

IN THE HIGH COURT AT CALCUTTA
(Criminal Miscellaneous Jurisdiction)

Appellate Side

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Bibhas Ranjan De

C.R.A 63 of 2019
With
CRAN 2 of 2019 (Old No. CRAN 3504 of 2019)

Prasanta Sahoo @ Prasanta Kumar Sahoo
Vs
The State of West Bengal
With
CRA 39 of 2019

Dipa Mullick @ Mallick @Mallik
Vs
The State of West Bengal

For the appellant	:Mr. Milon Mukherjee, Ld. Sr. Advocate Mr. Pravas Bhattacharya, Advocate Mr. Biswajit Manna, Advocate
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For the State	:Mr. Saibal Bapuli, Ld. APP Mr. Bibaswan Bhattacharya
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Heard on	: July 25, 2022
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Judgment on	: September 09, 2022
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Bibhas Ranjan De, J.:-

1. These appeals are directed against the common the judgment order of conviction dated 28.11.2018 passed by Learned Additional Sessions Judge, Fast Track, 2nd Court Jalpaiguri in Sessions Trial No. 10/2012 arising out of sessions case no 257 of 2009 corresponding to Kotwali PS case no. 108/ 2009 dated 15.02.2009 under Section 302 Indian Penal Code (for short IPC).
2. On 15.02. 2009 one Writwik Ranjan Chowdhury son of Priti Ranjan Chowdhury, resident of old Police Line Jalpaiguri, lodged a written compliant before the Inspector-in-charge, Kotwali Police Station, Jalpaiguri to the following effect:

On 14.02.2009 at about 9.30 p.m. one Debabrata Ghosh next door neighbor of complainant informed him about presence of blood at the gate of house of the appellant Prasanta Sahoo. Then complainant rushed to the first floor of that house through the stairs and found both the rooms of the first floor remained open and almirah was also found open and cloths money and ornaments were scattered on the floor and television of the adjacent room was on having notice blood in the upper floor, he went upstairs i.e. to the room of 2nd floor

and found wife of Prasanta Sahoo lying with bleeding injuries on the approach of the staircase. On call he found no response from her. On receipt of that complaint on 15.02.2009 at 01:55 hours Kotwali PS case no. 108/2009 dated 15.02.2009 under section 302 was started.

- 3.** S.I Praveen Pradhan attached Kotwali PS took up investigation of this case and SI Suraj Thakur of the same PS submitted charge sheet under Section 302 /120-B of the IPC after completion of investigation.
- 4.** After submission of charge sheet learned Chief Judicial Magistrate, Jalpaiguri took cognizance of offence and after complying the provisions of Section 207 of Criminal Procedure Code (for short Cr.P.C) committed the case to the Court of Learned Sessions Judge on 24.08.2009. Thereafter, learned Sessions Judge transferred the case to the Court Learned Additional Session Judge, 3rd Fast Track Curt, Jalpaiguri on 11.11.2009 for disposal. Subsequently, Learned Sessions Judge again transferred this case to the Court of Learned Additional Sessions Judge, 2nd Fast Track Court, Jalpaiguri on 26.03.2013, for disposal. Learned Trial Judge framed charge against both the accused persons (present appellants) under

Section 302/34 of the IPC read with Section 120-B of the IPC. Contents of the charge were read over and explained to the accused persons who pleaded not guilty and claimed to be tried and trial began.

5. To prove the charge prosecution examined as many as seventeen (17) witnesses and in course of evidence a good number of documents were admitted in evidence as exhibit 1 to 17 and along with some materials exhibits. Thereafter, both accused persons were examined under Section 313 of the Cr.P.C and no evidence was adduced on behalf of the accused persons.
6. Learned Judge considered all the evidence adduced on behalf of the prosecution together with the exhibited documents found guilty and convicted both the accused persons of committing offence under Section of the 120B/302 IPC and sentence them to suffer rigorous imprisonment for life and to pay a fine of Rs. 100,000/- each, with default rigorous imprisonment for the period of six (6) months.
7. Being aggrieved by and dissatisfied with the judgment these two appeals have been preferred by the appellants.

Arguments Advanced:

8. Learned Senior Advocate, Mr. Milon Mukherjee, appearing on behalf of the appellants, has advanced his arguments as follows:

- Prosecution failed to explain the delay in sending the FIR to the learned Court after two days.
- FIR was registered against unknown person and none of the witnesses disclosed anything implicating the appellant Prasanta Kr. Sahoo for committing murder of his wife.
- Incriminating Circumstances appearing in the evidence of PWs -10, 12 & 13 were not placed before the appellants in course of their examination under Section 313 Cr.P.C.
- Though prosecution has relied upon the evidence of PWs-2, 9 and 16 but those witnesses failed to establish the commission of murder at the instance of either of the appellants. That apart, PW-16, aged about 8 ½ years at the time of alleged incident was residing with her grandfather for ten years before adducing evidence before the Court. Besides, PW-16 did not reflect anything abnormal on her face before her music teacher (PW-7) who also did not disclose anything about such expression in course of her evidence.

- According to evidence PW-17 reached Jalpaiguri from Islampur at 1.30 a.m. but no one corroborated such fact. Police disclosed before PW-17 that Prasanta Kr. Sahoo had been arrested on 15.02.2009 early morning. But record shows that Prasanta Kr. Sahoo was arrested on 16.02.2009. Though PW-16 narrated the fact about the presence of appellant Dipa Mallick and the hammer to PW-17 in presence of Debabrata Ghosh and his family members but such fact was never disclosed by PW-17 before the Police, as it appears from the evidence of Investigating Officer.
- Neither PW-17 nor the investigating agency felt it proper to examine PW-16 who was aged about 8½ at the time of alleged incident.
- There were no materials to implicate the appellants into the offence prior to arrest of appellant Prasanta Sahoo. There was no specific evidence regarding alleged illicit relation between the two appellants. Even there was any such relationship that cannot give rise to any motive to commit the offence.

- It is evident from the record that there was an electric office in the ground floor of the house of Prasanta Kr. Sahoo and none of the persons working in that office could see appellant Dipa Mallick to come over there. Presence of Dipa Mallick was stated by PW-16 only that too after lapse of ten years.
 - Though sniffer dog was brought by the Police but that was not disclosed in the charge sheet and report of finger print expert did not favour the prosecution.
 - There is glaring discrepancies about place of occurrence which may be in the bed room on the western side of the house or on the landing of the stairs to the 2nd floor.
9. Before parting with his argument, Mr. Mukherjee submitted that non-examination of Debabrata Ghosh and Inspector Rajiv Bhattacharya to corroborate the evidence of PW-16 and 17 casts a shadow of doubt. In support of his contention Mr. Mukhejee relied on following authorities:
- ***(2019) 4 SCC 522 (Digamber Vaishnav & Anr Vs. State of Chattisgarh)***
 - ***(2021) 4 SCC 345 (Hari Om @ Hero Vs. State of Uttar Pradesh)***

- ***(2013) 5 SCC 705 (Shivasharanappa & Ors Vs. State of Karnataka)***
- ***(2020) 8 SCC 811 (Parminder Kaur Vs. The State of Punjab)***
- ***(2013) 5 SCC 705 (Shivasharanappa & Ors Vs. State of Karnataka)***
- ***(2019) 4 SCC 522 (Digamber Vaishnav & Anr Vs. State of Chattisgarh)***
- ***(2021) 4 SCC 345 (Hari Om @ Hero Vs. State of Uttar Pradesh)***
- ***(2021) 5 SCC 730 (Yogesh Vs. State of Haryana)***
- ***(1984) 4 Supreme Court Cases 116 (Sharad Birdhichand Sarda Vs. State of Maharashtra)***

10. On the other hand, supporting the impugned judgment learned advocate, Mr. Saibal Bapuli, for the State has strenuously contended as under:

- Admittedly, dead body of deceased wife of appellant Prasanta Sahoo was recovered from the house where deceased was staying with her husband Prasanta Kumar Shao and their minor daughter (PW-16).

- PW-1 in his evidence has stated about the conduct of appellant Prasanta Kumar Sahoo who was 'shouting aloud' about murder outside of his house instead of entering into his house.
- PW-3 further substantiated the said conduct of appellant Prasant Kr. Sahoo.
- PW-6 corroborated the recovery of some jewellery and a mobile and the offending hammer from bathroom of the house of the accused Prasanta Kumar Sahoo.
- PW-7 has further elaborated the guilty and culpable intention of accused persons (present appellants) who conjointly conspired to murder the wife of accused Prasanta Kr. Sahoo by sending PW-16 to the house of PW-7 to work out their plan.
- PW-9 has succeeded to prove the illicit relationship between the appellants who were residing in the house of PW-9 as tenant.
- PW-12 and PW-13 clearly confirmed the homicidal death of deceased and the use of hammer as offending weapon.
- PW-16 (daughter of Prasanta Kumar Sahoo) corroborated the conduct of her father regarding reschedule in her music

class before PW-7 and also presence of appellant Dipa Mallick in their house and carrying the alleged offending weapon (hammer). And her version was further fortified all sequence of events stated by PW-16 to him.

- 11.** Mr. Bapuli has stated that this case is entire based circumstantial evidence and prosecution has succeeded to prove the chain of circumstances conclusively leaving no break whatsoever. Thereby, Mr. Bapuli has submitted that conviction of accused/ appellants is in accordance with law warranting no interference by this Court.

Evidence

- 12.** Writwik Ranjan Chowdhury who put the law in motion by lodging FIR has been examined as PW-1. From his evidence it appears that on 14.02.2009 at about 9 p.m. one of his neighbors Professor Debabrata Ghosh and his wife Smt. Sumita Ghosh told him that blood was found in front of the house of Prasanta Sahoo. Immediately he rushed to the spot and saw Prasanta Kr. Sahoo raising alarm by saying 'khoon khoon' and his (appellant Prasanta Kr. Sahoo) daughter aged about 5/6 years also with him. On being asked Prasanta Kr. Sahoo told him that his wife was inside the house but he

refused to go inside. Then PW-1 went upstairs by staircase and found television was running, almirah was open and cloths were scattered. He had called out 'boudi-boudi' but no reply was given. Then he had proceeded towards 2nd floor and in front of 2nd floor he found the body of wife of Prasanta Kr. Sahoo and blood was oozing from her head. He came down through stairs and had informed Prasanta Sahoo. All of them including Prasanta Kr. Sahoo and his daughter had been to the house of Debabrata Ghosh and therefrom he informed Police. He had proved the written complaint (exhibit-1).

- 13.** During cross-examination of PW-1 repeated questions were put regarding topography of the house of Prasanta Kr. Sahoo and therefrom it is seen that house of PW-1 is almost adjacent to the house of Prasanta Kr. Sahoo only intervening the house of Debabrata Ghosh. It also appears from the cross-examination that there are many houses, shops and even a chamber of homeopathy doctor near the house Prasanta Kr. Sahoo and one WBSESD Officer in the ground floor of the house of Prasanta Kr. Sahoo. Some questions were also put to the witness regarding non-mentioning of some facts in First

Information Report (exhibit-1). He denied the suggestion of no incident.

14. Chandra Karmakar (PW-2), being resident of Deshbandhu Para was dealing in wood and he had a shop next to the house of Prasanta Kr. Sahoo. On 14.02.2009 at 8 p.m. he got information of Murder of wife of Prasanta Kr. Sahoo. He testified that one woman used to come to the house of Prasanta Kr. Sahoo very off and on and this witness identified the appellant Dipa Mallick in Court who used to come to the house of Prasanta Sahoo whenever wife of Prasanta Kr. Sahoo would go out for service.

15. Some question was also put to this witness also regarding topography of the place where house of Prasanta Kr. Sahoo is situated. In cross-examination he could not say the exact time or date when Dipa Mallick would come to the house of Prasanta Kr. Sahoo. As usual he denied suggestions of no incident.

16. Bimal Debnath (PW-3) having his duty hours from 9 a.m. to 5 p.m, claimed himself as an employee of shop of PW-2. From his evidence it appears that three (3) years ago in the month of February he was in the shop and in the evening time

he heard shouting from the house of Prasanta Sahoo and found Prasanta Kr. Sahoo pulling the hands of his wife in the balcony and after one hour he saw Prasanta Sahoo walking up and down in front of their shop and looking towards his own house.

17. In cross-examination PW-3 has stated that he did not informed such incident of pulling hand either to PW-2 or to any member of the Dishari Club. On the next morning he learnt about death of wife of Prasanta Kr. Sahoo.

18. Debabrata Basak (PW-4), was a resident of Deshbandhu Para, witnessed seizure of a mobile a diary of songs and one red coloured Alto Car. His signature was admitted as exhibit - 2. He identified the seized articles i.e. dairy and one mobile (Mat exhibit -1 & 2).

19. Animesh Biswas @ Raju (PW-5) testified that appellant Dipa Mallick was his ex-wife and she was working in Anganwadi Centre. He got divorced in the year 2008. He identified Prasanta Kr. Sahoo as immediate boss of his ex-wife. He saw his ex-wife with accused Prasanta Kr. Sahoo in his drawing room once where he was dictating something. His

ex-wife used to live in her father house mostly and that was the reason for divorce.

20. Anup Krishana Munshi @ Pulak (PW-6), claimed himself councilor of ward no, 24 the relevant point of time and Prasanta Kr. Sahoo was a resident of that ward. He identified Prasanta Kr. Sahoo. He would know PW-2 who had a shop of old furniture and wood situated in his ward no. 24. He further stated that shop of PW-2 and house of Prasanta Kr. Sahoo are situated adjacent to each other. He stated about incident happened on 14.02.2009 at about 9/9.30 p.m. in the house Prasanta Kr. Sahoo. He had been there and found a crowd in front of that house. He found huge blood on the foot of the staircase and somehow he went to upper floor and he saw wife of Prasanta Kr. Sahoo lying face downwards. Police prepared inquest report and he put his signature (exhibit-3). Police also seized some jewellery from the body, a mobile from a table for the next room, a hammer from the bathroom and yellow colour office file. He identified his signature (exhibit-4) on the seizure list. He identified all material exhibits produced before the Court.

21. In cross-examination PW-6 did not find any label on the seized article with his signature. He denied suggestion put to him and he also could not say the profession of Prasanta Kr. Sahoo.

22. Madhumita Sarkar (PW-7), claiming herself as music teacher had identified Prasanta Kr. Sahoo and stated that she used to give music lessons to his daughter, Deyashi Sahoo. (PW-16) He stated about incident about 14.02.29009 when accused Prasanta Kr. Sahoo came with his daughter to her house for music lessons on Saturday though she used give her music lessons on Sunday. Accused Prasanta Kr. Sahoo had called her over telephone that he had worked on Sunday and asked her for giving music lesson to his daughter on Saturday and she (PW-7) agreed. He taught her for an hour and then her father came and took her back.

23. In her cross-examination on behalf of appellants she stated as follows:

*“ I do not go to student’ residence to teach music. I teach many children like Diyasi.
Their guardians bring them and take them back.
Diyasi used to learn music under me for a period*

of one and a half years. During these years her father Prasanta babu used to bring her and take her back. I had told police that Prasanta babu had requested me to give music lesson to his daughter on Saturday. If there is problem for a guardian I co-operate with them to change their dates for such lessons in general if I too have no problems.”

24. Prabir Chowdhury (PW-8), being a photographer took photo of the dead body of a murdered woman as per instruction of Inspector-in-charge of Kotwali PS and those photographs were marked as exhibit 5 series. In cross examination he denied suggestions.

25. From the evidence of Bimal Saha (PW-9), it transpires that both the appellants went to his house at Ashrampara, Siliguri and identified themselves as married couple by the name of Dipa Sahoo and Swapan Sahoo and took rented accommodation at rental of allowed Rs 3200/ per month and both of them started residing as husband and wife. Police came to his house and inquired about that tenancy and he came to know for the first time that they were not husband and wife. Police seized two DVD cassettes, two letters, whiskey

bottle and cash rupees 21,300/- under a seizure list in his presence and his signatures (exhibit-6 & 7 series) were identified. Both the appellants were identified by this witness in the Court.

26. In cross-examination he did not find Cash Rs. 21,300/- and DVD in the Court. Police had gone to his house on 17.02.2009 with Swapan Sahoo at about 5.30/6.00 p.m. and seizure was made within 7 p.m. Though place of seizure had not been mentioned in the seizure list. He denied suggestions regarding tenancy of the appellants in his house.

27. Doctor Sandip Ghosh (PW-10) attached to RFSL Jalpaiguri has stated that on 09.03.2009 he received two parcels from the Court of learned CJM Jalpaigui on 09.03.2009 and 16.03.2009 respectively for examination and accordingly all those articles including wearing apparels of the deceased and blood were sent to the Institute of Serology Kolkata for detection of original and group of the blood. He proved Serology report (exhibit 9 series). He identified hammer (Mat exhibit VI). He denied the suggestion of not complying with the procedure in examining the seized articles.

28. Sova Roy (PW-11), sister of the appellant Dipa Mallick, was declared hostile by the prosecution. In cross-examination on behalf prosecution though she admitted that Dipa mallick visited her house but she denied the suggestion that her sister Dipa Mallick took her mobile sim card.

29. Doctor Amiya Dutta, attached to Jalpaiguri Sadar hospital on 15.02.2009 was examined as PW-12. He performed Post Mortem over the dead body of Mita Kundu in connection with Kotwali PS FIR no. 108/2009 and body was identified by constable no. 869 Bibkanda Roy. On examination he found following injuries:

- “ 1. The incised looking wound on right half of fore head.*
- (a) $1\frac{1}{2}$ " X $\frac{1}{4}$ " X $\frac{1}{4}$ " (b) 1 " X $\frac{1}{4}$ " X $\frac{1}{4}$ " (c) $\frac{3}{4}$ " X $\frac{1}{4}$ " X $\frac{1}{4}$ " margin irregular*
- 2. One small lacerated wound on fore head just above the bridge of Nose $1\frac{1}{8}$ " X $1\frac{1}{8}$ ".*
- 3. Lacerated injury in the left parietal area. 2 " X 2 " X 1 " with depressed fracture of left parietal bone.*
- 4. Lacerated injury on occipital area $2\frac{1}{2}$ " X $2\frac{1}{2}$ " X 1 ".*
- 5. Abrasion with haematoma on medial aspect of right area 2 " X 2 " X $1\frac{1}{8}$ ".*

6. Abrasion in the epegashi (sic) 1" X ½"

7. Abrasion in nape of neck 1" X 1"

8. Abrasion in the upper part of back near the nape of neck 1" X ½".

All wounds are recent in origin in hurt used (sic) by heavy blunt instrument blood clots resist washing."

In his opinion death was due to head injury which was ante mortem and homicidal in nature. He prepared post mortem report and signed (exhibit-10). According to him the head injury might be caused by hammer which is sufficient to cause death. He sent PM blood and viscera to FSL Kolkata for examination.

30. Dr. Saibal Gupta (PW-13) the then professor and head department of forensic medicine North Bengal medical college and hospital, has stated that on 20.02.2009 SI of Police Praveen Pradhan of Kotwali PS submitted requisition for unnatural death of one Smt. Mita Kundu wife of Prasanta Kr. Sahoo of Old Police Line PS Kotwali. He received PM report and photographs and hammer of the deceased. He visited scene of crime on 28.02.2009 at 15:00 hours before answer to the queries of SI of Kotwali PS. He meticulously investigated each part and parcel of the scene of incident. Accordingly he

answered to the query made by Investigating Officer as follows:

“ Q.1. : Injury seen over back of right side of head, whether caused by hammer or hammer like substance.

Ans. 1. Yes, considering the findings in P.M. report so far injuries mention and evidence of injuries shown in photograph no.2 and 3. It can be opined that such injuries was caused by hammer or hammer like substance, broader end (side) of head of hammer can produce the injuries shown in photograph.

Q.2. Amongst the injuries written in P.M. report, whether (caused) by same of different weapon.

2.A:- Injuries shown in all photographs, as well as mentioned in P.M. report from 1 to 8 was inflicted by same weapon. Force of application and direction of force were varied which resulted different dimension and shapes of the injuries shown in photographs.

Q.3. Amongst the injuries written in P.M. report and shown in photograph which were fatal.

A.3. Injuries no. 3 and 4 vide P.M. report and photograph no. 3 vide photograph no.3 were brain deep and were sufficient to cause death in ordinary course of nature.

Q.4. Can you assess the exact scene of crime after visiting the scene of incident and placement of body as shown in photograph.

4.A. Exact scene of crime was none other than the space in front of entrance door at the 2nd floor and deceased following death had been placed manually with head rested on two steps below the space in front of 2nd floor entry door. Rest of the body had been placed in right angle fashion covering 1st two steps of stair case and space in front of the 2nd floor entry –vide photograph no. 1. It might be following strike on the back of head, deceased was totally incapacitated and fallen down on the area as shown in photograph no. 1. This right angle placement of whole body with head rest at 2nd step prevented the body of deceased to fall down.

There is not much splashing of blood at the exact place of occurrence since fatal injuries at back of head were covered by printed chadar when the injuries had been caused. Presence of scalp hairs of the deceased as well as clotted blood and splitting of fabrics in chadar were suggestive of the above impression.

Q.5. Whether injuries over front of head were caused first or injuries was back of head caused first.

A.5. Injuries over back of head were caused first. The deceased had been incapacitated and then there were infliction at the back of head vide injury no. 3 and 4 in P.M. report i.e causation of injuries at back. Moreover injuries over front of forehead were done first, when the deceased was in standing posture considering the features of injuries vide photographs no. 2 which were obliquely placed with lower part of the injuries were more deep.

Q.6. whether there were evidence of signs of struggle found as per P.M. report or by photograph before death of the deceased.

Injuries no. 5 and 6 written in P.M. report and injuries detected over at the dorsal aspects of right finger – (little, ring and middle fingers) were suggestive of signs of struggle before death.

Q.7. How many assailant are involved in crime.

A.7. Visit to the scene of incident P.M. report and photographs were suggestive that there might be more than one assailant were involved in crime.

This is said typed original opinion with my signature with departmental memo and in printed pad.”

- 31.** Inspector Suraj Thakur, (PW-14) has stated in his evidence the on 15.02.2009 he was at Coochbihar as SI of Police and on 3.03.2009 he received case diary for

investigation. Assuming the responsibility he sent sized alamat and viscera to FSL for examination. He examined only one witness namely Asit Das. Requisitions sent by him were admitted in evidence as exhibit 8 and 8/1. He collected finger prints as per Court order and send for examination. Those requisitions were admitted as exhibited 9 collectively. He collected report from Finger Print Bureau, CID. After conclusion of investigation he submitted charge sheet.

32. In cross-examination he has stated that he did not examine any of the relatives of deceased or her father or daughter during investigation. During cross-examination he has further stated that he accompanied that previous IO to place of occurrence on 14.02.2009 at about 21:35 hours but case diary did not reveal the fact of his presence at the place of occurrence. He did not see either Pradip Kundu (PW-17) or Deyashi Sahoo (PW-16) at the place of occurrence while he visited PO.

33. Sub Inspector of Police Praveen Pradhan (PW-15) attached to Kotwali PS took up investigation of the case. During investigation he visited place of occurrence and prepared inquest report (exhibit 3/1) of deceased Mita Kundu

in presence of witnesses. He seized gold ornaments, one pair brown ladies slipper chappal, one yellow cover filed containing some documents of Dhupguri ICDS Project, Iron hammer having wooden handle, one steel colour sumsang mobile phone under a seizure list (exhibiut 4/1). He also took photograph of the deceased at the place of occurrence. He prepared rough sketch map with index and recorded statement of available witnesses under Section 161 Cr.P.C. and forwarded the dead body for post Mortem examination. He seized wearing apparels deposited by the Constable. He arrested accused Prasanta Kumar Sahoo (appellant in CRA 63 of 2019) on 16.02.2009 and seized one cash memo of fuel, one premium notice of HDFC in the name of Prasanta Sahoo, One money receipt of West Bengal State Electricity Distribution company limited and one Electric bill of WBSEDCL under a seizure list (exhibit 15). He also arrested Dipa Mallick (appellant) in CRA No. 39 of 2019. He prepared another sketch map (exhibit-16) where finger print was taken. He received PM report of deceased. He sent requisition to head of the department of forensic medicine with some questioner

(exhibit-17). On his transfer sub inspector of Police Suraj Thakur attached to same Police Station took up investigation.

34. In his cross-examination, PW-15 has testified that he started investigation after receiving FIR though he visited place of occurrence prior to lodging FIR. After returning from place of occurrence he lodged GDE before starting this case. He did not send any requisition to any magistrate for holding inquest. At the time of inquest appellant Prasanta Kr. Sahu, Writwik Ranjan Chowdhuy (PW-1), Anup Kr. Munshi, Subir Bhowmik and Debabrata Basu were present and put signatures. They stated nothing during preliminary inquiry. That apart, several questions were put to the Investigating Officer about non-mentioning of several facts either by PW-16 or PW-17.

35. Deyashi Sahu (PW-16), daughter of the deceased has testified that on 14.02.2009 her mother was murdered in their house when she was present in the house at about 6 6.30 p.m. her mother was teaching her in their bed room on the 1st floor. They heard laughing sounds of her father appellant Prasanta Sahu) from 2nd floor. She identified her father in the Court room. At that time her mother put on the Television set

and asked her to watch the same and her mother went upstairs after sometime her father came down to 1st floor and went to bathroom. Thereafter Dipa aunty also came down to 1st floor. Witnessed identified appellant Dipa Mallick as Dipa aunty in Court. She further stated that Dipa aunty was carrying a hammer in her hand and entered into the bathroom with that hammer. Thereafter, her father came to her and asked to go to the music teacher but she said that tomorrow (Sunday) was the music lesson day. But her father said that music teacher would not be available next day that's why she was asked to go for music lesson on that day. Thereafter her father took her to music class and she took music lesson for one hour. After the class his father took her to home and her way to house her father gave her chocolate and chips from the shop in front of the house of music teacher. When they reached home, the gate was found open and there was water like blood on the staircase. Then her father shouted saying 'murder-murder'. Next door neighbor 'Debu Jthu' came over there and took her to his house and her father was standing there. On the next day her maternal grandfather (PW-17) came in the morning took her to his house at Islampur. Police

interrogated her and she told everything to police. After her mother went to 2nd floor , she never saw her mother she did not see her mother when she left for music lesson. Witnesses identified the hammer (Mat exhibit VI) which she saw in the hand of Dipa aunty on that day.

- 36.** In cross-examination she stated that she read in class X and she was 15 years old. She was residing in her maternal grandfather's house for last 7/8 years. On 14.02.2009 she was studying in class III at Ashalata Basu School and her father was child development officer under the department of ICDS, Government of West Bengal and posted at Darjeeling. She would live with her mother in the house. He father used to come home on holidays. AT the relevant point of time there was one Electric Office in ground floor of their house on rent and remained open during office hours. she was stated after returning from music teacher she did not find any people in front of their house. On the next day she had talked with police in presence of her grandfather he told everything to her grandfather at the house of 'Debu Jethu' in presence of all other member of Debu Jethu. At the time of incident she was 8 years+. Her grandfather filed a case for her custody and for

Stridhan properties of her mother and she deposed in that case. She denied all the suggestions put to her during cross-examination.

37. Pradip Kr. Kundu (PW-17), testifies as follows:

“ Prosanta Kr. Sahoo is my son-in-law. Mita Sahoo was my only daughter. Mita was married to Prosanta on 13/06/1991 according to Hindu rites and customs.

They have only daughter Deyashee Sahoo who was born on 2/7/2000.

On 14/2/2009 at about 10.30 P.M. I got a phone call from Kotwali P.S. and one Rajib Bhattacharyya informed me that my daughter Mita has been murdered today. It was late at night. I tried to arrange for vehicle through my students but could arrange lately. I reached Jalpaiguri at about 1.30 A.M. after midnight.

When I reached in front of the house of Prosanta Sahoo, I saw police and others waiting. Rajib Bhattacharyya approached me and introduced himself and said that he called me over telephone and further informed me that the dead body was sent to mortuary for Post mortem examination. They also took me inside the house. I saw blood on the stair and they told me that the blood belonged to me that is the blood is of my daughter.

Then they took me to 1st floor bed room where television was still on and bundle of currency including Rs. 20/- currency notes, ornaments and other things were scattered on the bed. I also saw some garments on the bed as well as on the floor. I could identify the ornaments belonged to my daughter which I gifted to her.

Then I got down to ground floor and went to the house of one Debabrata Ghosh where I sat along with police officers who also told me that police arrested my son-in-law upon suspicion. Police also brought and showed one hammer and told me that my daughter was murdered by that hammer. One 'Sipahi' brought that hammer.

I then asked for Deyashee and I was told by Debabrata Babu that Deyashee has been sleeping at his house.

*It was 2.30 A.M. then
(then says – approximately).*

Police did not want to take my statement at that time but I insisted and then Police recorded my statement and asked me to come next day.

On next morning I waited and Deyashee woke up at about 9 A.M. on 15/02/2009.

Then I asked Deyashee about what happened to which Deyashee replied upon crying that 'Dadu my mother was murdered.'

Then I asked what happened actually to which Deyashee stated that my mother was imparting study to me. There was altercation with Dipa and mother. My mother asked Dipa as why she came to which Dipa replied that she came to meet with her Sir to discuss office matters and Deyashee also told that then her father came down and scolded her mother not to poke her nose in the affair.

Deyashee also stated that she heard laughter of her father and Dipa aunty inspite of 'Kirtan' going on then at nearby 'Gouriya Math'.

Deyashee then said that her mother then went to up stair. About ½ hour her father came down from up stairs and went to bath room to wash hands.

Deyashee felt scared when her father scolded her and directed to go inside the room. Thereafter Deyashee noticed that Dipa aunty came down and went to bath room with hammer in hand and then had talk with father at a very low voice.

Thereafter, father of Deyashee asked her to get ready to go to the music teacher to which Deyashee replied that today is not the scheduled day for music lesson but her father then told that he got telephone from music

teacher that she had to attend class today as on the next day teacher would not be available.

Thereafter Deyashee was taken to the Madhumita Sarkar – Music Teacher by her father. After the class, Deyashee came back from music lesson with her father who gave a potato chips packet to her and her father had opened the same for Deyashee.

After reaching at home, Deyashee's father tried to force her to go to the house of Debabrata Ghosh. Then Deyashee's father shouted for murder and local people rushed there. After talking with Deyashee, I alone went to Police Station and desired to record a FIR and asked to record statement of my granddaughter Deyashee.

Then Police informed me that already one FIR was lodged in this case and second FIR was not required. Police also showed reluctance to record statement of Deyashee.

Police also informed me that Post mortem was going on and asked to go there. I went there and identified my daughter.

I then took her dead body and cremated at Maskalaibari electric crematorium.

Thereafter I again went to Police Station to ask for Deyashee. Then Prosanta told in front of IC

Saheb that Deyashee did not know anybody except her grandfather.

Thereafter I started for Islampur with Deyashee and since then Deyashee has been living with me.

After cremation and talk with police, I went to Islampur with Deyashee and during that Police, Police did not record any statement of mine or of Deyashee.

Subsequently I prayed for 'Guardianship' of Deyashee before Ld. District Judge, Jalpaiguri and Ld. Judge after hearing Deyashee and the objection of Prosanta Sahoo, allowed my prayer to be legal Guardian of Deyashee.

Both Prosanta and Dipa are present in Court today (identified)"

- 38.** In cross-examination PW-17 has deposed that he initially got information from Inspector In charge Kotwali PS (Sri. Rajib Bhattacharya) at 10.30 p.m. and he reached at the house of Prasanta Sahoo at 1.30 p.m. and remained there for half an hour. Thereafter, he proceeds to the house of Debabrata Basu along with Police and found his granddaughter sleeping there. He stayed there till 9.00 a.m. on 15.02.2009. Thereafter, he went to the Police Station. He saw dead body of his

daughter at about 12:30/1:00 hours at Jalpaiguri mortuary on 15.02.2009. He has further stated that he heard the entire incident from Deyashee. He denied all the suggestions put to him in course of cross-examination.

Evaluation of evidence

- 39.** This case rests on circumstantial evidence. No one had seen the assault by the appellants on the deceased. By the ratio of ***Digamber Vaishnav*** (supra), ***Hari Om @ Hero*** (supra) and ***Yogesh*** (supra) it has become a settled law that in cases of the circumstantial evidence, all circumstances relied upon by the prosecution must be established by cogent and reliable evidence and all proved circumstances must provided complete chain. The chain of evidence should be complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

40. It is also settled proposition of law that such circumstantial evidence must satisfy the following five tests:

- The circumstances, from which the conclusion of guilt is to be drawn, should be fully established.
- The facts so established should consists only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty.
- The circumstances should be of a conclusive nature and tendency.
- They should exclude every possible hypothesis except the one to be proved.
- There must be a chain of evidence to show complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probabilities, the act must have been done by the accused.

41. ***Sharad Birdhichandd Sarad*** (supra) held in para 197 as under:

“197. *I had the benefit of reading the judgment of my learned Brother Fazal Ali, J. I agree with his final conclusion that the appeal should succeed. The learned Judges of the High Court have relied upon 17 circumstances for confirming the conviction and sentence of death awarded to the appellant. My learned Brother Fazal Ali, J. has rightly rejected every one of those circumstances as not conclusively pointing to the guilt of the appellant, including the circumstance that the appellant was last seen with Manju before her death on the ground that the case of the prosecution based on the evidence of Dr Banerji (PW 33) that there was any mechanical suffocation of Manju has been disbelieved by the High Court itself and that some entries in the carbon copy Ex. 134 of PW 33's report sent to the chemical examiner had been scored out and interpolated after his report Ex. 132 to the chemical examiner had left his hands, that the original entry in the post-mortem certificate Ex. 134 contained the words “can be a case of suicidal death” and that the explanation of PW 33 that he wrote the words “time of death” twice and not the words “can be a case of suicidal death” and, therefore, he scored off one of them is not acceptable at all. The doctors PW 24 and 25 did not find any external injury on the body of Manju which they saw at about 2.30 and 4.30 a.m. on June 12, 1982. Even PW 33 did not find any external or*

internal injury on the body of Manju. In these circumstances, unless the prosecution excludes the possibility of Manju having committed suicide by consuming potassium cyanide poison, as rightly pointed out by my learned Brother Fazal Ali, J., no adverse inference of guilt can be drawn against the appellant from the fact that he was last seen with Manju, he being no other than her own husband who is naturally expected to be with her during nights. Some of these 17 circumstances cannot, by any stretch of imagination, be held to point to the guilt of the appellant. Circumstance No. 6 is an attempt of the appellant's father Birdhichand to get the body of Manju cremated before 7 a.m. on June 12, 1982 by expressing such a desire to PW 30. Circumstance No. 9 is arrangement of the dead body of Manju to make it appear that she died a peaceful and natural death. Circumstance No. 11 is absence of an anklet of Manju from her leg. Circumstance No. 12 is the conduct of the appellant in allegedly concealing the anklet in the fold of the chaddar. Circumstance No. 15 is the fact that according to the medical evidence Manju was pregnant by four to six weeks and it would normally dissuade her from committing suicide. With respect to the learned Judges of the High Court, in my view, by no stretch of imagination, can any of these circumstances be considered to point to nothing but

the guilt of the appellant in a case resting purely on circumstantial evidence.

42. On the basis of above well-settled principles, we proceed to examine whether appellants can be held to be guilty in this case.

43. Star witnesses of this case are Writwik Ranjan Chowdhury (PW-1) complainant of this case, Chandra Karmakar (PW-2) owner of a shop dealing in wood, Bimal Debnath (PW-3) an employee of the shop of PW-2, Animesh Biswas @ Raju (PW-5) ex-husband of appellant Dipa Mallick, Anup krishan Munsi @ Pulak (PW-6) Councilor of the ward no. 24 where house of the appellant Prasanta Kr. Sahoo is situated, Madhumita Sarkar (PW-7) music teacher of the daughter of appellant prasanta Kr. Sahoo, Bimal Saha (PW-9) who accommodated both the appellants in his house as tenant, Deyashee Sahoo (PW-16) daughter of the deceased and Pradip Kr. Kundu (PW-17) father of the deceased.

44. Daughter of deceased (PW-16) witnessed the moment when her mother went upstairs after hearing sound of laughing of both the appellants and thereafter

her mother never came down. But, her father (appellant) came down and appellant Dipa Mallick also came with a hammer and entered into bathroom. She saw blood flowing like water. Then her father (appellant Prasanta Sahoo) took her to the house of music teacher inspite of her resistance as it was Saturday and music class of Deyashi (PW-16) was scheduled to be held on every Sunday.

45. On careful scrutiny of cross-examination of PW- 16 nothing abnormality or infirmity is found to discredit the aforesaid portion of evidence.

46. Mr. Mukherjee has contended that PW-16 stayed in the house of her grandfather (PW-17) for almost 10 years after alleged incident and for the first time she (PW-16) deposed before the Court. Therefore, according to Mr. Mukherjee, strong possibility of tutoring of PW-16 cannot be ruled out as she was 8 ½ years at the time of alleged incident.

47. Mr. Mukherjee has further contended that there was no behavioral change of PW-16 after such incident as it appeared from the evidence of music teacher (PW-

7). In support of such contention Mr. Mukherjee has referred to the ratio of ***Shivasharanappa & Ors Vs. State of Karnataka*** (supra).

48. In ***Shivasharanappa*** (supra) it was observed as follows:

“ In State of H.P.V. Mast Ram [(2004) 8 SCC 660: (2010) 1 SCC (Cri) 1165] it has been stated that there is no set rule that one must react in a particular way, for the natural reaction of man is unpredictable. Everyone reacts in his own way and, hence, natural human behavior is difficult to prove by credible evidence. It has to be appreciated in the context of given facts and circumstances of the case. Similar view has been reiterated in Lahu Kamlakar Patil v. State of Maharashtra [(2013) 6 SCC 417: (2012) 12 Scale 710.]

22. Thus, the behavior of the witnesses or their reactions would differ from situation to situation and individual to individual. Expectation of uniformity in the reaction of witnesses would be unrealistic but the court cannot be oblivious of the fact that even taking into account the unpredictability of human conduct and lack of uniformity in human reaction, whether in the circumstances of the case, the behavior is

acceptably natural allowing the variations. If the behavior is absolutely unnatural, the testimony of the witness may not deserve credence and acceptance.

23. *In the case at hand, PW 9 was given a threat when her mother was forcibly taken away but she had the courage to walk in the night to her grandmother who was in her mid-fifties. After coming to know about the incident, it defies commonsense that the mother would not tell her other daughter and the son-in-law about the kidnapping of the deceased by her mother-in-law. It is interesting to note that the High Court has ascribed the reason that PW7 possibly wanted to save the reputation of the deceased daughter and that is why she did not inform the other daughter and son-in-law. That apart, the fear factor has also been taken into consideration. Definitely, there would have been fear because, as alleged, the mother-in-law had forcibly taken away the deceased, but it is totally contrary to normal behavior that she would have maintained a sphinx-like silence and not informed others. It is also worthy to note that she did not tell it to anyone for almost two days and it has not been explained why she had thought it apt to search for her daughter without even informing anyone else in*

the family or in the village or without going to the police station. In view of the obtaining fact situation, in our considered opinion, the learned trial Judge was absolutely justified in treating the conduct of the said witnesses unnatural and, therefore, felt that it was unsafe to convict the accused persons on the basis of their testimony. It was a plausible view and there were no compelling circumstances requiring a reversal of the judgment of acquittal. True it is, the powers of the appellate court in an appeal against acquittal are extensive and plenary in nature to review and reconsider the evidence and interfere with the acquittal, but then the court should find an absolute assurance of the guilt on the basis of the evidence on record and not that it can take one more possible or a different view.”

- 49.** Hon’ble Apex Court in ***Shivasharanappa*** (supra) dealt with a case where mother of an 11 years old girl (PW-9) was forcibly taken away by an unlawful assembly after making threat to that minor girl (PW-9) of murder. But that girl (PW-9) inspite of knowing all the incident, maintained a sphinx like silence and did not disclose to anyone.

50. But in the case at our hand, Deyashi (PW-16), a 8½ years old girl did not witness any such incident except her mother (since deceased) went upstairs and her father took her to music teacher. In fact, she could not understand the actual incident. In spite of that she disclosed the fact she perceived to her grandfather (PW-17) and one Debabrata Ghosh (Debu Jethu) and his family members as she was taken to house of Debabrata Ghosh (Debu Jethu) after her returning from music teacher. Therefore, we are unable to take any assistance from the ratio of ***Shivasharanappa*** (supra).

51. Next, we proceed to another issue of “tutoring” raised by Mr. Mukherjee.

52. According to settled principles of law, it is true that we require to rule out the possibility of the child being tutored at the time of appreciation of her evidence. It is also an admitted position of this case that after the incident alleged in this PW-16 was taken to her grandfather house at Islampur.

53. Ratio of ***Digamber Vaishnav*** (supra), ***Hari Om @ Hero*** (supra) and ***Shivasharanappa*** (supra) is that

there is no rule of practice that in every case the evidence of a child witness has to be corroborated by other evidence before a conviction can be allowed to stand but as a prudence, the Court always finds it desirable to seek corroboration to such evidence from other reliable evidence placed on record. Evidence of a child witness must be evaluated carefully as the child may be swayed by what others tell him and he is an easy prey to tutoring. Therefore, only precaution which the Court has to bear in mind while assessing the evidence of a child witness is that witness must be a reliable one.

- 54.** Conglomerated effect of the provisions of Section 5 of Indian Oath Act, 1873 and 118 of Evidence Act, 1872 is that every witness is competent to depose unless he is prevented from understanding the question put to him by reason of tender age, extreme old age or disease. It is true that a child witness would easily fall prey to tutoring but the Court has to determine the issue of tutoring by examining the evidence to find out the same. It is not the law that if a witness is a child, his/her

evidence shall be rejected, even if it is found reliable. The law is that evidence of a child witness must be evaluated more carefully and with greater circumspection because a child is susceptible to be swayed by what others tell him/ her and thus a child witness is an easy prey to tutoring. But, a child is always receptive to abnormal events which take place in his life and would never forget those events for the rest of his/her life.

55. From the entire evidence of Investigation Officer (PW-15) it is not intelligible to us whether he recorded statement of PW-16 or PW-17 under Section 161 Cr.P.C. From the cross-examination of PW-16 or PW-17 we do not find any single question contradicting any statement rendered to investigation under Section 161 Cr.P.C. However, we are of the view that a person whose statement under Section 161 Cr.P.C was not recorded by the Investigating Officer can be examined in Court obviously after giving opportunity to rebut the evidence during cross-examination of that witness. In this case, both the witnesses were elaborately cross-examined on

behalf of the appellants. A statement in writing made by a witness before a Police Officer in the course of investigation can be used only to contradict his statement in the witness box and for no other purpose. Therefore, statements not reduced by the Police Officer to writing cannot be used for contradictions. In the circumstance, we are to evaluate the evidence of PW-16 & PW-17 on the touch stone of cross-examination.

- 56.** PW-16 (15 years old child) saw her mother to go upstairs and never came down when she was 8 ½ years of age. She saw her father (appellant) and Dipa aunty (appellant Dipa Mallick) to come down and Dipa aunty was holding one hammer. PW-16 told the fact to her grandfather (PW-17) and “Debu jethu” and his family members. Such evidence of PW-16 was further corroborated by her grandfather (PW-17). The evidence of PW-16 remained unshaken throughout her cross-examination. PW-16 a girl of 15 years cannot be expected to give evidence against her father (appellant Prasanta Sahoo) even if she was tutored as at the time of giving evidence PW-16 was a sufficiently grown up

child to anticipate the consequence of her evidence against her father. On careful scanning of entire evidence of PW-16 we find hardly any infirmity to reject her evidence.

57. Next we proceed to evaluate other evidence on record. PW-1 (complainant) claiming himself as a neighbour of the appellant rushed to the house of appellant Prasanta Sahoo immediately after hearing the news. He saw Prasanta Sahoo with his daughter (PW-16) standing at the gate of house and crying “murder, murder”. PW-1 entered into the house and found body of Mita Kundu (deceased wife of Prasanta Sahoo) with head injury with oozing blood. He saw blood in the staircase. On careful perusal of his cross-examination we find nothing substantial to discredit his evidence. He lodged written complaint. Inquest report (exhibit 3/1) also corroborated the place of occurrence stated by PW-1.

58. PW-6, Anup Krishna Munshi @ Pulak, also corroborated the evidence of PW-1 (complainant). In his presence inquest was performed and he signed (exhibit-

3) on the inquest report (exhibit-3/1). In his presence various articles including ornaments and one hammer were seized under seizure list (exhibit 4/1). This witness remained absolutely unshaken. PW-6 has confirmed the existence of a shop of Chandra Karmakar (PW-2) near the house of appellant Prasanta Sahoo. PW-2 saw the appellant Dipa Mallick who used to come to the house of Prasanta Sahoo. From his cross-examination nothing has been elicited to discredit his evidence. Evidence of PW-2 has been further corroborated by Bimal Debnath (PW-3) who is an employee of the shop of PW-2. PW-3 has stated that in month of February three (3) years back he heard a shouting from the house of Prasanta Sahoo and he found Prasanta Sahoo pulling hands of his wife in the balcony. Thereafter, he (Prasanta Sahoo) walking in front of their shop and looking towards his house. As usual his evidence remained unshaken during cross-examination.

59. Animesh Biswas @ Raju (PW-5) deposed that appellant Dipa Mallick was his ex-wife and he saw appellant Prasanta Sahoo dictating something to his ex-

wife in his drawing room. His evidence remained unchallenged. Now Bimal Saha (PW-9) has stated about close relationship between the two appellants. It appears from his evidence that both the appellants took rented accommodation in his house at a rental of Rs. 3,200/- as husband and wife in the name of Dipa Sahoo and Swapan Sahoo. He identified both the appellants in the Court. Police seized few articles including cash Rs. 21,300/- love letters, whisky bottle etc. under a seizer list.

60. Madhumita Sarkar (PW-7) music teacher of Deyashi (PW-16) has corroborated the evidence of PW-16. PW-7 has testified that she used to give PW-16 music lesson on Sunday. But, on 14th February, 2009 she received a phone call from father of PW-16, who requested her to give music lesson on Saturday instead of Sunday due to his some work. She gave her (PW-16) lesson for one hour and then her father came and took her away. Therefore, evidence of PW-16 has been squarely corroborated by her music teacher (PW-7).

61. Dr. Sandip Ghosh (PW-10) Forensic Expert, has deposed that he examined all articles including wearing apparels and one hammer. According to his reports (exhibit 8 & 9 series) blood could be detected in upper portion of nighty, all wearing apparels, pair of slippers, both the head handle junction and head of the hammer, sample blood and PM blood. His evidence remained unshaken during cross-examination.

62. Dr. Amiya Dutta (PW-12) performed Post Mortem over the dead body of Mita Kundu. He found several injuries on her head and according to his death was due to head injury which was ante mortem and homicidal in nature. He proved Post Mortem report which was admitted as exhibit-10. Dr. Saibal Gupta (PW-13), Professor and head Department of Forensic Medicine, North Bengal Medical College and Hospital, received some queries from Investigating Officer on 20th February, 2009 along with P.M. report, photographs of deceased Mita Kundu and suspected weapon i.e. hammer. He visited scene of crime on 28.02.2009 at 15.00 hours. According to his evidence Mita Kundu was

murdered by more than one assailant he found signs of struggle before death due to head injuries caused by hammer or hammer like substance. His report was admitted in evidence as exhibit-11. From the evidence of PW-12 & PW-13 it appears that Mita Kundu was murdered by the involvement of more than one person and the deceased had to struggle before her death.

63. From the evidence of PW-14 and PW-15 it appears that investigating Officer took up investigation of the case on receipt of written complaint lodged by PW-1 on 15.02.2009. But, on 14.02.2009 at about 21:35 hours one information was received by the Police Station regarding an incident of murder in the house of appellant Prasanta Sahoo. Police rushed to the place of occurrence to work out the information within the meaning of the Provision of Section 157 of the Cr.P.C which empowers the Police to do so in case of receiving an information about a cognizable offence. However after investigation charge sheet was submitted against both accused persons/appellants under Section 302/120B IPC.

64. Mr. Mukherjee has drawn our attention to some laches on the part of the Investigating Officer by not examining vital witness viz. Debabrata Ghosh, Rajib Bhattacharya of Kotwali PS and neighbours of the resident of the house of appellant Prasanta Sahoo. And thereby, Mr. Mukherjee has tried to make this Court understand that withholding of the vital evidence was fatal to the prosecution case incurably leading to drawing of adverse inference against prosecution.

65. The facts and circumstances delineated in the ***Sharad Birdhichandd Sarad*** (supra) is not identical to that of ours. In the case at our hand we dealt with homicidal death of Mita Kundu (since deceased) who suffered several head injuries.

66. In ***Parminder Kaur*** (Supra) it has been held as follows:

“ 15. The spot map prepared by PW 3 also has glaring omissions. The location of Bhan Singh’s house and the place where the appellant allegedly threatened the prosecutrix on 24-2-1996 are not even marked. Letters which the prosecutrix alleged in her examination-in-chief and police complaint that the appellant got

written from her, have not been produced during trial. These could have shed light on the relationship between the accused, the prosecutrix and the male tenant prior to the incident. It is the duty of the prosecution to lead the best evidence in its possession, and failure to do so ought to lead to an adverse inference. [Mussaiddin Ahmed v. State of Assam, (2009) 14 SCC 541, paras 11-15 : (2010) 1 SCC (Cri) 1445]”

67. We are not similarly situated as ***Parminder Kaur*** (supra). In the case at our hand prosecution examined some vital witnesses which we have already discussed in foregoing paragraphs. Therefore, in the background of particular facts and circumstances of this case, we are of the humble view that the non-examination of witness by itself is not a sufficient reason to disbelieve the entire prosecution case in toto, if the evidence adduced otherwise emphatically established the prosecution case. So, rule of “adverse presumption” depends on particular facts of each case and also differs from case to case.

68. Before summarising the circumstances it would be appropriate to take the issue of non-matching of Finger Prints raised by Mr. Mukherjee.

69. Friction ridges contain rows of sweat pores, and sweat mixed with other body oils and dirt produces finger prints on smooth surface. The visibility of set of prints depends on the surface from which they are lifted. That apart, finger print experts can disagree about how many points in common are needed to declare a match between two sets of finger prints. Some expert may declare a match on only 12 points in common, whereas other experts may require up to 20 points in common before declaring a match. However, we are of the view that even if finger print does not match we are unable to overlook the evidence already adduced by the prosecution in this case.

70. It is well settled law that even if the investigation is improper or defective the rest of the evidence must be scrutinized independently of the impact of it. Chain of circumstances proved on the record against the appellants as under:-

- (i) At the time of incident, appellant Prasanta Sahoo was residing with his wife, the deceased, in his house along with their daughter (PW-16).
- (ii) Appellant Prasanta Sahoo had close relation with other woman i.e. appellant Dipa Mallick.
- (iii) On the date of incident appellant Dipa Mallick was in the house of appellant Prasanta Sahoo in the second floor of the house while deceased Mita Kundu (wife of appellant Prasanta Sahoo) was teaching her daughter (PW-16) in the 1st floor.
- (iv) On hearing laughing sound deceased went to 2nd floor but she never came down. Though appellants came down. Appellant Dipa Mallick was catching hold of one hammer.
- (v) Immediately thereafter appellant Prasanta Sahoo took her daughter to music teacher on Saturday instead of Sunday scheduled for music class on the plea of work of appellant Prasanta Sahoo.
- (vi) Before the incident appellant Prasanta Sahoo was found pulling the hand of her wife (since deceased) in the balcony.

- (vii) Appellant Dipa Mallick used to visit house of Prasanta Sahoo and even both appellants took a rented accommodation elsewhere.
- (viii) Mita Kundu suffered homicidal death and cause of death was head injuries by hammer which was seized and blood was found present.
- (ix) In reply to the question No. 3 during examination under Section 313 Cr.P.C appellant Prasanta Sahoo stated that the incident took place about ten (10) years back and he did not recollect whether he had any conversation with PW-1. But, appellant Prasanta Sahoo did not deny.

71. The aforesaid chain of circumstances against the appellants is of conclusive nature. There is a complete chain of circumstances which show that in all human probabilities, the offence has been committed by the appellants. Therefore, having re-visited the entire evidence on record, we concur with the learned trial Court. Impugned judgement warrants no interference.

- 72.** For the reasons, as discussed above, both the appeals being nos. CRA 39 of 2019 and CRA 63 of 2019, stand dismissed.
- 73.** Pending application, if any, stands disposed of.
- 74.** Appellants, if on bail, shall surrender before the learned trial Court forthwith to serve sentence.
- 75.** Let a copy this judgment along with the Trial Courts record be sent back forthwith.
- 76.** All parties shall act on the server copies of this judgment duly downloaded from the official website of this Court.
- 77.** Urgent Photostat certified copy of this order, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

[BIBHAS RANJAN DE, J.]

- 78.** I Agree.

[DEBANGSU BASAK, J.]