

**IN THE HIGH COURT AT CALCUTTA**  
**Criminal Miscellaneous Jurisdiction**  
**Appellate Side**

Present:

**The Hon'ble Justice Debangsu Basak**

And

**The Hon'ble Justice Md. Shabbar Rashidi**

**CRR 259 of 2023**

**with**

**CRA 56 of 2021**

**Asraf Ansari**

**Vs.**

**The State of West Bengal**

For the Appellant : Mr. Satadru Lahiri, Adv.  
Mr. Sourav Paul, Adv.

For the State : Mr. Saibal Bapuli, Adv.  
Mr. Bibaswan Bhattacharya, Adv.

Hearing Concluded on : March 1, 2023  
Judgement on : March 28, 2023

**DEBANGSU BASAK, J.:-**

**1.** Appellant has preferred the present appeal against the Judgement of conviction dated December 21, 2019 and the order of sentence dated December 23, 2019 passed by the Additional Sessions Judge, 1<sup>st</sup> Court, Durgapur, in Sessions Trial No. 78 of 2013 arising out of Sessions Case No. 251 of 2013.

**2.** The case of the prosecution at the trial had been that, Nafisa Khatun was coming from school along with her daughter when, the appellant, suddenly attacked her, randomly stabbed her with a sharp weapon on the Najirabad Main Road in front of the house of Ajij Miya. Police had received a written complaint with regard to the murder from Prosecution Witness (PW) 1 on September 4, 2013 which was registered as a First Information Report being Andal Police Station F.I.R No. 347 dated September 4, 2013 under Section 302 of the Indian Penal Code, 1860.

**3.** Police conducted an investigation with regard to the such written complaint and on conclusion of the investigation, police had submitted a charge sheet against the appellant. The Court had framed a charge under Section 302 of the Indian Penal Code, 1860 against the appellant on December 11, 2013. The appellant had pleaded not guilty and claime to be tried.

**4.** At the trial, prosecution had examined 20 witnesses and relied upon various documentary and material evidences. On conclusion of the evidences of the prosecution, the appellant had been examined under Section 313 of the

Criminal Procedure Code where, he claimed to be innocent and falsely implicated.

**5.** By the impugned Judgement of conviction dated December 21, 2019, the appellant has been convicted under Section 302 of the Indian Penal Code, 1860. By the impugned order of sentence, the learned Trial Judge has awarded a sentence of imprisonment for life and to pay a fine of Rs. 10,000 and in default to suffer imprisonment for one more year.

**6.** Learned advocate appearing for the appellant has submitted that, the prosecution did not examine any eye witnesses to the incident. The prosecution had relied upon circumstantial evidence to prove the charge. According to him, the prosecution had failed to complete the chain of circumstances so as to point to the guilt of the appellant unquestionably.

**7.** Learned advocate appearing for the appellant has submitted that, no reliance should be placed on the inquest report as the same was initiated and conducted after the registration of the First Information Report. He has contended that, the Unnatural Death case No. 62 of 2013 had been registered after the registration of the First Information

Report. He has submitted that, the First Information Report was registered at 12:35 hours on September 4, 2013 while the unnatural death was registered at 12:35 hours and the enquiry commenced at 13:15 hours and closed at 14:05 hours. The Magisterial enquiry had been conducted between 13:25 to 16:30 hours.

**8.** Learned advocate appearing for the appellant has submitted that, the prosecution withheld best evidence of the circumstances without any explanation. The minor daughter of the deceased who was accompanying the deceased has not been examined. Two maternal uncles of the deceased who were present during the Magisterial enquiry had not been examined. The owner of the house in front of whom, the incident had occurred was not examined. A local resident from whom most of the witnesses and other relatives came to know about the incident was not examined during trial although examined during investigation. Nobody from the locality had been examined excepting PW 5 who had turned hostile.

**9.** Learned advocate appearing for the appellant has submitted that, PWs 1, 2 and 4 are hearsay witnesses. Therefore, withholding of the best evidences assumes significance in the facts and circumstances of the present

case. The incident had occurred at 10 A.M in the morning in a locality. Therefore, absence of eye witnesses is something which the Court should take adversely as against the prosecution. He has relied upon Section 114 of the Indian Evidence Act, 1872 and **2022 Volume 6 Supreme Cases 576 (Gadadhar Chandra vs. State of West Bengal), 1971 Volume 2 Supreme Court Cases 42 (State of Uttar Pradesh and Another vs. Jaggo @ Jagdish and Others), 2003 Volume 11 Supreme Court Cases 241 (Pawan Kumar vs. State of Haryana) in support of his contention.**

**10.** Learned advocate appearing for the appellant has submitted that, PWs 5 and 7 should not have been declared as hostile witnesses. He has contended that, through PWs 5 and 7, the prosecution intended to introduce inadmissible evidence to manipulate the version of the witnesses and to leave missing link to the circumstances which the prosecution intended but failed to establish.

**11.** Learned advocate appearing for the appellant has submitted that, there is no tangible and legally acceptable evidence to connect the appellant with the alleged recovery of the incriminating materials. He has pointed out that, there were infirmities in the alleged recovery. The appellant did not

record any statement leading to the recovery of the knife allegedly used in the offence. The knife was allegedly recovered from a pond which was accessible to all and sundry. The alleged recovery was made pursuant to the direction of a Police Officer who brought the appellant to the bank of the pond. There is no unique identification mark which distinguishes the knife allegedly recovered, with similar or alike articles. Prosecution did not endeavour to collect finger prints or any biological sample of the appellant with regard to the knife or the incident of murder. He has relied upon **2023 SCC Online SC 50 (Boby vs. State of Kerala), 2005 Volume 9 Supreme Court Cases 235 (State of Andhra Pradesh vs. Patnam Anandam).**

**12.** Learned advocate appearing for the appellant has contended that, there were no scientific evidence connecting the appellant with the crime. He has relied upon **2016 Volume 15 Supreme Court Cases 485 (Shamsher Singh Verma Vs. State of Haryana), 2019 Volume 4 Supreme Court Cases 522 (Digambar Vaishnav & Anr. Vs. Stae of Chattisgarh), 2003 Volume 8 Supreme Court Cases 180 (State of Rajasthan vs. Raja Ram).**

**13.** Learned advocate appearing for the appellant has taken us through the deposition of the prosecution witnesses. He has submitted that, most of the prosecution witnesses were deposing on the basis of hearsay evidence. He has relied upon **1997 Volume 6 Supreme Court Cases 171 (Vijender Vs. State of Delhi)** and **Patnam Anandam (supra)**.

**14.** Learned advocate appearing for the appellant has contended that, the Court did not put the allegedly incriminating material as against the appellant in his examination under Section 313 of the Criminal Procedure Code. According to him, the appellant has suffered prejudice. He has relied upon **2013 Volume 12 Supreme Court Cases 406 (Sujit Biswas vs. State of Assam)** in this regard.

**15.** Learned advocate appearing for the appellant has submitted that the prosecution had failed to establish links between the scattered circumstances and relied upon inadmissible materials. He has contended that, the prosecution proceeded in a surreptitious manner to obtain an order of conviction of the appellant. He has relied upon **2008 Volume 13 Supreme Court Cases 266 (Kailash Potlia Vs. State of Andhra Pradesh)**, **2012 Volume 7 Supreme Court Cases 45 (Brijesh mavi Vs. NCT of Delhi)**.

**16.** Learned advocate appearing for the appellant has submitted that, in the facts and circumstances of the present case, the appellant should be acquitted.

**17.** Learned advocate appearing for the State has submitted that, the prosecution was able to prove the charge against the appellant beyond reasonable doubt. Although, no eye witnesses was produced, the deposition of various prosecution witnesses proved the charge against the appellant. He has submitted that, the victim was subjected to torture and atrocities by the appellant during the stay of the victim with the appellant at Mumbai. The appellant had two prior wives and that the victim was unable to cope with the same. On learning about the same she had returned to her paternal home. Even in her paternal home, the appellant used to come and have frequent disputes with the victim. The victim had been persistently threatened with murder by the appellant in the event of her refusal to transfer all her landed properties in favour of the appellant. In such circumstances, the victim had been compelled to give Talak to the appellant.

**18.** Learned advocate appearing for the State has submitted that, sometime prior to the incident, there were another heated episode between the victim and the appellant.

Soon thereafter, the appellant had brutally murdered the victim in cold-blood and tried to dispose of the offending weapon in a pond which was witnessed by PW 5 and subsequently recovered by PW 6. PW 9 had confirmed that the weapon so recovered could have been used to inflict the injuries as found on the dead body of the victim.

**19.** The father of the victim had deposed as PW 1. He had identified the appellant in Court. Yet stated that, the victim was his daughter. He had stated that, the appellant had stabbed the victim on the road at Asgar Pally, Nazirabad. The appellant was his son-in-law and the husband of the victim. The incident had happened on September 4, 2013 at about 10:15 hours to 10:30 hours in the daytime.

**20.** PW 1 had stated that, the victim was married to the appellant about 4/5 years back. Since after marriage, the appellant had taken the victim to Mumbai. The appellant was a contractor for construction. Beside his daughter, the appellant had 2 other wives. Appellant used to reside with another wife at Mumbai while the victim went there. The victim had been physically assaulted by the appellant as well as by his earlier wife. The victim had no knowledge that the appellant had two wives.

**21.** PW 1 had stated that, due to the immense torture upon the victim by the appellant and his other wife, the victim had come back to her paternal home. After returning from Mumbai, within 4 months, the victim had given birth to a baby. He had made arrangement for the residence of the victim upon a land by making a construction thereon. He had stated that, at present the daughter of the victim is aged about 4 years and that she was a student of play school.

**22.** PW 1 had stated that as and when the appellant returned from Mumbai, he used to torture the victim and demanded cash and other belongings. The victim had informed the police and the local panchayat about the incident of torture meted out by the appellant.

**23.** PW 1 had stated that, at the time of the incident of stabbing, he was at a shop. On receiving the information he had rushed to the spot. Reaching the place of occurrence, he had found that the victim was lying on the road and people assembled there speaking that, the appellant had stabbed the victim and fled away. Appellant had stabbed the victim on her back, chest and also other parts of her body. When he had reached the place of occurrence, the victim was already dead.

He had found his wife to be at the place of occurrence and to be weeping.

**24.** After seeing the dead body of his daughter, PW 1 had gone to the police station to lodge the complaint. He had stated that the complaint was drafted as per his instruction by PW 3. He had identified his left thumb impression on the written complaint.

**25.** PW 1 had stated that on the date of the incident, the victim came out of her room at about 9:30 AM to 10 AM to pick her daughter from the school and thereafter to proceed to the computer centre for the daughter. After informing the police station, he had returned to the place of occurrence again at about 1230 noon. Police had conducted the inquest over the dead body of the victim at the place of occurrence. He had witnessed the inquest. He had put his left thumb impression on the inquest report. He had returned to the police station while the dead body was taken to the police station. A magisterial inquest had been done at the police station in his presence wherein, he had put his left thumb impression as a witness. The police had interrogated him in course of the investigation.

**26.** The mother of the victim had deposed as PW 2. She had stated that the appellant murdered the victim. She had identified the appellant in Court. She had stated that the appellant abducted the victim by making influence upon her and took her to Mumbai prior to her marriage. At that time, the appellant had other wives. The victim had remained in Mumbai and thereafter subsequent to a quarrel returned to her paternal house and started residing there. 4 months thereafter, the victim had given birth to a baby. Thereafter, she had purchased the land near her paternal house constructed a room and shifted there. The victim used to stay at her house during the night and at her paternal house during the day.

**27.** PW-2 had stated that while the appellant visited the paternal house of the victim from Mumbai he used to pick up a quarrel with the victim on issue of delivering the landed property in his favour. At that time, the victim had given the appellant Khula Talak.

**28.** PW-2 had stated that on September 4, 2013, at 8 AM in the morning, the victim came out of her house accompanied with her daughter to send the daughter to school. Subsequent to the victim returning to her house, appellant had tried to

gain entry into her room. The victim had closed the door from inside and did not allow the appellant to enter. A few minutes thereafter, the victim had come out from her house and proceeded to the house of PW-2 for bathing and cleaning her wearing apparels. At that time, the appellant had also come to their house when she had tried to make the appellant understand that the appellant should not put pressure upon the victim.

**29.** PW-2 had stated that on September 4, 2013 at about 10 am the victim had gone out of the paternal house to bring her daughter from school. Thereafter some people from the locality rushed to her house by shouting that the appellant had murdered the victim. Thereafter, she had rushed to the place of occurrence which was 5 minutes away from the main road. She had noticed her daughter lying having 9/10 marks of stab injury on her body. She had also noticed a tip of the knife plotted with blood. She had identified the photographs. She had stated that, the females of the locality disclosed to her that the appellant had committed the murder. Police had arrived at the spot 10/15 minutes after her arrival. Police had interrogated her over the incident on two occasions. She had identified the tip of the knife which was found where the dead

body of the victim was lying. Such tip of the knife had been marked as Material Exhibit I. She had identified the wearing apparels of the victim in Court and the same was tendered in evidence and marked as Material Exhibit II. She had stated that, during her stay at Mumbai, the victim was not properly treated by the appellant and was subjected to cruelty and for that reason, the victim had returned to Andal.

**30.** The scribe of the written complaint had deposed as PW 3. He had stated that, he wrote the complaint as per the instruction of PW 1. He had identified his handwriting and his signature on the written complaint. He had stated that he read over the contents of the complaint to the de facto complainant and thereafter PW 1 being satisfied with the contents of the written complaint, put his left thumb impression thereon. The written complaint had been identified and tendered in evidence and marked as Exhibit 1.

**31.** The brother of the victim had deposed as PW 4. He had stated that, the appellant was the husband of the victim. The appellant had murdered the victim on September 4, 2013 at about 10:10 hours. On the day of the incident at about 8 AM, appellant had been to the house of the victim and told her that the appellant wished to stay with her. The victim had

disclosed to him that Khula Talak had been given and she did not allow the appellant to enter. Then the appellant had threatened to kill her. Thereafter, the victim had to come to the house of her father. The appellant had also come to such house when PW 2 had rebuked him when the appellant finally left.

**32.** PW 4 had stated that, at about 9:30 AM, the victim came out to bring her daughter from school. The appellant had followed her. All of a sudden, he had received news that the appellant killed the victim. Having heard such hue and cry, he had rushed to the place of occurrence and found the victim lying bearing stab injuries from where blood was coming out. Local persons had said that the appellant stabbed the victim. The appellant was not present there. Local persons had said that after stabbing the victim, appellant threw the knife at the pond and fled away. PW 2 had also rushed to the place of occurrence. Thereafter, he had returned to his home accompanied with his mother who was weeping.

**33.** PW 4 had stated that the appellant took the victim to Mumbai where the appellant had 2 other wives. The victim had been subjected to cruelty by the appellant. The victim had given birth to a child while the victim was at their house. He

had stated that the police examined him. He had identified the appellant in Court.

**34.** A resident of the area had deposed as PW 5. He had stated that, he was angling at the local pond on September 4, 2013 at about 10 AM. Many others had been angling thereat. All of a sudden, someone threw some article in the pond and disturbed him in catching fish. On his turning, he had noticed the appellant was there and he enquired of the appellant as to why the appellant had disturbed in his catching fish. He had identified the appellant in Court. He had stated that, he did not hear any sound thereafter. He had noticed that so many persons had assembled in front of the place of occurrence. He had seen the victim lying dead at the place of occurrence. Police had carried the dead body from the place of occurrence. Police had thereafter recovered the knife from the pond. After recovery of the knife, police had prepared a label where he had put his signature. He had identified his signature and the Material Exhibit. He had signed the seizure list dated September 4, 2013. He had identified his signature thereon. He had recorded a statement before the learned Magistrate, under Section 164 of the Criminal Procedure Code which was tendered in evidence and marked as Exhibit 6 series.

**35.** Prosecution had declared PW 5 hostile and, on such declaration, he was cross-examined by the prosecution. He had denied the suggestions put to him in cross-examination by the prosecution.

**36.** Another resident of the locality had deposed as PW 6. He had recovered the knife from the pond. He identified the knife he got out from the pond. He had stated that he put his left thumb impression on the label of the knife as also on the seizure list.

**37.** A resident of the locality who knew both the victim and the appellant had deposed as PW 7. He had stated that, the victim was murdered and that he heard about the incident and hearing the same, he had rushed to the place of occurrence where he found the dead body of the victim. He had signed the seizure list of the articles the police seized from the place of occurrence. He had stated that, he had signed the label and the seizure list in respect of the knife. He had witnessed the inquest of the dead body of the victim. He had identified the appellant in Court. He had tendered his statement recorded under Section 164 of the Criminal Procedure Code before the magistrate. He had been declared hostile by the prosecution. He had denied the suggestions put

by the prosecution on his cross examination after he was declared hostile.

**38.** An uncle of the victim had deposed as PW 8. He had stated that, on receiving the news about the incident, he had rushed to the place of occurrence and found the victim lying dead. He had stated that the victim had stab injuries on her body. Surrounding the dead body were articles like umbrella, vanity bag undergarments of the victim and the broken portion of a knife. He had witnessed the inquest. He had tendered his signature on the inquest report which was marked as Exhibit 8/1. He had stated that, the appellant married the victim and went to Mumbai. 2 months thereafter, the victim had learnt that the appellant had another wife. She had come back to her paternal home. Appellant had also returned and started to put pressure upon the victim to execute a deed of property in his favour. The victim did not agree. The victim had given Khula Talak to the appellant. On the date of the occurrence, the victim was proceeding to the school of her daughter and back and on the way, appellant had intercepted her and struck her with a knife and killed her. He had identified the appellant in Court. He had stated that magisterial inquest was done over the dead body of the victim

at the police station in his presence and he had signed the inquest report. His signature on the Magisterial inquest report had been marked as Exhibit 10.

**39.** The doctor who had performed the post-mortem on the dead body of the victim deposed as PW 9. He had stated that, the dead body of the victim was identified by a police constable. He had found many stab injuries on the body of the victim. He had mentioned the injuries he found on the dead body of the victim, in his post-mortem report as well as additional papers which also formed part of the report. He had opined that the cause of death was due to shock haemorrhage with stab injury to heart and lung which is homicidal in nature and corroborate with the inquest report. He had tendered the post-mortem report in evidence which was marked as Exhibit 11. On being shown the knife which was marked as Material Exhibit II, he had stated that, the types of injuries mentioned in the post-mortem report may be caused by the use of such a knife.

**40.** A sub- inspector of police had deposed as PW 10. He had received the written complaint from PW 1. On the basis of such written complaint, he had started the police case by registering a First Information Report. He had entrusted the

case to the Investigating Officer for investigation. The formal First Information Report had been tendered in evidence and marked as Exhibit 12.

**41.** Another police personnel had deposed as PW 11. He had stated that, he was issued a body Challan. He had taken the dead body to the police station for inquest. On September 5, 2013, he had accompanied the dead body to the subdivisional hospital for post-mortem examination. After the post-mortem was over, the post-mortem doctor had handed over the wearing apparels of the victim to him which he had seized along with other articles. He had tendered the seizure list dated September 5, 2013 which was marked as Exhibit 14.

**42.** The police constable who had seen PW 11 deposit the seized articles at the police station had deposed as PW 12. He had identified his signature on the seizure list dated September 5, 2013 which was marked as Exhibit 14/1.

**43.** The owner of the business concern where, the victim used to take computer lessons had deposed as PW 13. He had stated that, he had come to the place of occurrence after learning about the murder. He did not know how the victim was murdered. A police officer had examined him and

recorded his statement. He had been declared hostile by the prosecution. On him being declared as hostile, the prosecution had cross-examined him. He had denied the suggestions put to him in cross-examination by the prosecution.

**44.** An assistant sub- inspector of police had deposed as PW 14. He had stated that on September 4, 2013 the appellant was wearing a white shirt and trouser and that, there was blood stain on the sleeves of his white shirt. Police had seized the bloodstained white shirt of the appellant by preparing a seizure list in his presence. He had identified his signature on the label as also on the seizure list. The seized white shirt had been marked as Material Exhibit III. The seizure list had been marked as Exhibit 16. Police had recorded his statement under Section 161 of the Criminal Procedure Code.

**45.** A person known to the appellant had deposed as PW 15. He had stated that, he heard that the appellant used to stay at Mumbai. He did not know whether the appellant had married any woman in Mumbai or not. He did not know how the victim had died. He had been declared hostile by the prosecution and on cross-examination, by the prosecution, he

had denied the suggestions put by the prosecution. He had identified the appellant in Court. He had stated that he had good relation with the appellant as a customer.

**46.** A Home Guard had deposed as PW 16. He had stated that, PW 20 had brought the appellant to the police station on September 4, 2013 at night. He had seen the appellant to be wearing a white shirt on his person with blood stains. PW 20 had seized the bloodstained white shirt which the appellant was wearing. He had signed the seizure list. He had identified his signature on the seizure list dated September 4, 2013 as well as the white shirt of the appellant which was marked as Material Exhibit VII. He had failed to identify the appellant in Court.

**47.** Another local resident had deposed as PW 17. She had been declared hostile by the prosecution. She had denied the suggestions put to her in cross-examination by the prosecution.

**48.** The Judicial Magistrate before whom one of the prosecution witnesses had recorded a statement under Section 164 of the Criminal Procedure Code deposed as PW 17 A. He had identified his signature in the statement of PW 1. The statement of PW 1 recorded under Section 164 of the

Criminal Procedure Code had been tendered in evidence and marked as Exhibit 20.

**49.** The judicial Magistrate before whom, the prosecution witnesses had recorded their statements under Section 164 of the Criminal Procedure Code deposed as PW 18. He had identified his signatures on such statements.

**50.** The executive magistrate who had performed the inquest over the dead body of the victim had deposed as PW 19. He had identified his signature on the inquest report. He had described the injuries he had found on the dead body of the victim. He had stated that, he recorded the injuries he found on the dead body of the victim during the magisterial enquiry.

**51.** The Investigating Officer had deposed as PW 20. He had described the manner of his investigations. He had stated that, he had taken snaps of the dead body of the victim. The photographs had been developed at a local studio. He had tendered 10 photographs which were marked as Material Exhibit VIII collectively. He had prepared the rough sketch map of the place of occurrence with index which was tendered in evidence and marked as Exhibit 21. He had stated that, he found various articles at the place of occurrence which he

seized. He had seized the front part of an iron made sharp cutting weapon measuring about 2  $\frac{3}{4}$  inches in length stained with blood. He had identified the front part of the iron made sharp cutting weapon seized by him in Court. He had stated that, he examined available witnesses at the place of occurrence. On interrogation of the witnesses, he had come to learn that the appellant had fled away from the place of occurrence after throwing something in the nearby pond which was seen by PW 5. He had asked the witnesses to search for such thing which the appellant had thrown into the pond. PW 5, 6, 7 and others had got down into the pond and searched for the article thrown by the appellant. PW 6 had recovered the knife from the pond. He had stated that, the knife so recovered had the front portion broken with the handle of it coloured on one side with red and the other side with green. He had identified such knife which he had seized in Court.

**52.** PW 20 had received source information that the appellant was moving towards the railway station from his house. He had rushed and apprehended the appellant. He had interrogated him and thereafter arrested him and took him to the police station. PW 14 was the duty officer of the police

station at that time and he had detected blood stain on the full sleeve shirt of the appellant and also on the front side middle portion of the shirt. He had seized the shirt at the police station by preparing a seizure list. He had searched the body of the appellant when he found that there were cut marks near the index finger of each hand of the appellant. He had stated that after seizure of the shirt he had sent the same to the forensic science laboratory for expert opinion. The label had been marked as Exhibit 21. He had contradicted the suggestions put to the hostile prosecution witnesses on them being declared as hostile. He had tendered the forensic science laboratory reports which were marked as Exhibit 20, 20/1 and 20/2. He had been cross-examined at great length on behalf of the defence. However, the defence could not elicit anything favourable from such cross-examination.

**53.** On conclusion of the evidence of the prosecution, the appellant had been examined under Section 313 of the Criminal Procedure Code where he claimed to be falsely implicated and being innocent. He had declined to adduce any defence witness.

**54.** Police had recovered the dead body of the victim on September 4, 2013. An inquest over the dead body of the

victim had been held in the compound of the police station on September 4, 2013. The inquest report had been tendered in evidence and marked as Exhibit 19. The inquest report being Exhibit 19 had noted 7 cut marks on the upper portion of the dead body of the victim. Police had sent the dead body of the victim for post-mortem at the subdivisional hospital.

**55.** PW 9 had held the post-mortem over the dead body of the victim. He had found 9 injuries on the dead body of the victim. He had detected injury on the left lung and stab injury over left ventricle. He had opined that the cause of death was due to shock haemorrhage from stab injuries ante mortem. post-mortem report had been marked as Exhibit 11.

**56.** The deposition of PW 9 read with Exhibit 11 and the inquest report being Exhibit 19 have established that the victim was murdered on September 4, 2013.

**57.** Prosecution did not produce any eyewitness to the incident at the trial. Prosecution had relied upon circumstantial evidence to prove the charge of murder of the victim as against the appellant.

**58.** *Gadadhar Chandra (supra)* is a case where the accused had been convicted with the aid of Section 34 of the Indian Penal Code, 1860. It has held that, in the facts of that

case, the prosecution had failed to prove the ingredients of Section 34 of the Indian Penal Code, 1860. It has also held that, confessional statement made by a co accused juvenile who was tried separately cannot be used to convict the accused.

**59. *Jaggo alias Jagdish and others (supra)*** has observed that, it was the duty of the prosecution to examine necessary witnesses. In the facts of that case, the Court had found conflict between eyewitness account and medical evidence. Both the doctors who had been examined at the trial said that the deceased did not bear any stab wound on his person.

**60. *Pawan Kumar (supra)*** is a case where the prosecution did not examine competent witness to prove the circumstances. One person had been found dead in a hotel room. 2 persons who had accompanied such dead person to the hotel were seen leaving the hotel after asking the waiter to take care of the deceased. Prosecution had failed to examine such waiter. In such circumstances, the case of the prosecution had been held not to be proved beyond reasonable doubt.

**61.** In the facts of the case relating to ***Boby (supra)*** the ***Court had found that the prosecution failed to prove the*** circumstances establishing the guilt of the accused.

**62.** ***Patnam Anandam (supra)*** has on appraisal of the evidence proved by the prosecution at the trial, found that there was no eyewitness to support the case of the prosecution which rested purely on circumstantial evidence and that, the prosecution had failed to prove all the circumstances leading to the guilt of the accused.

**63.** ***Shamsher Singh (supra)*** has considered an application of the accused for getting a compact disc marked as an exhibit at the trial. It has held that, compact disc is also a document within the meaning of Section 3 of the Evidence Act, 1872.

**64.** In ***Digamber Vaishnav and another (supra)*** the Court found the testimony of the child witness to be fraught with inconsistencies. No other witnesses had identified the appellants at the trial. There had been unexplained delay in reporting the crime and that, the complaint was registered against unknown persons.

**65.** ***Raja Ram (supra)*** has observed that conviction solely on the basis of circumstantial evidence is permissible. It has

observed that, inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other person. The circumstances have to be proved beyond reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances.

**66. *Vijendra (supra)*** has observed that, when the dead body had been already discovered, statement of the accused as to where they threw the dead body was not admissible in evidence. In the facts of that case, father of the victim stated that the witness had given him the number of the vehicle in which his son was kidnapped and the names of the kidnappers. Such witness however did not state in his evidence that he had seen the accused kidnapping the boy nor giving the number of the vehicle in which he was kidnapped. It has also observed that, in a case where the prosecution seeks to establish the charges on the basis of circumstantial evidence, motive to commit the crime is of no moment in absence of other incriminating circumstances.

**67. *Sujit Biswas (supra)*** has observed that, there was distinction between proof beyond reasonable doubt and

suspicion. It has observed that, reasonable doubt is not an imaginary, trivial or a merely probable doubt, but a fair doubt that is based upon reason and common sense. It has reiterated that, “in case of circumstantial evidence, the judgement remains essentially inferential. Inferences are drawn from established facts, as the circumstances lead to particular inferences. The Court must draw an inference with respect to whether the chain of circumstances is complete, and when the circumstances therein are collectively considered, the same must lead only to the irresistible conclusion, that the accused alone is the perpetrator of the crime in question. All the circumstances so established must be of a conclusive nature, and consistent only with the hypothesis of the guilt of the accused”.

**68.** In the facts and circumstances prevailing in ***Kailash Potlia (supra)*** it has been held that, evidence regarding extrajudicial confession and recoveries made in pursuance of statement under Section 27 of the Evidence Act, 1872 were not inspiring confidence. The circumstances of presence of the accused near the scene of occurrence at midnight and injury on his finger has been found not to be sufficient to connect the appellant with the crime.

**69.     *Brijesh Mavi (supra)*** has found in the facts of that case that, the parameters to sustain a conviction on the basis of circumstantial evidence was not sufficient and satisfied.

**70.     **Mausam Singha Roy (supra)**** has observed that, the burden of proof in a criminal trial never shifts and that, it is always the burden of the prosecution to prove its case beyond reasonable doubt on the basis of acceptable evidence.

**71.**     Crimes may not be committed before an eye witness. Prosecution may not be able to produce an eye witness to the crime at the Trial. Law does not inculcate an embargo on the prosecution from establishing beyond reasonable doubt that the accused was guilty of the commission of the crime charged with on the basis of circumstantial evidence. There is no rule of law requiring that commission of a crime by an accused has to be established on the basis of ocular evidence only. It can be established on the basis of circumstantial evidence provided that the best evidence with regard thereto is placed before the Court.

**72.**     It is trite law that, where the prosecution relies on circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found incompatible with the innocence of the accused or the

guilt of any other person. The circumstances from which such an inference is drawn have to be proved beyond reasonable doubt and have to be shown to be closely connected with the principal facts to be inferred from such circumstances. The cumulative effect of the circumstances must be such as to negate the innocence of the accused.

**73.** It is on the golden rules of evaluation of circumstantial evidence as noted in the authorities referred to above, the evidence led by the prosecution of the trial in this case has to be evaluated so as to arrive at a finding as to whether or not the prosecution proved the charges as against the appellant beyond reasonable doubt.

**74.** Prosecution had established that, the appellant was the husband of the deceased. There had been matrimonial disputes between the appellant and the victim. The appellant had more than one wife and that such issue was one of the reasons for the matrimonial disputes. The victim had eschewed the company of the appellant. The victim had been living separately from the appellant.

**75.** The appellant had visited the victim on the morning of the incident and there had been a quarrel between the victim and the appellant. The appellant had been pressurising the

victim over a period of time for transferring the land belonging to the victim to the appellant. The victim had been resisting such efforts of the appellant. Prosecution had therefore, established sufficient motive for the appellant to commit the crime of murder of the victim.

**76.** PW 9, the post-mortem doctor, had stated in his deposition after being shown Material Exhibit II being the knife used in the crime of murder, that the type of injury suffered by the victim may be caused by use of Material Exhibit II. Material Exhibit II had been tendered in evidence by PW 5. He was angling at a pond from which Material Exhibit II had been recovered by PW 6. PW 5 had seen someone throw an article at the pond which disturbed his angling. He had turned his head and saw the appellant there and enquired of him why he was disturbing his angling.

**77.** PW 20 had arrested the appellant and brought him to the police station. PW 14 at the police station had noticed blood stains on the wearing apparel of the appellant. PW 20 had stated that, bloodstains were detected on the full sleeve shirt of the appellant and also on the front side middle portion of his shirt. He had seized such shirt by a seizure list prepared at the police station. He had sent such shirt for forensic

examination. The forensic examination report in respect of the shirt of the appellant being Exhibit 20 had stated that, there were bloodstains on the shirt of the appellant.

**78.** Appellant had been examined at the police station by PW 20 when cut injuries on the hand of the appellant were detected.

**79.** PW 5 had seen the appellant in the vicinity of the place of occurrence and about the time of the occurrence of the incident. PW 5 had asked the appellant as to why he threw an object into the pond which disturbed his angling. PW 5 had established the presence of the appellant near the place of occurrence and about the time of the occurrence of the incident. PW 5 had established that the appellant threw something into the pond.

**80.** Material Exhibit II had been recovered from the pond and was identified by the post-mortem doctor as a piece of instrument which was capable of inflicting the injuries sustained by the victim on her body.

**81.** These incriminating circumstances had been put to the appellant in his examination under Section 313 of the Criminal Procedure Code when the appellant did not offer any explanation.

**82.** It has come out in evidence that the daughter of the victim was with the victim at the time of the incident. PW 1 had stated that the daughter of the victim was about 4 years at the time of his deposition on July 24, 2014. She was therefore about 3 years at the time of the incident. It has not come out in evidence that any other eye witnesses was present at the time of the incident. It would be imprudent to disbelieve the case of the prosecution on the basis that it failed to examine a 4 year old child to testify an incident witnessed by the child when she was 3 year old.

**83.** In view of the discussions above, we are of the view that the prosecution had established the charge of murder of the victim as against the appellant beyond reasonable doubt.

**84.** The impugned judgement of conviction and the impugned order of sentence are therefore upheld.

**85.** CRA No. 56 of 2021 is dismissed.

**86.** In view of the appeal being dismissed, the bail bond issued on behalf of the appellant pursuant to the order suspending the sentence, is cancelled. Appellant will surrender before the jurisdictional Court within 4 weeks from date. Appellant will be taken into custody to serve the remainder of the sentence. CRR 259 of 2023 is disposed of.

**87.** Sentences awarded shall run concurrently. Period of detention pre-trial and post-trial shall be set off against the sentences awarded.

**88.** A copy of this judgement and order along with the Trial Court records be remitted to the appropriate Court expeditiously.

**89.** Urgent Photostat certified copy of this judgement and order be supplied to the parties applying for the same, on completion of all formalities.

**[DEBANGSU BASAK, J.]**

**90.** I agree.

**[MD. SHABBAR RASHIDI, J]**