

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

**Present:**

**The Hon'ble Justice Debangsu Basak  
And  
The Hon'ble Justice Md. Shabbar Rashidi**

**C.R.A. 48 OF 2020  
With  
IA No.: CRAN 1 of 2020 (Old No.: CRAN 1015 of 2020)  
**Buddhadeb Tudu @ Budhu  
VS.  
The State of West Bengal****

For the Appellant : Mr. Bibaswan Bhattacharya  
Mr. Bitasok Banerjee

For the State : Ms. Anasuya Sinha  
Mr. Pinak Kumar Mitra

Heard on : January 30, 2023 & February 1, 2023

Judgment on : February 1, 2023

**DEBANGSU BASAK, J.:-**

1. The appeal is directed against the judgment of conviction dated November 28, 2019 and the order of sentence dated November 29, 2019 passed by the learned Additional Sessions Judge, Birbhum at Rampurhat in Sessions Trial No.24/May/2013 arising out of Sessions Case No.57/2013.

2. By the impugned order of sentence dated November 29, 2019, the appellant was sentenced to suffer rigorous imprisonment for life along with a fine of Rs.50,000/- in

default to rigorous imprisonment for nine months for the offence punishable under Section 302 of the Indian Penal Code, 1860, rigorous imprisonment for ten years along with a fine of Rs.30,000/- and in default to rigorous imprisonment for six months for the offence punishable under Section 364 of the Indian Penal Code, 1860 and rigorous imprisonment for three years along with a fine of Rs.3,000/- in default to rigorous imprisonment for three months for the offence punishable under Section 201 of the Indian Penal Code, 1860.

3. A written complaint was lodged on December 2, 2012 with regard to kidnapping and murder of the victim. A First Information Report was registered by the police in respect of such written complaint on December 2, 2012 itself. The police completed investigations and submitted charge sheet against the appellant. The Court framed charges under Sections 364/302/201 of the Indian Penal code, 1860 against the appellant on May 11, 2013. The appellant pleaded not guilty and claimed to be tried. At the trial, the prosecution relied upon ten witnesses and various documentary and

material evidences to establish the guilt of the appellant beyond all reasonable doubt.

4. Learned Advocate appearing for the appellant submits that, the prosecution was unable to establish the charges against the appellant beyond all reasonable doubt. He submits that there are material discrepancies in the version of the prosecution witnesses.

5. Learned Advocate appearing for the appellant submits that there are no direct eye-witnesses to the incident. The prosecution relied upon circumstantial evidences to prove the charges. The chain of circumstances were not completed by the prosecution by cogent evidence in order to find the appellant guilty. Referring to the deposition of the prosecution witnesses and in particular to the depositions of P.W.1 and P.W.7, he submits that, there are contradictions between the versions of the last seen together claimed by the prosecution. On the one hand, P.W.1, the mother of the victim, claimed that, the appellant spoke with the victim and took her out while P.W. 7 stated that, she informed P.W.1 that the appellant dragged the victim out. He submits that, P.W.1

cannot be said to be an eye-witness of the last seen together of the appellant and the victim. Moreover, the evidence of P.W.7 cannot also be relied upon in view of the contradictions between her version and the version of P.W.1.

6. Learned Advocate appearing for the appellant draws the attention of the Court to the two defence witnesses. He submits that at no point of time till the oral testimonies of the prosecution witness nos.1 and 7, did they claim that, the appellant took away the victim forcefully.

7. Learned Advocate appearing for the appellant submits that, the death was suicidal in nature. The appellant was falsely implicated. Therefore, the impugned judgment of conviction and the order of sentence should be reversed.

8. Learned advocate appearing for the State submits that the prosecution was able to establish the charge beyond reasonable doubt. She refers to the deposition of the prosecution witnesses. She submits that the Court should take into account the economic and social background of the prosecution witnesses while assessing the evidence. One of

the prosecution witnesses did not understand Bengali. Help of translator was taken.

9. Learned advocate appearing for the State submits that, the appellant was last seen with the victim. The victim was found dead. She refers to the postmortem report of the victim as also to the evidence of the postmortem doctor. She submits that, the victim was strangled to death. The postmortem doctor found the strangulation to be homicidal in nature. Consequently, the victim was murdered. The appellant did not furnish any alibi in his explanation made Section 313 of the Criminal Procedure Code or through the witnesses that he chose to examine on his behalf.

10. The mother of the victim deposed as P.W. 1. She stated that, the appellant murdered the victim. She stated that, at the time of incident, there was a dispute between the appellant and the victim. The appellant and the victim were in a love affair with each other and it was fixed that, the appellant would marry the victim. The love affair continued for a period of 2/3 years. Later, the appellant declined to marry the victim as his marriage was settled in another place. Appellant

disclosed to the victim that he could not marry the victim on the ground that P.W 1 could not pay the dowry due to her financial condition.

11. Referring to the date of the incident, P.W 1 stated that at about 7 P.M., she and the victim were present in the house of P.W.-2. At that time, P.W.- 7, sister-in-law of P.W.-1, was present along with them. The victim and P.W.- 7 were cooking food in one thatched room while she was sitting in another thatched room. Appellant came there, spoke something to the victim and pulled the victim and took her from the spot against her will. P.W-1 thought that the victim would return after sometime. However, the victim did not return. Then, P.W-1 went to the house of another brother. P.W.- 7 followed her.

12. P.W.-1 stated that, she and P.W.-7 started searching the victim in and around the village primary school. She and P.W.-1 started informing various neighbours about the victim being missing. She, then saw the victim in a standing condition with her saree was tied on her neck and another part of the saree was tied in loose condition with a tree. She

caught the victim and started crying and then pulled her body and then her body fell down on the ground. Hearing the cries, the villagers reached the place of occurrence. P.W. 1 stated that she saw a mark on the neck of the victim. She also saw the nail mark in the neck of the victim. It was around 9.00/10.00 P.M., when she found the dead body of the victim. She stated that the police came at the place of occurrence at about 10.00/11.00 P.M. On the next date, the police prepared an inquest over the dead body of the victim. She went to Court after 3/4 days of the death of the victim. After the death of the victim, she was deeply shocked and could not move. She took the assistance of an advocate to lodge the written complaint. The written complaint was written as per her dictation. She identified the appellant in Court. The defence cross-examined the P.W.-1 in detail. The defence could not, however, elicit anything favourable from such cross-examination.

13. The uncle of the victim deposed as P.W-2. He stated that, his wife told him that his wife and the victim are cooking food when the appellant came there and dragged the victim towards

the village primary school. The mother of the victim saw the victim tied to the tree.

14. A resident of the village deposed as P.W.-3. He stated that, the mother of the victim and the aunty of the victim told him, the appellant dragged the victim out of the house and, thereafter, the victim was found dead. He went to the place of occurrence and saw the victim lying dead. He witnessed the inquest report. The inquest report was tendered in evidence and marked as Exhibit-1. He signed the seizure list which was marked as Exhibit-2.

15. P.W. 4 saw the dead body of the victim lying on the ground and the mother of the victim weeping. P.W.-4 saw nail mark on the neck and upper chest of the victim.

16. A co-villager of the victim deposed as P.W.-5. He stated that, P.W-7 came to his house and reported that P.W.-1, the victim, was dragged by the appellant from the house of P.W.-2. He went to the place of occurrence and found the dead body of the victim left beside the tree adjacent to a paddy field. The mother of the victim was crying. He is one of the witnesses to the inquest report.

17. An uncle of the victim deposed as P.W.-6. He claimed that the appellant murdered the victim. He claimed that, P.W.-1 and P.W. -7 told him that the appellant dragged the victim from the house of P.W.-2 was a part of the search party. He saw the victim in a standing condition with a contact of the tree and a saree was tied with the neck on the branch of the tree.

18. The aunty of the victim who was present in the house alongwith P.W-2, deposed as P.W.-7. She stated that, the appellant pulled the victim from the house at about 7 P.M. At that time, the mother of the victim, she and minor children were playing in the house. P.W.-1 was suffering from fever. P.W.-1 was staying in another room. The victim was cooking in another room. She was staying in the courtyard. At that time, the appellant entered into the house and dragged the victim from there. She described the house to be constructed by mud wall with tali roof. She stated that she tried to resist the appellant, but failed. When the victim did not return home, they started searching for her. She corroborated the oral testimony of P.W.-1 with regard to the happening.

19. The doctor who performed the post mortem on the dead body of the victim deposed as P.W. 8. He tendered the post mortem report, which was marked as exhibit 3. He stated that no ligature mark was seen on the neck of the deceased victim. P.W. 8 opined that, the cause of death was due to strangulation, which was ante mortem and homicidal in nature.

20. The scribe of the written complaint deposed as P.W. 9. He stated that, he was a practising advocate of Rampurhat Court.

21. P.W. 10 is a Sub-Inspector of Police, who received the written complaint and registered the same as a First Information Report. He conducted the investigations. He narrated about the conduct of the investigations with regard to the death of the victim. He was cross-examined at length by the defence. However, the defence could not elicit anything favourable from such cross-examination.

22. On conclusion of the evidence of the prosecution, the appellant was examined under Section 313 of the Code of Criminal Procedure, where he claimed that he was falsely

implicated and to be innocent. He stated that, there was a love affair between him and the victim. However, the mother of the victim and the family members did not agree to marriage.

23. The appellant produced two witnesses in defence. D.W.1 is the village head man. He claimed that, he asked the mother of the victim how the incident happened. She told him that she rebuked the victim and out of being sentimental she committed suicide by hanging.

24. D.W. 2 is another head man of the gram panchayet. He corroborated the D.W. 1 with regard to the fact that the mother of the victim stated that the victim committed suicide.

25. The victim was found dead on November 23, 2022. Post mortem on the dead body of the victim was performed by P.W. 8 on November 24, 2012. The post mortem report was tendered in evidence and marked as exhibit 3.

26. P.W. 8 in the post mortem report as also his oral testimony stated that his opinion as the cause of death of the victim was due to effects of strangulation which was ante mortem and homicidal in nature. In cross-examination, the

defence was unable to demolish the opinion of the post mortem doctor as to the cause of death.

27. Therefore, on the strength of exhibit 3 read with the oral testimony of P.W. 8, it can be safely said that the victim was murdered by strangulation.

28. Once such finding is returned, then, the evidence of D.W.1 and D.W. 2 to the effect that P.W.1 stated that the victim committed suicide, is of no consequence. The victim did not commit suicide. She was murdered. Therefore, the claim of D.W.1 and D.W. 2 that the mother of the victim made such a statement is disbelieved.

29. Moreover, P.W. 1 consistently stated that, the victim was murder. Her claim that the victim was murdered was established by the medical evidence brought on record at the trial. P.W. 1 and P.W. 7 stated that, the appellant entered the house of P.W. 7 and took the victim with him. There is no explanation on the part of the appellant as to the happening subsequent to the appellant being last seen with the victim in the house of P.W.7.

30. It is contended on behalf of the appellant, that there are discrepancies between the narration of events of P.W. 1 and P.W.7 with regard to the interactions between the appellant and the victim on the fateful day.

31. P.W. 1 and P.W. 7 both stated that, they saw the appellant to enter into the house of P.W. 7 and take the victim away. It is contended on behalf of the appellant that, P.W. 1 would not see the appellant taking away the victim as she was in another room. However, P.W.1 described the nature of the room she was staying at the material point of time. It was thached room. The nature of room as described in deposition allows vision from one room to the other. There is no material on record to suggest that, the vision of P.W. 1 was obstructed so as to prevent her from claiming that she saw the appellant taking away the victim.

32. P.W. 7 corroborated P.W. 1 with regard to the appellant taking away the victim. P.W.7 at least saw the appellant with the victim prior to the victim being found dead. As noted above, the appellant did not explain the murder after he took the victim from the house of P.W. 7.

33. In the facts and circumstances of the present case, the prosecution was able to prove the chain of circumstance leading to the irresistible hypothesis that the appellant is guilty of murdering the victim. The appellant forcefully took the victim from the house of P.W. 7 as it transpired from the evidence of P.W. 1 and P.W. 7. The evidence of the prosecution also established that, the appellant tried to destroy the evidence of the crime.

34. In such circumstances, we find no ground to interfere with the impugned judgment of conviction and the order of sentence by the learned Trial Judge. We uphold the same.

35. CRA 48 of 2020 is dismissed. With the dismissal of the appeal, CRAN 1 of 2020 is also dismissed.

36. All sentences shall run concurrently. The period of detention of the appellant be set off.

37. Trial Court records along with a copy of this judgement and order be sent down at once to the appropriate Court for necessary action.

38. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

**(Debangsu Basak,J.)**

39. I Agree.

**(Md. Shabbar Rashidi, J.)**