a katari and also injured her son. PW9 however, did not go the place of occurrence. He also heard that the woman was taken to hospital but she died on her way. PW9 also stated that accused Kabla was arrested by police and as shown by him, a Katari and a knife was recovered from the roof of the urinal of Nimdangi Primary School. The accused also made a statement before police, in presence of PW9, that he had hit his aunt and the boy with the Katari and knife. The Katari and knife was seized by police in his presence under a seizure list to which he signed along with the accused. PW9 proved his signature on the seizure list (Ext.8/1). He also proved the seized Katari and knife (MAT Ext. II & III respectively). The witness was declared hostile by the prosecution and in his cross examination on behalf of the prosecution; PW9 denied having made any statement before the police.

18. Another co villager deposed as PW10. He identified the appellant. He further stated that at the end of the month of September, 2001, he heard that Kabla has killed his aunt and assaulted his cousin brother while they were returning home after watching TV program. On the following morning PW10 came to know that aunt of Kabla died. He also came to know that cousin brother of Kabla was admitted in the Hospital. He further stated that one Katari and a knife was seized by police in his presence from the roof of the urinal of Nimdangi Primary School, as shown by Kabla. Kabla himself brought out the said articles climbing on to the roof and made a statement before the police that he killed his aunt and injured his cousin brother Parimal with the said Katari and knife. He identified the seized articles and proved his signature on the seizure list (Exhibit 8/2). This witness was also declared hostile by the prosecution and in his cross examination, he denied having made any statement before the police.

19. PW 11 is the brother of the victim Dipali Das. He stated that on 30.09.2001 at about 7.45 pm he was

informed over telephone that his sister Dipali Das was seriously ill. He rushed to the in-law's house of Dipali with some other persons. Reaching there, he came to know that Dipali was taken to Srirampur Hospital. Going to the Hospital, PW 11 found his sister in dying condition, full of blood. He later heard that his sister and nephew Parimal were attacked by Kabla, who was hiding in a cow shed while they were returning home from the house of Kalyan. Parimal rushed to the neighboring house and reported the incident. He was treated by local doctor and at Arambagh S. D. Hospital whereas, Dipali died on the date of incident itself. He has also stated that his sister had reported her that Kabla used to give illicit proposal to her which she reported to her husband and other elderly members and for which Kabla was admonished. Kabla committed the occurrence out of grudge. PW 11 proved his signature on the inquest report (Exhibit 4/4). In his cross-examination, PW 11 stated that he heard about the incident from his brother-in-law Mohanlal Das.

20. PW 12 is also a hearsay witness. He heard about the occurrence. He has given the details of the incident as heard. However, he stated that Kabla brought out a Katari and knife climbing into the roof of the urinal in Nimdangi Primary School, in his presence. The said articles were seized by the police under a seizure list on 02.10.01, to which PW 12 signed (Exhibit 8/3). He also identified the seized Katari and knife (Mat. Ext. II & III). In his cross examination also, PW12 asserted the identification of the seized articles. He further stated that he signed on the seizure list after going through it.

21. One uncle of the appellant deposed as PW13. He stated that the incident took place on 30th of September 5 years ago (from 27.11.2006). At about 6/6.30 pm he was in his house which he is about 100 feet from that of Prafulla Manna. PW13 he was called by Prafulla Manna and informed that mother of Parimal was murdered and being asked he also reported that he saw Kabla running away towards east. He further stated that PW 13 and others brought the victim Dipali Das into his house and

kept her in the courtyard. Parimal was taken to local doctor who advised to take him to hospital. Thereafter, police came there being informed about the incident. Dipali was taken to Srirampur Hospital where she died. Her dead body was brought to Arambagh S. D. Hospital for post mortem examination. In his cross examination, PW 13 stood by his statements made in examination-in-chief.

22. Another uncle of the appellant was examined as PW 14. This witness although supported the case of the prosecution but he happens to be a hearsay witness as he has stated that he was at his shoproom at Sodhpur. He however, saw local people assemble near his house and Dipali in an injured condition.

23. PW15 is a police personnel and witness to seizure list through which half pant and 'Ganjee' was seized. He proved his signature on the seizure list (Exhibit 9/1) and also proved the Seized half pant and 'Ganjee' (Mat Ext.IV). in cross examination, he stated that he was reported by Mohan Lal that the seized articles belonged to Parimal Das.

24. One hospital staff of Arambagh S.D. hospital has deposed as PW16. He has proved his signature on the seizure list through which Bed Head Ticket of Parimal Das was seized by police (Exhibit 10/1).
25. One friend of Srikanta Das, brother of victim Dipali Das has deposed as PW 17. He identified the accused and stated that he had been to the house of Dipali. He is however, a hearsay witness.
26. PW 18 is a neighbor of the victim. He also deposed as hearsay and declared hostile by the prosecution. In his cross examination by the prosecution, he denied having made any statement before the police.
27. Staff of Srirampur BPHC has deposed as PW 19. He stated that on 30.09.01 at about 10.15 pm one Dipali Das was brought to Srirampur BPHC and was declared brought dead. He has proved the entries in the Death Register of the BPHC (Exhibit 11).
28. The local doctor of Nimdangi village has been examined by the prosecution as PW 20. He has stated that on 30.09.01 at about 06.45 pm Parimal Das was brought to

him for treatment with bleeding injuries and PW 20 advised him to take Parimal to Hospital. He has also stated that he was reported that Parimal and his mother were assaulted by Kabla.

29. The brother of the victim deposed as PW 21. He has stated that on 30.09.01 at about 8.00 pm he got information that his sister was seriously ill. He visited her house in the following morning when he was informed that his sister was taken to Srirampur Hospital and her son to Arambagh S D Hospital. Reaching Srirampur hospital he saw the dead body of his sister. He also narrated the incident as he heard. He has proved his signature on the inquest report (Exhibit 4/5). In his cross examination, PW 21 admitted that his knowledge about the incident was based on hearsay information.

30. The doctor who examined injured Parimal deposed as PW 22. He has stated that on 30.9.2001 he examined one Parimal Das son of Mohanlal brought by Ashok Das and was admitted as indoor patient under him. He further stated that on examination, he found cut injury over

anterior part of scalp 3 inches in length and stitched. He also found cut injury over the left middle and ring fingers. PW22 proved the injury report prepared in his pen and signature (Exhibit 12). In cross examination, PW 22 has opined that the injuries on the middle and ring finger could be inflicted if one tries to save himself from any violent activity.

31. The autopsy surgeon has been examined as PW 23. He has stated that on 01.10.2001 he conducted post mortem examination on the dead body of Dipali Das. On examination he found multiple injuries,

- i. one sharp cutting wound from one cheek to the other about 6 inches X 4 inches x 4 inches with one inch deep cutting the nose and the upper jaws revealing the upper rows of teeth.
- ii. One cut injury lacerated oral cavity from one angle of the mouth to the extension of other angle.
- iii. One punctured wound 1 inch x 1 inch deep over the left side of neck below the angle of mouth.

iv. One punctured wound of 2 inches x 2 inches deep on the left aspect of left side labia Major.

32. PW 23 also stated that in his opinion, the cause of death was due to the profound shock following severe hemorrhage from the multiple wounds. He also proved the post mortem report prepared by him (Exhibit 13).

33. PW 24 is the recording officer. He received the written complaint on 30.9.2001 by endorsing his receipt thereon and proved the endorsement (Exhibit 3/2). He then started Pursurah Police Station Case No. 69 dated 30.9.2001 under section 341/326/302 of the Indian Penal Code by filling up of the formal FIR (Exhibit 14). He had no personal knowledge of the incident.

34. One constable of police of Pursurah Police Station has deposed as PW 25. He has stated that the wearing apparels i.e. 'saree', 'saya' and 'blouse' of victim Dipali were seized in his presence. He proved his signature on the seizure list dated 01.10.2001 (Exhibit 15/1). He also tendered the seized bloodstained wearing apparel of deceased Dipali Das

(Mat. Ext. V series). He also denied any personal knowledge of the incident.

35. The learned Judicial Magistrate who recorded the statement of Parimal Das under section 164 of the Code of Criminal Procedure, deposed as PW 26. She has proved the statement so recorded by her (Exhibit 7).

36. One Assistant Sub-Inspector of police has deposed as PW 27. He has stated that bloodstained wearing apparels of accused i.e. full shirt, lungi and napkin was seized by police handed over by the accused Samir Das @ Kabla in his presence under a seizure list prepared in this regard. He has proved his signature on the seizure list dated 02.10.2001 (Exhibit 6/2). The witness also proved and identified the bloodstained shirt, bloodstained Lungi and Napkin in the court (Mat. Ext. VI, VII and VIII respectively).

37. PW 28 is another witness to the seizure list dated 01.10.2001, through which wearing apparels of the deceased were seized. He has proved his signature on the seizure list (Exhibit 15/2). He also identified the seized articles (Mat. Ext. V series).

38. The Investigation Officer was examined as PW 29. He has stated that on 30.9.2001 he was entrusted with the investigation of Pursurah Police Station Case No. 69 dated 30.9.2001. He has also stated that on 30.9.2001, telephonic information was received at Pursurah Police Station from one Bablu Das to the effect that his sister-in-law was assaulted by someone. A GDE being Pursurah PS GD Entry No.1115 dated 30.9.2001 was lodged. PW29 was entrusted to pursue the information. He proceeded to the place of occurrence and on enquiry, it was revealed that at 18.25 hrs. while Dipali Das wife of Mohan Das accompanied by her son were returning to their house after watching TV at the house of Kalyan Das, one Kabla @ Samir Das assaulted her and her son by a sharp cutting weapon causing grievous injuries. The injured Parimal was already moved to Arambagh SD Hospital. Dipali Das in her dying stage was taken to Srirampur BPHC..

39. Being endorsed with the investigation of the case, PW 29, after perusing the First Information Report, visited the place of occurrence and prepared rough sketch map with

index (Exhibit 16). He also seized bloodstained earth and chappals from the place of occurrence under a seizure list (Exhibit 5). He also visited Srirampur BPHC and conducted inquest on the dead body of Dipali (Exhibit 4). PW 29 also proved the seizure list through which he seized the bloodstained wearing apparels of the victim on 01.10.2001 (Exhibit 15) and identified the seized articles (Mat. Ext. V series). He also proved the seizure list dated 02.10.2001 through which he seized the bloodstained wearing apparels of accused Kabla (Exhibit 6). PW 29 also proved the seizure list dated 02.10.2001 through which the offending weapons were seized as per the statement of the accused Kabla leading to recovery (Exhibit 8). He also identified the seized offending weapons (Mat. Ext. II & III). PW 29 has also proved the seizure list dated 03.10.2001 through which wearing apparels of injured Parimal were seized (Exhibit 9). He also collected the BHT of injured Parimal Das under a seizure list dated 03.10.2001 (Exhibit 10). In course of investigation, PW 29 examined available witnesses and recorded their statements under section 161 of the Code of

Criminal Procedure, collected the post mortem report, sent the bloodstained wearing apparels of the victim as well as the accused for chemical examination. This witness also tendered the blood soaked earth and chappals seized from the place of occurrence (Mat. Ext. IX series) and identified Mat. Exts. IV, VI, VII and VIII in court. On completion of investigation, he submitted charge sheet against accused Samir Das @ Kabla under section 341/324/302 of the Indian Penal Code.

40. Upon appreciation of evidence so adduced on behalf of the prosecution and on examination of the accused under section 313 of the Criminal Procedure Code, by the impugned judgment and order, convicted the accused for the offences punishable under section 302/324 of the Indian Penal code. He was sentenced to undergo imprisonment for life and a fine of Rs. 5000/- and in default of payment of fine to undergo imprisonment for two years for the offence punishable under section 302 of the Indian Penal Code, 1860. The accused was further

sentenced to imprisonment for one year for the offence punishable under section 324 of the said Code.

41. It is this judgment of conviction and order of sentence, which has been challenged in the present appeal.

42. The appellant seeks to assail the impugned judgment of conviction and order of sentence on the grounds that most of the witnesses relied by the learned trial court in convicting the accused are relatives of the complainant. It has also been elicited that inspite of most of the witnesses going hostile to the prosecution case, conviction has been secured. The appellant also challenged the testimony of the eye witness PW8 pointing to his statement that he lost senses for 1/2 minutes being assaulted and after regaining senses he saw his mother lying with bleeding injuries. According to the appellant such statement is not credible and cannot be relied.

43. The other point which has been resorted to by the appellant is that no motive behind the incident has been proved by the prosecution and on this score, it has been contended that the prosecution story is not believable. It

has also been submitted on behalf of the appellant that the recovery of offending weapons is highly doubtful since the statement leading to such recovery has not been brought on record nor the seized articles were sealed and labeled. It is contended that in absence of serological report regarding the blood stains found on the seized articles renders the complicity of the appellant in the commission of crime doubtful. The testimony of PW 22 has been doubted by the appellant on the ground that he was not reported the name of the assailant.

44. On the other hand it is contended on behalf of the State that the prosecution has been able to prove the charges with the help of convincing evidence and therefore, the conviction and sentenced passed against the appellant deserves to be affirmed.

45. The case as made out by the prosecution, unfolds that deceased Dipali and her son Parimal (PW 8) were returning from the house of their neighbor Kalyan Das, after watching TV after 6.00 pm on 30.9.2001. On the way, near the house of one, Prafulla Manna, she was attacked by the appellant

Samir Das @ Kabla with a katari and a knife. Both the victim and her son were injured with sharp cutting weapon. The son was taken to Arambagh SD Hospital whereas, seeing the condition, the victim was immediately moved to the nearest Srirampur BPHC for treatment but she expired on her way to hospital.

46. The matter was reported to the police on the date of occurrence itself. An inquest on the dead body was conducted at Serampore Hospital on 01.10.2001 and later on post mortem over the dead body was conducted at Arambagh SD Hospital on 01.10.2001. In course of the inquest, according to the narration given by the witnesses, the deceased Dipali Das and her son sustained injuries inflicted by the appellant Kabla @ Samir Das by sharp cutting weapon while they were returning from the house of Kalyan Das. The injuries noted by the inquest officer, is completely in conformity with that discovered at the post mortem examination. According to the testimony of the autopsy surgeon (PW 23), the victim Dipali Das sustained multiple injuries on her person and that the death, in his

opinion, was profound shock following severe hemorrhage from the multiple wounds. PW 19 has also testified that on 30.9.2001 the victim was brought to Srirampur Hospital and was found to be brought dead (Ext.11). Therefore, the aforesaid evidence leaves no doubt that the victim Dipali Das died on 30.9.2001. It is also explicit that the said victim died of profuse hemorrhage from multiple injuries.

47. Therefore, question arises as to who inflicted the injuries which resulted in her death.

48. PW 8 is an eye witness to the incident. In fact, he is not only an eye witness but a victim as well. According to his narration, when he and his mother were returning from the house of one Kalyan Das after watching TV, they were attacked near the house of one, Prafulla Manna with sharp cutting weapon inflicting injuries on his person as well as that of his mother which ultimately resulted in her death. Such story has duly been supported by the witnesses equivocally. PW 2, the de-facto complainant is although, not an eye witness to the occurrence but he reached the place of occurrence just after the incident being informed

by a boy. He has testified the rest of the story. He has fully supported the case of the prosecution that his wife and son were to the house of Kalyan Das to watch TV and they were attacked by the appellant while returning near the house of Prafulla. He went to the Scene of occurrence and brought his wife in an injured condition. His wife was moved to Srirampur hospital where she was declared to be brought dead. PW 3 has not supported the case of the prosecution. However, he has testified that returning to his house at 8/8.30 pm he found Dipali lying in the courtyard. He also accompanied the victim to Srirampur Hospital and put his signatures on the inquest report and seizure list. PW4, near whose house the incident took place. He has not testified seeing the assailant but he has supported the story of Dipali going to the house of Kalyan Das for watching TV. He heard a sound when the victim was returning home at about 6.15/6.30 pm and coming out of the house he saw Dipali with bleeding injuries. He has also testified that inmates of the house of Dipali came there and took her. The person at whose house the victim went to watch TV (PW5)

has not claimed to have seen the incident as he was in his shop at the relevant time. But he has confirmed having been informed over telephone from his house that Dipali was murdered and her son Parimal took shelter at his house. The wife of PW 5 has also did not see the incident but she has supported the case of the prosecution in a better way than her husband. She not only confirmed that she informed the incident to her husband over telephone but she also came in support of the prosecution story that the victim Dipali and her son came to watch TV at her house on 30.9.2001 between 3.00/3.30 pm and 6.15 pm. She also testified that Parimal (PW 8) suddenly came back to her house in injured condition and that after a while Parimal was taken away by his uncle.

49. From the testimony of the aforesaid witnesses supported by other witnesses who signed on seizure list and inquest report and received the information of the incident etc. the only proposition comes to our mind with overwhelming clarity is that there was an incident in the evening of 30.9.2001 at around 6.15/6.30 pm and in the

incident, the victim Dipali Das and her son Parimal received serious injuries. The victim Dipali Das died of such injuries.

50. There appears no reason to disbelieve the testimony of the injured eye witness PW 8. He has clearly stated that the injuries so inflicted were caused by the present appellant. Mere non-mentioning of the name of the assailant in the injury report of Parimal does not seem to dent his credibility.

51. It is well settled that where the testimony of eye witness(es) is confident and credible proof of motive is not of much importance especially when the story of attack set out by the prosecution is so overwhelmingly brought home with the help of persuasive and swaying evidence discarding any iota of doubt.

52. We also do not find much force in the contention on behalf of the appellant regarding related witnesses. The evidence on record reveals that the witnesses are related to the victim and the appellant in same degree. The appellant happens to be cousin brother of the injured Parimal and

the deceased was aunt of the appellant. No reason appears to have been assigned on behalf of the appellant during cross examination to justify such contention.

53. Even if we consider the recovery of offending weapons improper in the absence of proper proof of the statement leading to such recovery, the evidence led by the prosecution seems to be sufficient to give rise to one and only one proposition leading to the guilt of the appellant in every possibility to the exclusion of all others.

54. Therefore, in view of the discussion made hereinbefore, we are of the opinion that the impugned judgment of conviction dated 18.04.2007 and consequential order of sentence dated 19.04.2007 are well founded and warrant no interference, and thus, affirmed.

55. Accordingly, the Appeal being CRA 50 of 2020 stands dismissed.

56. Period of detention suffered by the appellant during investigation, enquiry and trial shall be set off from the substantive sentence imposed upon the appellant in terms

of Section 428 of the Code of Criminal Procedure. Copy of the judgment along with Trial Court Records be sent down to the trial court at once for necessary compliance.

57. Urgent Photostat Certified copy of this order, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

[MD. SHABBAR RASHIDI, J.]

I agree.

[DEBANGSU BASAK, J.]