

IN THE HIGH COURT AT CALCUTTA

Criminal Application

Appellate Side

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

CRA 39 of 2021

Bimal Jana @ Khokan

Versus

The State of West Bengal

For the appellant : Mr. Ranadeb Sengupta, Adv.

For the State : Mr. Joydeep Roy, Adv.

: Ms. Sujata Das, Adv.

Hearing

concluded on : 01st February, 2023

Judgment on : 28th February, 2023

Md. Shabbar Rashidi, J.:

1. The appeal is directed against the judgement of conviction dated September 26, 2019 and order of sentence dated September 27, 2019, passed by learned Additional Sessions Judge, Fast Track Court, Haldia in connection with Sessions Trial number 62/2016 arising out of CIS No. 273/2016.
2. The case of the prosecution is that the sister of de-facto complainant, that is the victim, was married to the appellant Bimal Jana in accordance with Hindu customs and rites. At the time of marriage several articles were given in marriage. After marriage, the sister of the de-facto complainant started residing at her matrimonial house. After sometimes, the victim was subjected to physical and mental torture by the appellant and other accused on the plea that she was not good-looking and of dark complexion.
3. On September 16, 2015, mother of the de facto complainant went to the matrimonial house of her

daughter taking some vegetables. On that night, the appellant assaulted the sister of de-facto complainant in presence of her mother and threatened that he will kill her. When the mother of de facto complainant, raised objection she was also beaten by the appellant. On September 17, 2015, the de-facto complainant, hearing the news, went to the matrimonial house of his sister and brought her back with her mother. They were taken to Nandigram hospital for medical treatment. The de-facto complainant also informed the incident to the members of Gokul Nagar panchayat No. 6. They assured de-facto complainant that the dispute will be settled in a few days for which the de facto complainant did not make any complaint before the police. Since then the sister of de facto complainant has been residing at his house.

- 4.** It is further case of the prosecution that on September 23, 2015, at about 6 o'clock, in the morning, the sister of the de-facto complainant went to natural call. When she did not return for a long, the de facto complainant started searching for her. The petticoat of

his sister, a pair of slippers and a wooden stick was found adjacent to the bathroom. The de facto complainant was informed by the woman of his village that his brother-in-law Bimal Jana killed his sister and took the dead body from the canal of water to the house of Bhanu Pradhan. The appellant is said to have ran away seeing the de facto complainant. At that time he was wearing a 'gamcha'(Indian towel) and his entire body was covered with mud. Hearing the news, the de-facto complainant along with other villagers went there and witnessed the dead body of his sister.

- 5.** A written complaint was lodged, over the incident, by the de-facto complainant on September 23, 2015 at 09. 15 hours. On the basis of such written complaint, Nandigram Police Station Case No. 388/2015 dated September 23, 2015 under section 498A/302/201 of the Indian Penal Code was started against 2 (two) accused persons.
- 6.** The police took up investigation and on completion of investigation submitted charge sheet against the two,

First Information Report (FIR) named accused persons. Accordingly, on the basis of materials in the case diary, charges under section 498A/302/34/201 of the Indian Penal Code were framed against the two accused persons to which, the accused persons pleaded not guilty and claimed to be tried.

- 7.** In order to bring home the charges levelled against the accused persons, prosecution examined as many as 22 witnesses. In addition, prosecution also relied upon documentary and material evidences.
- 8.** The de facto complainant himself deposed as PW 1. In his deposition, he reiterated his statement in the written complaint lodged by him. He stated that his sister Namita Sahoo was married to the accused Bimal Jana as per Hindu customs and rites. In her marriage, gold ornaments weighing 30grams, Cash money and other articles were given. His sister went to her matrimonial house and started residing with the accused persons. It was further stated that at the instigation of her mother-in-law, the accused husband of his sister used to inflict

torture upon her on the ground that she was not good-looking and of dark complexion. He used to give out that he will marry again after killing the victim. He further stated that his sister used to report that she was ill treated at her matrimonial house and was not provided with medical assistance as and when she needed. On September 16, 2015, mother of PW 1, went to the matrimonial house of his daughter carrying some vegetables. There she found the appellant assaulting her daughter and snatching her articles. There she stayed for the night. In the evening the appellant Bimal Jana came back and threw all vegetables brought by the mother of PW 1. On raising protest, mother of PW 1 was also assaulted by the appellant.

9. Such incident was reported by the mother of PW 1 to him. Being so informed, PW 1 went to the matrimonial house of his sister on September 17, 2015, and took his mother and sister to Nandigram hospital for treatment. PW 1 also stated that he informed the matter to the members of the gram panchayat whereupon, he was

advised to take his sister to his house and in the meantime, they assured to resolve the matter.

10. On September 23, 2015, the sister of PW 1 went for nature's call, at a place surrounded by chot. He searched for his sister as she did not come back. Going there, he found one pair of torn slippers and one wooden stick. At that time some women of the village reported that accused Bimal, after committing murder of the sister of PW 1, lifted her dead body from the ditch. However, seeing the women, the accused fled away. PW 1 was also reported that at that time, Bimal was wearing a wet "gamcha" and his body was covered with mud. PW 1 rushed to the spot and found the dead body of his sister in naked condition

11. PW 1 reported the matter to the police by lodging a written complaint which was written by one Shib Shankar Jana. PW 1 proved his signature on the written complaint which was marked as Exhibit 1. He also proved his signature on the inquest report which was marked Exhibit 2 and that on the seizure list which was

marked as Exhibit 3 collectively. He also produced the medical papers relating to treatment of his mother and sister which were seized by the investigating officer under a seizure list. His signature was marked Exhibit 4. He also proved the wearing apparel and slippers seized by the investigating officer which were marked Mat. Exhibit I and Mat. Exhibit II.

- 12.** A co-villager of the de facto complainant was examined as PW 2. He has corroborated the case of the prosecution. She stated that Namita was married to Bimal two years ago and after such marriage she started residing at her matrimonial house. The appellant husband of Namita started inflicting torture upon her at the instigation of his mother. He used to assault Namita and did not provide medical assistance to her. She further stated that when the mother of victim visited her matrimonial house carrying some vegetables, the victim was assaulted in her presence and on raising protest, the mother was also assaulted. Both of them were brought back by PW 1.

13. PW 2 further stated in her deposition that when she was returning after leaving her son for pollution at about 6 AM, she found Bimal Jana having mud all over his body and he was wearing a 'gamcha'. He was coming hastily. PW 2 called but he went away pushing her without responding to the her calls. She then reported the matter to another neighbour lady Sumitra Barman to intimate the house of the de facto complainant. She heard that Namita went to meet natural call some 10/15 hands from a house where a red colour saya and one pair of slippers and a wooden stick where found. She found the dead body of Namita in a naked condition in the jungle by the side of the house of Bhanu near the ditch. She covered the dead body with a sari and brought it near a tea stall. She further stated that Namita was killed by her husband. PW 2 also identified the seized articles. She was interrogated by police and recorded her statement before learned Magistrate and proved her signature on such statement which were marked Exhibit 5 series. She also identified the appellant in court.

14. Another lady from the village of de facto complainant was examined as PW 3. She identified the appellant in court. She also stated that Namita was married to Bimal Jana about two years ago. After marriage, the Namita used to reside at her matrimonial house. She was subjected to torture and assault. She further stated that after some days, her mother went to matrimonial house of Namita carrying vegetables. She had an altercation with Bimal Jana and she was assaulted by him. On protest Bimal also assaulted the mother of Namita. She stated that Namita was assaulted as she was of dark complexion. The matter was reported to PW 1 who brought both his sister and mother to Nandigram hospital for treatment. Since then Namita was at her father's house. PW 3 also stated that after five or seven days Namita went to the bathroom at about 6 AM in the morning, some 10/15 hands from her house by the side of the ditch. She further stated that one wooden stick, a red colour saya and one pair of slippers were found lying near the jungle. She also stated that one girl

from the village reported to her that she found Bimal Jana wearing a wet 'gamcha', having mud all over his body and fleeing away. On search, Namita was found she was d in naked condition near the house of Bhanu Prodhan. The dead body of Namita was brought near a tea stall. PW 3 also stated that since Bimal was fleeing away, she thought, that he committed murder of Namita. She was interrogated by police.

15. In her cross-examination, PW 3 stated that she saw Bimal fleeing away and she married at the same before police.

16. Another lady from the village of the paternal house of the victim deposed as PW 4. She claimed to know PW 1, his sister Namita and the appellant. She identified the appellant in court. She further stated that Namita was married to Bimal Jana and after such marriage she went to her matrimonial house. Namita was subjected to torture and her matrimonial house and was assaulted by the accused as she was of black complexion and her accused husband had every intention to marry for the

second time. She also stated that on 5th Aswin, Bimal Jana fled away hastily in wet body covered with mud. PW 4 stated that she and Alpana Barman had seen Bimal fleeing away. She reported the matter to PW 1. She also stated that at that time they were searching for Namita and one pair of slippers, one stick and red colour saya was lying there which belonged to Namita. After some time they could trace out the dead body of Namita in a naked condition in the jungle near the house of Bhanu Prodhan which was brought near a tea stall. She has also stated that Bimal committed murder of Namita. PW 4 also stated to have recorded her statement before learned magistrate.

- 17.** The doctor who examined the victim Namita and his mother deposed as PW 5. He stated that on September 19, 2015 he examined Namita Jana and Ava Rani Sahu, while on emergency duty at Nandigram B. M. Pal, BPHC. He proved the report prepared in his pen and signature which were marked as Exhibit 6 and 6/1.

18. The Block development Officer, who conducted inquest on the dead body of Namita, was examined as PW 6. He has stated that on September 23, 2015, he conducted inquest upon the dead body of Namita and prepared a report in this regard which he tendered in evidence which was marked as Exhibit 7. He further stated that he found injury on the left and right side of neck, black spot on middle of forehead, red spot just under the left eye. He also noted scratch over whole body caused by thorn like object.

19. A lady from the village of the de facto complainant deposed as PW7. She stated that she knew the accused persons and identified them in Court. She further stated that she also knew Namita and Uttam Sahoo. Namita was married to Bimal Jana two years ago. After marriage, she went to her matrimonial house. She was happy there for two months and thereafter she was subjected to torture as she was of black complexion. She was denied proper food and medical assistance and used to be assaulted her husband at the instigation of the mother-

in-law of Namita. PW7 also stated that in the month of the Bhadra, mother of Namita went to her matrimonial house after about one and half years of her marriage. At that time, Namita was suffering under fever and Bimal did not provide proper treatment to her. Over that issue, the accused Bimal had altercation with Namita and her mother. Bimal assaulted both of them. Namita informed her brother who brought them back and took them to Nandigram hospital. She further stated that on 5th Ashin, Namita went to bathroom and after some time she was not found. Sumitra Barman and Alpana Barman at the house of Uttam that they saw Bimal. PW7 stated that going there, she found one Magenta covered saya, one wooden stick and a pair of black coloured sleepers lying there. PW7 informed this at the house of Uttam. She further stated that the dead body was found bearing marks of dragging by pulling her legs from the bank of ditch. The dead body was found in deep bushes near the house of Bhanu Pradhan. PW7 recovered the dead body from the bushes by pulling in a naked condition. The

dead body was taken near a tea stall of Gourmore. She further stated that Bimal committed murder of Namita. She also identified the seized articles in Court. In her cross-examination, PW7 admitted to have stated before Police that Sumitra and Alpana both saw Bimal. She also admitted having stated before Police that after taking the dead body in lap kept her near tea stall at Gourmore.

20. PW 8 is the scribe. He stated that he wrote down the written the complaint as per the instruction of Uttam. He proved the written complaint which was marked Exbt. 1/1. He further stated that the dead body was found in a naked condition and was recovered from jungle near ditch. He was also present when the dead body was examined and a saya, stick and sleepers were seized by Police. He signed on the seizure list. PW 8 proved his signature on the seizure list Exbt. 4/1 and the magisterial inquest report (exbt. 7/1).

21. Another lady from the village of the de facto complainant was examined as PW9. She stated that she knew Uttam Sahoo, Namita and the accused persons.

Namita was married with Bimal two years ago. After marriage, she went to reside at the house of Bimal. PW9 identified the accused persons in Court. She further stated that husband and mother-in-law of Namita used to inflict torture upon her. PW9 stated that Namita died on 5th Ashwin at 9 and she found Bimal Jana going through road by the side of her house. At that time, his body was bespattered with mud and he was having a wet 'gamcha'. He was going there hastily. After some times, PW9 heard a hue and cry that Namita was murdered by her husband. She along with others rushed towards Khalpar behind the house of Bhanu Pradhan where the dead body was found. It was taken to tea stall by the side of pitch road. She also found sleepers, wooden stick and red saya near the bathroom. PW9 identified the said articles in Court.

- 22.** One person from a neighbouring village has been examined as PW10. He stated that about 8/9 months ago at about 7 or 7.30 p.m., one boy came to his house with a request to keep his wet 'gamcha' at his house, which he

declined. The said boy also demanded one cloth for his wearing. On his request, wife of PW10 provided a torn apparel to that boy. On enquiry, the said boy disclosed that he was a resident of Simulkundu and that he was coming after killing his wife. Thereafter, the said boy left the house wearing the pant. PW10 also stated that after three and half months, Police visited his house with that boy. At first, he could not identify the said boy. But later on, he could identify the said boy who borrowed wearing apparels from his house. PW10 identified the said boy as the appellant in Court. In his cross-examination, PW10 stated that the village of the complainant was about one mile away from his house.

- 23.** An acquaintance of PW1 deposed as PW11. He stated that he knew Uttam Sahoo and Namita. He went to P.S. for delivering medical papers of Namita who had died. PW11 identified his signature on the seizure list (Exhibit- 4/2). In his cross-examination, he has stated that his village was 5 to 7 km from the village of the

complainant. He could not show the description of the papers delivered by him at the Police Station.

- 24.** Another resident of adjoining village was examined as PW12. She stated that about 9/10 years ago (from 15.07.2016), an unknown boy came to her house demanding one wearing apparel. She provided a wearing apparel and asked him as to why he was in a wet 'gamcha'. She further stated that the said boy had disclosed that he committed murder of his wife. Thereafter, he fled away. She further stated that after three months, thereto, Police came to her house and asked if she identified that boy. She identified the boy as the person whom she had provided an old pant-shirt. She also claimed to have been interrogated by the Police. In her cross-examination, at first, she denied a suggestion to the effect that nobody however came to her house demanding shirt and pant but incidentally thereafter, she made a statement that the boy never came to her house demanding pant and shirt and she did not provide him such apparel. The said boy was identified by Police.

25. PW13 is the photographer. He stated that about 10 months ago, he tendered photographs of latrine(covered with chat), slippers, two sticks and that of the place of occurrence(khalpar), which were marked as Exhibit-8 series.

26. Another co-villager has deposed as PW14. He stated that he knew the complainant Uttam Sahoo, his sister and the accused persons. He further stated that Namita was married to about 2/3 years ago and started residing at her maternal house due to torture inflicted by her husband and mother-in-law as she was of dark complexion. PW14 also stated that on September 16, 2015, mother of Namita went to her matrimonial house carrying some vegetables. Namita was assaulted in presence of her mother and mother was also assaulted. On the following day, brother of Namita went to her matrimonial house and brought Namita and her mother back for medical examination at Nandigram Hospital. Thereafter, Namita was residing at her father's house. It was also stated that on September 23, 2015, Namita

went to meet nature's call near Khalpar in a privy surrounded with 'chat'(thatch). When she did not return since long time, she was searched. Her dead body was found lying naked in the jungle opposite khalpar near the house of Bhanu Pradhan, which was retrieved by the local women. Her body was brought over pitch road and covered with a saree. PW14 also stated that possibly Bimal, husband of Namita caused death of Namita by attacking with lathi and dragged her to khalpar. He has stated that the saya, slippers and wooden lathi were seized. PW14 proved his signature on the seizure lists (Exbt. 3/1,2/1).

27. The mother of the de facto complainant and victim deposed as PW15. She stated that Namita was married to Bimal Jana. After marriage, she went to her matrimonial house. She was not provided with proper food and assaulted by the accused persons as she was of black complexion. PW15 also stated that she went to the house of Namita carrying some vegetables at about 10 a.m. Her son-in-law left the house seeing her and came back at 7

p.m. He threw of her vegetables into the pond and abused her. He also assaulted Namita and PW 15 due to which she sustained injuries on her hand and head. Bimal also locked the door and upon alarming raised by PW15 and Namita, they were rescued by the village people. On the following morning her son came and took her for medical examination. She further stated that after 7/8 days, her daughter died. Her daughter went to latrine in the morning when she did not return, PW15 searched for her and found lathi, slippers and saya lying in front of the latrine. She made hue and cry. She was reported by some female villagers that her son-in-law fled away with wet 'gamcha'. On search, the daughter of PW15 was found lying dead in a naked condition in jungle. She stated that Namita was murdered by Bimal Jana. She identified the seized articles in Court. She specifically stated that the seized saya and slippers produced in the Court belonged to her daughter. PW 15 was cross-examined and in her cross-examination, she stated to have narrated before the Police that Bimal

locked PW15 and her daughter and they were rescued by the village people.

28. One Panchayet Member deposed as PW16. He stated that Namita was married to Bimal Jana three years ago and Namita died on September 23, 2015. He further stated that in the early morning, he got information on the death. He found the dead body in bushes near khalpar. He heard that one Sumitra Barman noticed husband of deceased going with a wet 'gamcha' from there. He also stated that one lathi, pair of slippers and saya were found near the privy, which was seized by Police. PW16 proved his signature on the seizure lists (Exbt. 3/2 and 2/2). He however did not know the accused (Bimal Jana).

29. The Police Constable who accompanied the dead body of Namita on 23.20.2015 deposed as PW17. He deposited the articles belonging to the deceased at the Police Station by signing on the seizure list. He proved his signature (Exhibit 8).

30. The Recording Officer was examined as PW18. He stated that on September 23, 2015, he received a written complaint at Nandigram Police Station from one Uttam Sahoo and started Nandigram P.S. Case No. 388/15 dated 23.09.2015 under Section 498A/302/201/34 of the Indian Penal Code and entrusted Sub-inspector Mankilal Adak to investigate the case. Simultaneously, one UD Case being Nandigram P.S. Case No. 50/15 dated 23.09.2015 was also started. PW 18 tendered the formal First Information Report which was marked as Exhibit- 9.

31. Another Police Officer of Nandigram P.S. was examined as PW19. He stated that on January 07, 2016, he went to Kontai P.S. and submitted a request for collecting certain information. He tendered the request which was marked Exbt. 10. He also stated that on December 15, 2015, he was on double duty at Nandigram Police Station and signed on a seizure list. His signature was marked Exbt. 8/1.

32. The Investigating Officer of the case was examined as PW20. In his deposition, PW20 deposed about the manner and purport of his investigation. He conducted the inquest over the dead body and submitted a request for magisterial inquest. PW 20 proved the inquest report which was marked Exbt. 2/3. He also forwarded the dead body to Tamluk Hospital for Post Mortem examination. He also visited the place of occurrence and prepared rough sketch map with index which were marked as Exbt. 11 and 11/1. He also seized certain articles belonging to the deceased as well as a wooden stick under a seizure list prepared by him (Exbt. 3/3). PW20 also identified the alamats/ material exhibits produced in Court. He also arranged for recording statement of witnesses under Section 164 of the Code of Criminal Procedure, collected the Post Mortem Report and sent viscera for chemical examination. The wearing apparels of the deceased OPD ticket were seized by him. He also prepared rough sketch map with index of the second place of occurrence where the dead body also found,

recorded statement of the witnesses under Section 161 of the Cr. PC. On completion of investigation, PW20 submitted charge sheet in the case. PW20 was cross-examined on behalf of the accused persons at great length. In his cross-examination, PW20 stated that PW3 Chaiarani did not state before him that she came to know about the torture from Namita and that she did not disclose before him that she saw Bimal fleeing away.

- 33.** The doctor who conducted post mortem upon the dead body of the victim deposed as PW21. He stated that on September 23, 2015, he conducted post mortem examination over the dead body of Namita Shahoo in connection with Nandigram P.S. UD Case No. 50 of 2015 and first information report No. 388 of 2015 both dated September 23, 2015, he stated in his deposition that as per his information cause of death was due to the combined effects of drowning partial throttling which were ante-mortal and homicidal in nature. PW21 prepared a post mortem report in this regard which was tendered by him and marked Exbt. 13. He further stated

that upon such examination, he found the following wounds over the dead body:

1) One near oval thumb like impression (of flexor aspect – pulp of thumb) with regular margin measuring approximately 2.3 cm x 2cm over central region of forehead – dark red or better to say blackish in colour. On dissection think sub scalp hematoma which stained to the periostium beneath over frontal bone. The hand lance used and vital reaction positive.

2) The occipital protuberance also having thick dark reddish hematoma – sub scalp. On dissection :- vital reaction positive.

3) Back of both heels and elbows also having abraded bruises (dependent parts). Neck findings:- circumference of neck at upper border of thyroid cartilage is approximately 11.5 cm. Reddish mark

like that of “fingers in glass holding fashion” over upper and mid region of neck –thumb like impression over right side of neck and other 4’s over left side of neck. Upper border of the said impression is continuous (1’ and 2nd web space- skin-mid of which is centrally placed over neck.) The rest four fingers like impression is joined over central mid line neck and laterally spread- not to much. The second mark over left side is longest on counting from above downwards and lowest one on same left side is smallest in length. The much over right side of neck is thickest and placed downwards and continuous with that of left side (arising out of impression by index finger) the falling light over neck is / tangential and colour neck is brownish the hand lance used shows bruise more

**clearly with the above noted findings. No
nail scratch mark or mars of ligature.**

34. The learned Magistrate who recorded the statements of the witnesses under Section 164 of the Code of Criminal Procedure deposed as PW22. She tendered the statements which were marked as Exbt. 5/2 and Exbt. 14.

35. Upon completion of evidence adduced on behalf of the prosecution, the accused persons were examined under Section 313 of the Code of Criminal Procedure. The circumstances in respect of the death of Namita, going against the accused persons were put forth and explained to the accused persons in such examination to which the accused persons denied all the allegations appearing against them as transpired from the evidenced on record. The accused persons pleaded innocence and the allegation to be false.

36. In consideration of the materials on record including the examination of the accused persons under Section 313 of the Code of Criminal Procedure, by the

impugned judgment of conviction, the accused Bimal Jana @ Khokon was convicted of the offences punishable under Sections 498A /302/201 of the Indian Penal Code. The accused Panchami Jana was, however, found not guilty and was acquitted.

37. By the impugned order of sentence, the convict Bimal Jana was sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs. 10,000/- and in default of payment of fine to suffer rigorous imprisonment of a further period of six months for the offences punishable under Section 498A of the Indian Penal Code. The said convict was also sentenced to rigorous imprisonment for life and a fine of Rs. 20,000/- and in default of payment of the fine to suffer rigorous imprisonment for further period of one year for the offences punishable under Section 302 of the Indian Penal Code.

38. He was further sentenced to suffer rigorous imprisonment for seven years and a fine of Rs. 5000/- and in default of payment of the fine to undergo rigorous

imprisonment for another three months for the offences punishable under Section 201 of the Indian Penal Code. All the sentences were directed to run concurrently.

- 39.** The learned advocate for the appellant submitted that there are contradictions in the testimony of witnesses examined on behalf of the prosecution. It has been pointed out that the de-facto complainant claimed to have been reported by the women of the village who had seen the appellant fleeing away from the place of occurrence just after the incident. However, such fact was not incorporated in the written complaint lodged by the de facto complainant. It is also pointed out that PW1 also stated in his deposition that he saw the appellant fleeing away seeing PW1. It is contended that the statements so given by the PW1 were contradictory. Non-mentioning of the names of the women who informed PW1 in the written complaint has also been said to render the testimony of PW1 untrustworthy. Moreover, it is argued that there is no evidence on record from any

corner showing the entry and exit of the appellant in the village of PW1 at the relevant point of time.

40. Learned advocate for the appellant also pointed out that PW4 has claimed that she and PW2 saw the appellant fleeing away, contrary to the statement of PW2 who stated that she saw the appellant fleeing away and thereafter, she reported it to PW4. It was also pointed out that the written complaint did not contain the statements to the effect that it was read over and explained to its maker and as such, it is not reliable. Learned Advocate for the appellant has also assailed the credibility of the testimony of PW9 to the effect that she saw the appellant walking on the road beside her to know the reason for discarding such evidence was assigned.

41. Learned advocate for the appellant also challenged the testimony of PW10 and PW12 from whose house the appellant is said to have borrowed wearing apparel after the occurrence on the ground that the aforesaid witnesses kept silence for over three months in spite of the fact that the appellant is said to have made an extra

judicial confession before them. Learned advocate for the appellant also pointed out that some of the vital witnesses like Bhanu Pradhan from whose house the dead body was found was not examined. No steps were taken by the Investigating Officer to obtain finger prints from over the neck of the dead body and that it was not disclosed as to who identified the place of occurrence to him. The Investigating Officer also did not take any steps for forensic examination of the seized the articles. For the aforesaid reasons, learned advocate for the appellant sought to assail the impugned judgment of conviction and order of sentence.

42. On the other hand, learned advocate for the State has submitted that the evidence adduced on behalf of the prosecution has sufficiently proved that the appellant was seen in the village of the de facto complainant just after the occurrence. It was submitted that the prosecution has been able to prove circumstances that the appellant committed murder of the victim in the wee hours of the date of occurrence. It is submitted that it

has been proved that the appellant after committing murder was seen in a wet 'gamcha' with mud all over his body. He fled away from the place of occurrence and on his way, he borrowed wearing apparels from the house of the witnesses where he is said to have made an extra judicial confession of committing murder of his wife. Therefore, it has been contended that the prosecution has been able to bring home the charge levelled against the appellant beyond all shadow of all reasonable doubts. As such, the impugned judgment and order is liable to be affirmed.

- 43.** According to the case set out by the prosecution, the victim was married to the appellant and after such marriage, she started residing with the appellant at her matrimonial house. She was subjected to torture by the appellant and his mother on the plea that she was of dark complexion. It has also come out in the evidence that the appellant used to give out to marry for the second time after killing the victim. It is further the case of prosecution that while the victim was at her father's

house, the appellant came to the village. He got an opportunity when the victim went to meet nature's call to a bathroom situated at some distance from her house in the morning. Utilising the opportunity, the appellant committed murder of his victim wife and fled away from his in-law's village.

44. It is a fact that there was no eye witness to the incident and the case is entirely based on circumstantial evidence.

45. It is a case of the prosecution that when the victim went to meet nature's call in the morning and did not return for a while, her family members started searching for her. In the mean time, it was reported by some of the witnesses that the husband of the victim was seen fleeing away in a wet 'gamcha' having mud all over his body. Thereafter, the dead body of the victim was recovered in a ditch from near the house of one Bhanu Pradhan. Prior to that a wooden stick, a red saya and sleepers belonging to the victim was found lying near the bath room. The dead body was recovered and thereby an inquest was

conducted by Police over the dead body and later on the post-mortem examination of the dead body was also conducted. The incident is said to have taken place in the morning of September 23, 2015. The post-mortem examination of the dead body was conducted on September 23, 2015 by PW21, upon which a post mortem report was also prepared by him being Exhibit-13. PW21 stated in his deposition that two types of injuries were found on her neck also. PW21 opined that the cause of death of the victim was the combined effects of drowning and partially throttling which was ante mortem and homicidal in nature. The autopsy surgeon PW21 found the injuries on the dead body of the victim namely:-

- 1. One near oval thumb like impression (of flexor aspect – pulp of thumb) with regular margin measuring approximately 2.3 cm x 2cm over central region of forehead – dark red or better to say blackish in colour. On dissection thick sub scalp hematoma which stained to the periostium**

beneath over frontal bone. The hand lance used and vital reaction positive.

- 2. The occipital protuberance also having thick dark reddish hematoma – sub scalp.**

On dissection :- vital reaction positive.

- 3. Back of both heels and elbows also having abraded bruises (dependent parts).**

Neck findings:- circumference of neck at upper border of thyroid cartilage is approximately 11.5 cm. Reddish mark like that of “fingers in glass holding fashion” over upper and mid region of neck –thumb like impression over right side of neck and other 4’s over left side of neck. Upper border of the said impression is continuous (1’ and 2nd web space- skin-mid of which is centrally placed over neck.) The rest four fingers like impression is joined over central mid line neck and laterally spread-not to much. The second mark over left

side is longest on counting from above downwards and lowest one on same left side is smallest in length. The much over right side of neck is thickest and placed downwards and continuous with that of left side (arising out of impression by index finger) the falling light over neck is / tangential and colour neck is brownish the hand lance used shows bruise more clearly with the above noted findings. No nail scratch mark or mars of ligature.

46. From the testimony of PW21 all together with Exhibit 13, it is quite evident that the prosecution has been able to prove that the victim died an unnatural death which was opined by the doctor to be homicidal in nature.

47. According to the case of the prosecution, the victim was murdered by the appellant being her husband. The circumstances put forward by the prosecution to incriminate the appellant in the murder of his wife is that

he used to inflict torture upon his wife on the ground of her dark complexion. A few days prior to the incident i.e. on September 16, 2015 and September 17, 2015, the appellant is subjected to have assaulted the victim and her mother when the mother of the victim visited her matrimonial house carrying some vegetables. On September 17, 2015, the victim and her mother were brought back to her father's house by her brother and were medically treated due to the assault inflicted by the appellant.

- 48.** On the date of incident i.e. on September 23, 2015, the appellant was seen fleeing by some women of the paternal village of the victim. They reported the matter to the brother of the victim i.e. PW1. PW1 in his deposition has stated that he was searching for his sister who did not return for long time from the bath room, and also reported that the appellant committed murder of the victim and dragged the dead body from a ditch belonging to Bhanu Pradhan. The village women also reported PW1 that seeing them the appellant fled away. Upon such

report from them, the dead body of the victim was recovered by PW1.

49. One of such village women deposing as PW2 stated that when she was going after leaving her son to private tuition at about 6 a.m., she found the appellant having mud all over his body. He was then wearing a wet 'gamcha' and was moving hastily from the side of Khalpar (bank of a canal). She also stated that she called the appellant but he did not respond to her calls and went away by pushing her. She informed the matter to PW4. PW4 has supported the statements of PW2. She also stated that she saw the appellant fleeing away hastily in a wet 'gamcha' and his body besmirched with mud. PW4 also stated that she intimated it to PW1. Both PW2 and PW4 have also supported the case of the prosecution that red saya, sleepers and a wooden stick were recovered from near the bath room and the dead body of the victim was recovered from a ditch near the house of one Bhanu Pradhan. PW3 has also testified the statements of PWs 1, 2 and 4 as regards the recovery of the dead body. PW7

has supported the statement of PWs 1, 2, and 4 and testified that the appellant was seen by PWs 2 and 4 and that they reported the same to the house of PW1. The said witness also testified the recovery of sleepers, red saya and wooden stick as also that of the dead body of the victim from near the house of Bhanu Pradhan. The Police was informed and the aforesaid articles were seized by Police under a seizure list. An inquest was conducted on the dead body and inquest report was prepared. PW13 has proved the photograph of the seized articles as well as the dead body at the spot.

- 50.** The evidence of PW1, 2, 3 and 4 goes to establish that the appellant was present in the village of PW1 on the date and time of incident. The appellant is a resident of another village. In the cross-examination of the aforesaid witnesses, the defence has not been able to make any dent upon the credibility of the aforesaid witnesses as regards presence of the appellant at the place and time of occurrence in the paternal village of the victim.

51. The resident of another village PW10 and his wife PW12 have stated that at about 7/7.30 p.m. came to their house with a request to keep his wet 'gamcha' at their house. He also asked for some spare wearing apparel which was provided by them. The said boy stated to before them that he was a resident of Simulkundu and he had killed his wife. Thereafter, the said boy left his house. After 3 or 3 ½ months, Police visited his house with the said person and PW10 identified the said boy who had been provided with an wearing apparel. Such a statement of PW10 has been emphatically supported by his wife PW12. PW10 and PW12 both identified the appellant in Court as the person who borrowed wearing apparel from their house. The testimony of PW10 and PW12 verifies the case of the prosecution regarding presence of the appellant in the paternal village of the victim on the date and time of the occurrence. Furthermore, both PW10 and PW12 in their deposition stated that the appellant made a confession before them that he had killed his wife and fled away. There is

absolutely no cross-examination of the aforesaid witnesses on behalf of the appellant as to the confessional statements made by him before the said witnesses. In the examination of the appellant under Section 313 of the Code of Criminal Procedure, the appellant was confronted with the statements given by PW10 and PW12 but no explanation whatsoever was offered on behalf of the appellant. Thus, from the evidence adduced on behalf of the prosecution as well as the examination of the appellant under Section 313 of the Code of Criminal Procedure, there appears no doubt that the appellant was present in the paternal village of the victim on the alleged date and time of incident. It is also not doubtful that the appellant was then wearing a wet 'gamcha' and his entire body was covered with mud. The evidence on record suggests that the victim was murdered, partially by throttling and partially by drowning. The circumstances had suggested that the appellant must have gone wet and mud-laden in the process of committing murder of his wife in the canal.

Thereafter, the dead body was dragged and thrown into a ditch. The appellant was seen in a wet condition besmirched with mud reported by the ladies of the paternal village of the victim as well as by the witnesses from the adjoining village on his way back i.e. PW10 and PW12.

52. Since the testimony of the aforesaid witnesses being PWs 1,2,3 and 4 taken together with that of PWs 10 and 12 goes to establish that the appellant was present in the paternal village of the victim on the relevant date and time, it was obligatory upon the appellant to offer an explanation for his presence in the paternal village of the victim in the morning hours and that too in a questionable condition wearing a wet 'gamcha' and his body being covered with mud. No such explanation has been provided on behalf of the appellant which necessarily obviates inference towards the guilt of the appellant in the murder of his victim wife.

53. Besides that, the testimony of PW10 and PW12 also discloses that the appellant made an extra judicial

confession before them, admitting his involvement in the murder of his wife. The evidence of PW10 and PW12 goes to show that the appellant chose not to cross-examine the aforesaid witnesses so far as it related to the extra judicial confession. For the sake of argument, even if we leave aside extra judicial confession made by the appellant before PW10 and PW12, even then the appellant has not been able to give plausible explanation for his presence in the paternal village of the victim on the relevant date and time. For the aforesaid reasons, we are of the opinion that the prosecution has been able to bring home the charge levelled against the appellant beyond the shadow of all reasonable doubts.

54. Therefore, on the basis of discussion made hereinbefore, we find no reason to interfere with the impugned judgment of conviction and order of sentence. Accordingly, the impugned judgment of conviction dated September 26, 2019 and order of sentence dated September 27, 2019 passed by learning Additional Sessions Judge, Fast Track Court, Haldia are affirmed.

55. Consequently, the instant appeal being **CRA 39 of 2021** is hereby dismissed.

56. Let the Trial Court records along with a copy of this judgment be sent down immediately to the appropriate Court for necessary action.

57. Urgent Photostat Certified copy of this judgment, if applied for, be supplied to the parties expeditiously upon compliance with all requisite formalities.

[MD. SHABBAR RASHIDI, J.]

58. I agree.

[DEBANGSU BASAK, J.]