

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Ajay Kumar Gupta

C.R.A. 524 of 2014

Mongal Sahani @ Mangala

-Vs-

The State of West Bengal

With

C.R.A. 456 of 2014

Pintu Das

-Vs-

The State of West Bengal

With

C.R.A. 459 of 2014

Ujjwal Tapadar

-Vs-

The State of West Bengal

For the Appellant :

Mr. Mainak Bakshi, Adv.
Mr. Sudip Ghosh Chowdhury, Adv.
... in CRA 524 of 2014

Mr. Saryati Dutta, Adv.
Mr. Sanjib Kumar Dan, Adv.
Mr. Chitrak Biswas, Adv.
... in CRA 456 of 2014

Ms. Ameena Kabir, Adv.
Mr. Syed Mohiuddin, Adv.
Mr. Syed Shahidul Arefin, Adv.
... in CRA 459 of 2014

For the State : Mr. Neguive Ahmed, Ld. APP
Ms. Amita Gaur, Adv.

Heard on : 19.09.2022, 26.09.2022,
16.11.2022 & 23.11.2022

Judgment on : 02.12.2022

Joymalya Bagchi, J. :-

1. Appeals are directed against the judgment and order dated 23.05.2014 and 26.05.2014 passed by learned Additional District & Sessions Judge, Bolpur, Birbhum in Sessions Trial No. 4(July)/2012 arising out of Sessions Case No. 92 of 2012 convicting the appellants for commission of offence punishable under Sections 394/302/411 of the Indian Penal Code and sentencing them to suffer rigorous imprisonment for seven years and pay a fine of Rs. 2,000/- each, in default, to rigorous imprisonment for six months each for the offence punishable under Section 394 of the Indian Penal Code, sentencing them to suffer imprisonment for life and pay a fine of Rs. 10,000/- each for the offence punishable under Section 302 of the Indian Penal Code. Convict Pintu Das is further sentenced to suffer imprisonment for two years for commission of offence punishable under Section 411 of the Indian Penal Code. All the sentences to run concurrently.

Prosecution case:-

2. Prosecution case against the appellants is to the effect that on 13.01.2012, Renu Sarkar, a septuagenarian came to her residence at Santiniketan to pay the dues of a mason, namely, Manu, and the monthly

remuneration to the caretaker of the said house, Ujjwal Tapadar. On 14.01.2012 at 7:30 a.m. Ujjwal informed Prabal Sarkar (P.W. 1), son of Renu Sarkar that her mother had died. Ujjwal had sent intimation to the police station at 7:00 a.m. to A.S.I. Amal Kumar Shyam regarding unnatural death of Renu Sarkar. He also lodged written complaint at Bolpur Police Station which was received by P.W. 22, Kamal Chandra Bairagya, Inspector-in-Charge of Bolpur Police Station resulting in Bolpur Police Station Case No. 24/2012 dated 14.01.2012. Investigation of the case was taken over by P.W. 31, S.I. Debasis Ghosh. P.W. 31 went to the spot and found the dead body of Renu Sarkar lying on the cot in her bedroom. Bedroom was situated on the first floor of the house. P.W. 31 also noted blood stains on the frame of the toilet door. In the presence of the son and daughter of the deceased, he prepared inquest report (Exhibit 1). Photographer, P.W. 11 was summoned to the spot. He took photographs. P.W. 31 noted the outer garden door was broken. Room had been ransacked. Mobile phone and other articles of the deceased were missing. He seized various articles from the room and dining room under seizure lists (Exhibit 4 and 5 respectively). Fingerprint expert came to the place of occurrence and developed ten numbers of chance fingerprints from the wooden frame attached to toilet, from the wooden latch used for shutting the door, from the left edge of verandah side door of first floor and from the outer frame of the door of the first floor. Lock and handle of the collapsible door of the house was found in broken condition. CID photographer took photograph of the fingerprints. Autopsy surgeon (P.W.

23) stated death was due to intra-cranial haemorrhage and fracture of nasal bone septal cartilage. On receipt of vicera report, the doctor further opined death was due to the aforesaid injuries which may be homicidal and ante mortem in nature. P.W. 31 recorded statement of tenants of Renu Sarkar and local people. On 15.01.2012, he sent requisition for Call Details Record, Consumer Application Form, tower location of five mobile phones – 8820074114 (stolen mobile), 8900659845 and 9635192841 (phones of Ujjwal Tapadar), 9831193153 (phone of Prabal Sarkar), 9830238807 (phone of Aditi Sarkar).

3. On the same day, he interrogated Ujjwal Tapadar and out of suspicion arrested him. His mobile phone was also seized. On 18.01.2012, he received CDRs and tower locations of the stolen mobile phone belonging to the deceased, i.e., 8820074114. He interrogated one Goutam Bagdi (P.W.16) son of Rabi Bagdi and one Prasadi Mehena @ Priyanka Mehena (P.W. 19). Upon interrogation, he came to know the whereabouts of Mongal Sahani. He arrested Mongal Sahani and seized his mobile phone. On the showing of Mongal Sahani, he seized an iron rod in the presence of witnesses. The seizure was photographed by Mumtaj Rahaman (P.W. 17). On 24.01.2012, on the showing of Mongal Sahani he recovered the mobile phone of the deceased with the SIM card under a seizure list. He arrested Pintu Das. He made prayer for taking fingerprints of Mongal Sahani and Pintu Das before the Magistrate. Pintu Das complained that he has been forced to touch a bottle while he was in police custody. On 24.01.2012, he made requisition for taking

fingerprints from the bottle. Pursuant to the requisition, fingerprint expert developed eight chance partial fingerprints from four bottles. On 31.01.2012, on the showing of Pintu Das, prescriptions and other personal articles of the deceased were recovered from the residence of his father-in-law, Lalan Bansfore. On receipt of letter from Director of Fingerprint Bureau, CID West Bengal (P.W. 30) further fingerprints were obtained from the accused person and sent for examination. In the meantime, he received reports with regard to CDRs, SDRs and CAFs of the seized mobile phones. He handed over investigation to one Biswajit Chowdhury (P.W. 28) who submitted charge-sheet.

Proceedings before the trial Court:-

4. In conclusion of investigation, charge-sheet was filed. Charges were framed under sections 394/302/411/34 of the Indian Penal Code. Appellants pleaded not guilty and claimed to be tried. Prosecution examined 31 witnesses and exhibited a number of documents.

5. In conclusion of trial, trial Judge by the impugned judgment and order dated 23.05.2014 and 26.05.2014 convicted and sentenced the appellants, as aforesaid.

Evidence on record:-

6. P.Ws. 1 and 2 are the son and daughter of the deceased.

7. P.W. 1, Prabal Sarkar deposed his mother had gone to Santiniketan on 13.01.2012 on the request of Ujjwal Tapadar to clear the dues of a mason and to pay his monthly remuneration. On the next day, i.e., on 14.01.2012, he received information that his mother has been

killed. He along with his sister Aditi Sarkar (P.W. 2) and others rushed to the spot. He found police was present in the house. He is signatory to the inquest report. P.W. 1 handed over receipt of the mobile phone of his mother to S.I. Debashis Ghosh (P.W. 31) in presence of A.S.I. Syed Jakir Ali (P.W. 24).

8. P.W. 2, Aditi Sarkar corroborated his brother Prabal Sarkar (P.W. 1). She deposed on 13.01.2012 at about 9:00 p.m. she had talked with her mother who informed her she had paid money to the mason. On the next day, Ujjwal informed her brother that dacoits killed her mother.

9. P.Ws. 3, 5 and 14 are the neighbours. They are the signatories to the seizure lists and inquest report prepared at the spot. P.Ws. 3 and 14 also deposed with regard to fingerprints taken at the place of occurrence in the evening.

10. P.Ws. 9 and 10 are tenants in the ground floor of the house of the deceased. They deposed in the morning of 14.01.2012 they heard the caretaker shouting at the top of his voice saying someone had killed Renu Sarkar and fled away.

11. P.W. 4, Samita Tapadar is the wife of Ujjwal Tapadar. She deposed around 2:00 a.m. in the night, her husband received a phone call. The caller abused her husband. Her husband did not disclose who had called him. On the next day, her husband found Renu Sarkar lying dead in a pool of blood in her room. They informed local people. After two days her husband was arrested.

12. P.W. 28, Biswajit Chowdhury collected the fingerprint report, chemical examination report of viscera and seized compact disc from P.W. 17, Mumtaj Rahaman. He obtained final opinion of autopsy surgeon and submitted charge-sheet.

13. P.Ws. 13 and 15 are official witnesses who were present at the time of recovery of iron rod on the showing of Mongal Sahani. They are signatories to the seizure list.

14. P.W. 17, Mumtaj Rahaman made a video recording of the recovery. He also signed on the seizure list. He produced the compact disc in Court.

15. P.W. 18, A.S.I. Amal Kumar Shyam received the initial intimation with regard to the death of a lady over telephone and diarised the intimation as GD Entry No. 256 dated 14.01.2012. He was present along with investigating officer, (P.W. 31) when on the showing of Mongal Sahani, mobile phone of the deceased was recovered from the residence of Pintu Das. He signed on the seizure list.

16. P.W. 26, S.I. Milan Kumar Ghatak was also present at the time of recovery of the aforesaid articles and signed on seizure list. The said police officer along with P.W. 21, Constable Md. Nuruddin Sk was present at the time of recovery of prescriptions and other personal articles of the deceased from the house of Lalan Bansfore, father-in-law of Pintu Das. They proved their signatures on the seizure list.

17. P.W. 19, Prasadi Mehena deposed she was acquainted with Mongal Sahani. She had received phone calls from Mongal Sahani on three occasions on 14.01.2012. Mongal Sahani asked her to meet him at

Tarapith on 15.01.2012. She stayed with Mongal in a hotel. One Achintya Pramanik was also present with Mongal.

18. P.W. 22, Kamal Chandra Bairagya was the inspector-in-charge of Bolpur Police Station. He received written complaint of Ujjwal Tapadar. He drew up the formal FIR. He also started Bolpur UD Case No. 5/12 dated 14.01.2012. He sent requisition to obtain call data records, tower locations of the mobile phones seized in the course of investigation.

19. P.W. 25, A.S.I. Narayan Chandra Nandi accompanied P.W. 31 at the spot. He was present at the time of inquest and seizure of various articles from the room and the dining room of the house.

20. P.W. 23, Dr. Netaipada Halder post mortem doctor held post mortem over the dead body of Renu Sarkar. Upon receipt of chemical examiner's report, he gave final opinion that death was due to intra cranial haemorrhage, which may be homicidal and ante mortem in nature.

21. P.W. 29, S.I. Ashim Chakraborty was posted as OC, DCRB and OC, SOG Birbhum. He received requisition from IC, Bolpur Police Station. Pursuant to the requisition, he collected information from the service provider and gave the information to IC, Bolpur Police Station. He proved the CDRs and SDRs received from the service provider (Exhibits 27, 27/1, 27/2, 27/3 and 27/4).

22. P.W. 30, Sankar Datta Roy is the Director, Fingerprint Bureau, CID, West Bengal. He deposed he gave two reports one on 06.03.2012 and another on 28.03.2012. In the first report, it is opined chance fingerprint

marked as 'P/1' is identical with the specimen – left middle fingerprint of Mongal Sahani marked as 'FP/1'. In the second report, he opined chance fingerprint marked as 'L' is identical with specimen – right index fingerprint of Pintu Das, marked as 'FP/2'. He proved the reports marked as Exhibits 28 and 29.

23. P.Ws. 31 and 28 are the investigating officers of the case.

Law relating to Circumstantial evidence:-

24. Analysis of the aforesaid evidence would show the case is based on circumstantial evidence. In a case involving circumstantial evidence the prosecution is required to meet the five golden principles laid down in

***Sharad Birdhichand Sarda vs. State of Maharashtra*¹:-**

“153. ... (1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned “must or should” and not “may be” established.

(2) the facts so established should be consistent 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,

(3) the circumstances should be of a conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so 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.”

25. Let me examine whether the prosecution has been able to discharge the aforesaid burden.

¹ (1984) 4 SCC 116

Case against Mongal Sahani:- whether proved:

26. With regard to appellant Mongal Sahani, the prosecution has relied on the following circumstances:-

- i) Deceased suffered homicidal death due to intra cranial haemorrhage;*
- ii) Fingerprint of Mongal Sahani was found on a green coloured bottle labelled 'Madera' which was recovered from the room of the deceased;*
- iii) He made a phone call from the mobile phone of the deceased bearing SIM card no. 8820074114;*
- iv) On 14.01.2012 Mongal Sahani made phone calls using SIM card of the deceased, i.e. 8820074114 to make phone calls to Prasadi Mehena @ Priyanka Mehena (P.W. 19) at 9:2:54, 11:12:3 and 18:57:42 hours.*

27. It is argued the fingerprint expert who collected the fingerprints had not been examined and presence of Mongal Sahani at the place of occurrence cannot be established on this score alone. P.W. 31 deposed fingerprints have been collected from the various parts of the room as well as from the bottles which were found inside the room. P.W. 30, Director, Fingerprint Bureau, CID, West Bengal did not express reservation with regard to the chance fingerprints which were found on green 'Madera' bottle ('P/1') that matched with the specimen fingerprint of Mongal Sahani. Unlike Pintu Das, Mongal Sahani had not raised objection at the earliest opportunity before the Magistrate when specimen fingerprints

were collected that he had been made to touch the bottles. Belatedly, he raised a desperate plea that he had been taken to the place of occurrence and had been forced to touch various articles including fridge, liquor bottle and dansa. Evidence of the investigating officer and the Director, Fingerprint Bureau (P.W. 30) establish beyond doubt the fingerprints of Mongal Sahani on the liquor bottle found in the room of the deceased. In addition to the aforesaid circumstance Mongal Sahani made phone calls from the SIM card of the deceased to Ujjwal Tapadar as well as to others including Prasadi Mehena (P.W. 19) immediately after the incident. This corroborates the fact that Mongal Sahani was present in the room immediately after the incident. This fact is proved through the relevant entries in the CDRs of No. 8820074114 being Exhibit 27. On the showing of Mongal Sahani the stolen mobile phone with the SIM card were also recovered. These circumstances in addition to the fingerprint found on the bottle recovered from the room of the deceased leave no doubt in one's mind that Mongal Sahani was present in the room when the victim lady suffered homicidal death. He has not offered any contrary explanation with regard to the cause of death. Hence, the prosecution case against Mongal Sahani is proved beyond doubt.

Case against Pintu Das:- whether proved:

28. With regard to Pintu Das, prosecution has relied on the following circumstances:-

- i) *His fingerprint matches with chance fingerprint 'L' found on a Kinley club soda bottle;*

ii) *Mobile phone and SIM card of deceased were recovered on the showing of Mongal Sahani from his residence;*

iii) *Medical prescriptions, cash memo and medical card of the deceased were recovered on the showing of Pintu Das from the residence of his father-in-law, Lalan Bansfore.*

29. It is contended on behalf of Pintu Das, the most vital evidence, that is, fingerprint matching with the specimen fingerprint of his client with the one on Kinley bottle is extremely suspicious. On 25.01.2012 when prayer was made for collecting specimen fingerprint of Pintu Das, he informed the Magistrate that he had been forced to touch a bottle by the police. This fact has not been countered by the prosecution. In his examination under section 313 Cr.P.C. Pintu Das again reiterated such objection.

30. Upon consideration of the evidence on record, I am inclined to accept the defence objection. Pintu Das had raised objection with regard to taking of his specimen fingerprint before the Magistrate at the earliest opportunity and stated that he had been made to touch a glass bottle. Not only is his objection raised at the first opportunity but the article which he had been made to touch, i.e., bottle corresponding to the article on which his fingerprint is found raises suspicion. Hence, the aforesaid circumstance appears to be a manufactured one and I am not inclined to rely on it. The other circumstances against Pintu Das i.e. recovery of the mobile phone and other articles of the deceased even if believed to be true, do not establish his presence at the place of occurrence. Hence, the

circumstances relied on and proved by the prosecution cannot unerringly establish the presence of Pintu Das at the place of occurrence and he is entitled to the benefit of doubt.

Case against Ujjwal Tapadar:- whether proved:

31. With regard to Ujjwal Tapadar, prosecution has relied on the following circumstances:-

- i) Ujjwal Tapadar was the caretaker of the house. He had requested deceased Renu Sarkar to come to Santiniketan to pay the dues of the mason and his monthly remuneration;*
- ii) He suppressed a phone call received from Mongal Sahani from the mobile phone of the deceased on 14.01.2012 at 2.14 AM. He also deleted the said number from the call list of his mobile phone.*

32. Learned Additional Public Prosecutor strongly relies on the circumstances to show that Ujjwal Tapadar was hand in glove with Mongal Sahani to commit the murder. Though the circumstances may give rise to grave suspicion against Ujjwal Tapadar, it is doubtful whether they unerringly point to his guilt and cannot yield to any alternate hypothesis. There is no evidence that he had met or was seen with Mongal Sahani before the incident. He was a caretaker of the building. It is possible in ordinary course of event he may have requested the landlady to come to Santiniketan to pay the dues of the mason. In fact, the dues of the mason were cleared in the evening itself. During his examination under section 313 Cr.P.C. Ujjwal Tapadar explained he had been threatened with death by the caller which prompted him to keep

mum. This explanation is plausible. Out of fear Ujjwal Tapadar kept silent about the phone call made to him at around 2.00 am on the fateful night and deleted the number. Whether he had acted out of panic or to protect his accomplice is not clear. Hence, I am inclined to give the benefit of doubt to him.

Conclusion:-

33. In the light of the aforesaid discussion, I am of the opinion prosecution has been able to prove the presence of Mongal Sahani in the room on the night when the deceased was murdered. Soon after the incident, Mongal Sahani used the mobile phone of the deceased to make phone calls to various persons. On his showing, mobile phone was recovered from Pintu Das. Though Pintu Das may be found guilty of the offence of receiving stolen property but since his fingerprint on the Kinley bottle appears to have been subsequently manufactured, we are not inclined to hold him guilty of theft or murder. Similarly, circumstances against Ujjwal Tapadar though giving rise to grave suspicion would not transcend to the level of proof.

34. Accordingly, I convict Mongal Sahani under sections 394/302 IPC and Pintu Das under section 411 IPC.

35. Appellant Ujjwal Tapadar is acquitted of all the charges framed against him. He shall be discharged from his bail bonds after six months in terms of section 437A Cr.P.C.

36. Pintu Das has already suffered the sentence imposed upon him for the offence punishable under section 411 IPC. Accordingly, he shall

also be discharged from his bail bonds after six months in terms of section 437A Cr.P.C.

37. Sentence imposed on Mongal Sahani under sections 394/302 IPC is upheld and sentence imposed on Pintu Das under section 411 IPC is also upheld.

38. Period of detention suffered by the appellant, Mongal Sahani, during investigation, enquiry or trial shall be set off under Section 428 of the Code of Criminal Procedure.

39. Appeals are, accordingly, partly allowed.

40. Let a copy of this judgment along with the lower court records be forthwith sent down to the trial Court at once.

41. Photostat certified copy of this judgment, if applied for, shall be made available to the appellant upon completion of all formalities.

I agree.

(Ajay Kumar Gupta, J.)

(Joymalya Bagchi, J.)