

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

CRA (DB) 65 of 2022
With IA No.: CRAN 1 of 2022

Md. Farmood..... Appellant (in jail)

Versus

The State of West Bengal

For the appellant : Mr. Bibaswan Bhattacharyya,
Ld. Amicus Curiae.

For the State : Ms. Trina Mitra, Adv.

Hearing concluded on : April 20, 2023

Judgment on : May 18, 2023

Md. Shabbar Rashidi, J.

1. The appeal is directed against the judgment of conviction dated May 26, 2010 and order of sentence dated May 27, 2010 passed by the learned Additional Sessions Judge, 2nd Fast Track Court, Alipore, South 24 Parganas in connection with Sessions Trial No. 2 (7) of 2003 arising out of Sessions Case No. 45 (3) of 2003.

- 2.** By the impugned judgment of conviction, the appellant was found guilty and convicted for the offences punishable under Section 302/394/201 of the Indian Penal Code. By the impugned order of sentence, he was sentenced to suffer imprisonment for life and a fine of Rs. 20,000/- and in default of fine to suffer imprisonment for another two years for the offence punishable under section 394 of the Indian Penal Code. The appellant was also sentenced to life imprisonment and a fine of Rs. 25,000/- and in default of payment of fine to undergo imprisonment for another period of two years for the offence punishable under Section 302 of the Indian Penal Code. He was further sentenced to undergo imprisonment for seven years and to pay a fine of Rs. 10,000/- and in default of payment of fine to undergo further imprisonment for one year for the offence punishable under Section 201 of the Indian Penal Code.
- 3.** It may be noted that while undergoing the sentences so awarded, the unexpired period of sentence

of the appellant was remitted by the State in terms of the provisions of Section 432 of the Criminal Procedure Code, 1973 and he was released on December 24, 2022 in terms of the Judicial Department, Government of West Bengal Order No.731-JL/JDL/16M-22/2022 dated December 23, 2022.

4. PW 1 lodged a written complaint with the officer in charge, Tiljala Police Station on September 10, 2002 stating inter alia that on September 9, 2002 at about 10.00 a.m. a phone call from one Farmood of 25/A, Topsia Road, Calcutta 39 was received at his uncle's house asking to talk to the cousin of PW 1 namely Md. Samir who used to live in the same house at 8/A, Ostagar Lane Kolkata – 14.

5. The written complaint also disclosed that after having talks with Farmood, Md. Samir left the house to meet him. When he did not return until late night, PW 1 and others and started looking for, Md. Samir. Having found no trace of him, PW 1 lodged a GDE at Beniapukur

at about 5.00 a.m. on September 10, 2002. They also kept on searching for Md. Samir. At about 2.00 p.m. PW 1 received an information that Farmood and his associates have killed Md. Samir at 25/A, Topsia Road, Bansbagan under Tiljala PS.

6. On the basis of such written complaint Tiljala PS Case No. 286 dated September 10, 2002 under Sections 302/201 of the Indian Penal Code was started against the appellant. The police took up investigation and on completion of investigation submitted charge sheet under Sections 302/201/394/411 of the Indian Penal Code on October 6, 2000. Accordingly, charges under Sections 302/201/394 of the Indian Penal Code were framed on July 3, 2003. The appellant pleaded not guilty to the charges and claimed to be tried.

7. In order to prove the charges, the prosecution examined 40 witnesses. In addition, the prosecution also relied upon certain documentary as well as material evidences. On conclusion of the evidence on behalf of the

prosecution, the appellant was examined under Section 313 of the Code of Criminal Procedure. The appellant claimed innocence in such examination and the allegations as false.

8. Learned advocate for the appellant submitted that there is no eyewitness to the occurrence and the case of the case is purely based on circumstantial evidence. It has been submitted that the prosecution has failed to prove the chain of circumstances comprehensive enough to prove the guilt of the appellant beyond all reasonable doubts.

9. Learned advocate for the appellant contended that the prosecution has not been able to prove that it was the appellant who made the call at the house of the victim and killed him for the purpose of looting. Nothing was recovered at the instance of the appellant. It was also contended that the extra-judicial confession allegedly made by the appellant was not proved by the prosecution

and the recovery of the dead body and the offending weapons at the instance of the appellant is doubtful.

10. Learned advocate for the appellant further submitted that there are exaggeration and embellishments in the testimony of the prosecution evidence and as such, a conviction on the basis of such evidence is not justified.

11. On the other hand, learned advocate for the State submitted that the prosecution has proved the chain of circumstances which points to the only proposition of the guilt of the appellant.

12. It is submitted on behalf of the State that the dead body and the offending weapons used in the offence were recovered on the basis of extra judicial confession made by the appellant. The prosecution has sufficiently proved with the help of overwhelming evidence beyond doubts that appellant was involved in the murder of the victim. Therefore, it is submitted on behalf of the State that impugned judgment of conviction and order of sentence

are well based on convincing evidence and need not be interfered.

- 13.** The de facto complainant himself deposed as PW 1. He stated that the victim was his cousin brother. On September 9, 2002 his aunt received a phone call from the appellant who wanted to talk to the victim. There were conversation between the appellant and the victim. Thereafter the victim left his house by motorbike and did not return by 9.00 p.m. PW 1 also stated that his aunt tried to search her son. PW 1 and his relatives also searched for the victim but he could not be traced out. At about 5.00 a.m. they lodged a missing diary with Benia Pukur police station. He further stated that on September 10, 2002 at about 2.0 p.m. PW 3 informed him that he had some information about the victim. He went to National Club at 25/A Topsia Road, Bansbagan within the jurisdiction of Tiljala PS and noticed that the members of the club and detained the appellant. The

appellant stated that he will tell the truth about the victim if he is released.

14. PW 1 further stated that the appellant disclosed that he along with his other associates had committed murder of the victim. Thereafter PW 1 went to Tiljala PS and lodged the written complaint. The police took the appellant into custody from 25A, Topsia Road. PW 1 tendered the written complaint which was marked as Exhibit 1.

15. A sub- inspector of police deposed as PW 2. He stated that on September 10, 2002, at about 14.45 hours he received the written complaint from PW 1 and on the basis of such written complaint he filled up the formal First Information Report and started Tiljala PS Case No. 286 dated September 10, 2002 under sections 302/201/34 of the Indian Penal Code against the appellant and his associates. PW 2 proved the formal first information report which was marked Exhibit 2 and his endorsement on the written complaint (Exhibit 1/2). PW

2 also stated that due to inadvertence the date was a written as August 10, 2002 instead of September 10, 2000.

16. A resident of Topsia Road deposed as PW 3. He stated that on September 10, 2002 at about 10.00 a.m. some persons including PW 1 came to his house. He further stated that PW 1 told him that his brother left his house with money for purchasing leather and has gone untraceable. PW3 along with others started searching for the victim. He further stated that at about 12.30 o'clock one Ebrar came to the national club where PW 3 was the game secretary and reported that he used to work under the appellant in his factory. He also reported that he wanted to take back his clothes kept in the factory but the appellant did not open the gate. PW 3 along with others went to the factory and asked the appellant to open the gate whereupon he stated that the keys were lying with one Tenia. Instantly, Tenia was seen coming towards the factory. Seeing him, the appellant tried to

flee away but he was overpowered by PW3 and others. The appellant disclosed before him that he had murdered the victim and his body was thrown in the Corporation canal near the pumping station. PW 3 also stated that the appellant further disclosed that the body of the victim was cut into pieces and was kept in the back. Thereafter the matter was reported to Tiljala PS. Please came and recovered the dead body.

- 17.** The person present in the national club was examined as PW 4. He stated that on September and 2002 he along with PW 3 and others were in the national club when one Ebrar came there and told that the appellant was not opening the gate of his factory for which he was not able to take his clothes. PW 4 also stated that he along with others went to the factory of the appellant and demanded its key whereupon he stated that the key was lying with a boy. The boy referred by the appellant was seen coming at that point of time whereupon, the appellant tried to flee away but he was

apprehended by PW4 and others. PW 4 also stated that on enquiry, the appellant disclosed that he had murdered the victim and cut his dead body in 10 pieces, It in a sandbag and thrown in the canal near Chowbhanga. Thereafter PW 3 informed the matter to Tiljala PS. Police visited and took the dead body. PW 4 identified the appellant in court.

- 18.** A resident of Topsia Bansbagan deposed as PW 5. He has stated that on September 10, 2002 at about 12 o'clock he had been to national club. At that time one Ebrar came there and reported that the appellant was not giving the keys of his factory. PW 5, accompanied by PW3, PW 4 and PW 9 went to the house of the appellant and asked him to give the keys to Ebrar. The appellant told them that the key was lying with the Tenia. At that time Tenia was seen coming towards them. Seeing him, the appellant tried to flee away but he was apprehended by PW 5 and others. The appellant disclosed that he had murdered the victim and his dead body was cut into 10

pieces and was kept in a sandbag thrown in the canal near Chowbhanga. PW 5 also stated that the matter was reported to Tiljala PS which recovered the dead body. He also identified the appellant in court.

- 19.** A local resident deposed as PW6. He stated that on September 10, 2002 at about 3.00 p.m. he was about to proceed to his place of work. At that time, he saw some police and some persons assembled at the pumping station. He also saw the appellant with the police. He also stated that the appellant stated that he threw the dead body of the victim into the canal water in a sandbag. PW6 was asked by the police with that he could swim. He stated that he along with Bikas, Khokan and Hansha recovered nine Sandy bags in one jute bag containing different parts of the body. The jute bag contained the chest of the body. The father and other family members identified the dead body of the victim Samir seeing his face and head. The police took backs containing the parts of the dead body. PW 6 identified the appellant in court.

20. A resident of the place where the dead body was found was examined as PW7. He stated that on September 10, 2002 at about 3.00 p.m. At that time he saw some persons along with the police personnel assembled on the bridge at Chowbhanga. The police had confined the appellant. PW7 also stated he along with Khokan and Bapi Baidya recovered ten pieces of dead body of the victim Samir kept in nine sandy bags from the water at the request of police on the basis of the statement of the appellant. He identified the photographs of the dead body which was already marked as Exhibit X/1 to Exhibit X/6. The bags were opened by the police and were identified by the relatives of the victim. The dead body was sent for post mortem examination. The police seized the bags containing the dead body and some other articles. PW7 put his left thumb impression on such seizure list along with other witnesses. He identified the appellant in court.

21. An acquaintance of PW7 deposed as PW8. He also stated that on September 10, 2002 at about 3.00 pm he along with Bapi, Khokan and Bikash saw some persons and the police personnel assembled at the bridge of Paschim Chowbhangra. The police had detained the appellant who confessed that he had thrown the dead body of the victim in the Canal water. He also stated that leading to such statement and as per identification of the place by the appellant, PW8 dived into the water and recovered nine bags and one gunny bag containing different parts of the body of the victim Samir. The dead body was identified by the family members of the victim. Police conducted inquest over the dead body and thereafter, it was sent for post mortem. The police seized the bags in presence of PW8. He also identified the appellant in court.

22. A resident of Topsia Road was examined as PW9. He stated that on September 10, 2002 at about 12.00 O'clock he was gossiping in the National Club with PW3,

PW4 and PW5. At that time PW23 came there and complained that the appellant was not giving the key of the room where he used to work with the appellant. They went to the building and asked the appellant to open the padlock. The appellant disclosed that the key was lying with the Tenia. The appellant tried to flee away when he saw Tenia coming. He was apprehended by the aforesaid persons and on enquiry, he confessed that he had murdered the victim Samir and cut the dead body into pieces. The appellant also disclosed that he had kept the parts of the dead body in sandy bags and thrown it into the Chowbhanga pumping canal. The matter was reported to police by PW3 and the appellant was handed over to police. PW9 identified the appellant in court.

23. A resident of Paschim Chowbhanga deposed as PW10. He stated that on September 10,2002 at about 3.00 pm he along with PW6, PW7 and PW8 was in front of Chowbhanga Pumping station. At that time police brought the appellant who disclosed in presence of the

assembled crowd that he had murdered the victim Samir and had thrown the dead body in watery portion of the canal. At the request of the police, PW10 and others recovered ten gunny bags. Nine bags contained different parts of the dead body whereas one bag contained lobister of the victim. The police seized the bags along with other articles under a seizure list. PW10 proved his signature on the seizure list (Exhibit Y/1) and identified the appellant. The dead body parts were sent for post mortem examination.

- 24.** A businessman of hardware deposed as PW 11. He stated that he had a hardware business at Kohinoor market, 14/15, Topsia Road. He further stated that on September 9, 2002 at about 6:30 PM one person came to his shop and purchased one Hackshaw frame, 10 pieces of blades and half kilo sutli. He also purchased one shopper and one bag. He identified the appellant in court as the person who had come to purchase the aforesaid articles. He also proved the Hackshaw frame and the 10

pieces of blades which were marked as Mat Exhibit III. PW 11 also stated that he identified the appellant in the Test Identification Parade conducted in jail.

25. A resident of Topsia Road was examined as PW 12. He has stated that he had a business of supplying building materials. One person purchased 15 bags of sand from his shop on September 9, 2002. He identified the appellant as the purchaser of sands. He also claimed to have identified the appellant in the Test Identification Parade.

26. The cousin brother of the victim deposed as PW 13. PW 13 stated that he saw the appellant and other persons with the police at Chowbhanga. He further stated that the appellant identified the place where he had thrown the dead body of the victim and the police recovered the dead body with the help of four persons in 10 bags containing different parts of the dead body. PW 13 also stated that he identified the victim seeing the face. He has also stated that on September 9, 2002 the

victim had gone out of his house by his motorcycle but he did not return. He along with others conducted search for him. On September 10, 2002, PW 13 came to know that the victim was murdered by the appellant. He identified the appellant in court. He also proved his signature on the inquest report (Exhibit 3).

- 27.** One acquaintance of the victim deposed as PW 14. He has stated that on September 9, 2002 of the victim went out of his house by his motorcycle and did not return till 8 PM. PW 14 also stated that he along with others searched for the victim. On September 10, 2002 he came to know that the victim was murdered at Choebhanga canal and went there. Arriving there, he saw the appellant with the police personnel. The appellant identified the place where he had thrown the dead body of the victim. The police engaged for persons to recover the body from the water of the canal. 10 gunny bags were recovered containing different parts of the dead body of the victim. The police conducted inquest over the dead

body. PW 14 identified his signature on the inquest report (Exhibit 3/1). He also identified the photographs of the dead body and the appellant in court.

- 28.** Another acquaintance of the victim deposed as PW 15. He also stated that on September 19, 2002 the victim went outside his house with money for purchasing leather but he did not return till the night of September 9, 2002. PW 15 has also stated that on September 10, 2002, he received information that the victim was murdered. Arriving at Chowbhanga pumping station, he saw the appellant was detained by police and there was so many persons assembled there. The appellant identified the place where he threw the dead body of the victim. He further stated that 3/4 persons recovered the dead body of the victim from watery portion of the canal in 10 gunny bags. The police collected the parts of the dead body and conducted inquest. PW 15 identified his signature on the inquest report (Exhibit 3/2).

29. PW 16 is another acquaintance of the victim. He has also stated that on September 9, 2002, the victim went out on his motorcycle for purchasing leather but he did not return till the night. On the following day PW 16 received information, went to Chowbhanga pumping station and saw the appellant. He further stated that the police recovered the parts of the dead body with the help of 4/5 persons from the place identified by the appellant. PW 16 along with others identified the dead body of the victim and was interrogated by police. He has proved his signature on the inquest report (Exhibit 3/3). He also identified the appellant in court.

30. Another resident of Topsia Road and an employee in the shop of PW 12 was examined as PW 17. He stated that on September 9, 2002 he, along with another person PW17, supplied bags of sand from the shop of PW12 to the house of the appellant through his van rickshaw. He identified the appellant in court as the person at whose

house he delivered the sand bags and claimed to have identified him on the Test Identification Parade.

31. PW18 is the van rickshaw puller who along with PW17 supplied 20 bags of sand to the house of appellant on September 9, 2002. He also identified the appellant in Test Identification Parade.

32. The landlord of the appellant deposed as PW19. He stated that the appellant was a tenant in his house situated at 25/A, Topsia Road, on the first floor at a monthly rental of ₹.800/- per month and the appellant paid a sum of ₹.15, 000/- as advance. He used to deal in leather business and PW23 was his employee. He identified the appellant in court. He also stated that the tenanted premises was under lock and key and was stained with blood.

33. Another resident of Topsia Road was examined as PW 20. He stated that he had a factory by the side of the factory of the appellant at Topsia Road. On September 10, 2002, he saw that police arrested the appellant in his

tenanted house and the appellant confessed in his presence that he had murdered the victim Md. Samir. He further stated that the appellant led the police to recovery of certain articles which were seized by police under a seizure list. The police seized the driving license of the victim which was identified by PW 20 and marked as Mat Exhibit IV. He also identified the hammer, chop stained with blood, sharp cutting knife, iron rod, blood stained napkin, wearing apparel of the victim, slippers, hackshaw blades having bloodstains, plastic bags and other articles which were marked as Mat Exhibit V to Exhibit XV. He also proved the seizure list (Exhibit 4). He identified the appellant informed

- 34.** Another witness to the seizure list deposed as PW 21. He also stated that the appellant used to reside besides his residence at 25/A, Topsia Road. He identified the appellant in court and stated that the appellant had the business of manufacturing of gunny bags. He further stated that on September 10, 2002 at about 12 o'clock,

police came to the residence of the appellant with him and opened his room. Leading to the statement of the appellant, the police recovered and seized several articles like hackshaw blades, hammer, driving license and wearing apparel of the victim and other articles which were seized under a seizure a list. PW 21 proved his signature on the seizure list (Exhibit 4/3). He also identified the seized articles in court.

35. A rickshaw puller was examined as PW 22. He stated that at about 6.00 a in the morning he was hired by the appellant to carry certain articles in at least eight bags. He further stated that the articles where carried by him through his rickshaw from the room where the appellant resided. It was taken to a culvert where the appellant threw the gunny bags in the water. PW 22 identified the bags he carried (Mat. Exhibit XV).

36. The sub- tenant of the appellant in the premises where the occurrence took place deposed as PW 23. He stated that he used to work in a factory of manufacturing

bags situated at 25/A, Topsia Road. He was a sub-tenant in respect of the aforesaid premises under the appellant which originally belonged to PW 19. He identified the appellant in court. He further stated that on September 8, 2002, the appellant asked him to deliver vacant possession of the premises to him for two days which he complied in the morning of September 9, 2002. The appellant state in the factory in the night and delivered the samples to PW 23.

- 37.** PW 23 also stated that on September 10, 2002 at about 11.00 p.m., he returned to the premises and requested the appellant to hand over the key of the witnesses which the appellant denied. Thereafter, PW 23 went and complained to the members of National Club. The members of the club intervened whereupon the appellant stated that the he was lying with the custody of Tenia. He also stated that the appellant went on the first floor of the premises and tried to flee away but he was apprehended by PW 3 and PW 9. Later on PW 23 came to

know from local people that the appellant had murdered one person in the said premises. He was interrogated by police.

38. A motorbike mechanic was examined as PW 24. He stated that in the year 2002, the appellant gave him a motorbike for repairing which he brought to his shop. It was a red coloured Hero Honda motorbike bearing Registration No. 5084. He further stated that the appellant told him that he will collect the motorcycle of the following day but he didn't turn up. PW 24 also stated that one day thereafter the appellant came to his repairing shop along with the police and identified the motorbike. Police seized the said motorbike under a seizure list. He identified his signature on the seizure list which was marked as Exhibit 5. PW 24 also identified the Hero Honda motorbike in court (Mat. Exhibit XVI). He also identified the appellant in court.

39. A seizure list witness deposed as PW 25. He stated that he was a resident of 25/A, Topsia Road. On

September 11, 2002 police came to the house of the appellant and the blood stained plasters from the room. The police first came to the room of Ashique on the 2nd floor of the premises and recovered ₹ 90,000 from the Almira as per the leading statement of the appellant. The aforesaid articles were seized by police under a seizure list PW 25 proved his signature on such seizure list dated September 11, 2002 (Exhibit 6/1). He also stated that the besides himself, the appellant and one Wadud also signed on the seizure list. PW 25 also proved his signature on the seizure list dated September 11, 2002 by which the police seized the blood stained plasters of the wall (Exhibit 7/1). Besides PW 25, the appellant and one Jamaluddin also signed such seizure list.

- 40.** PW 25 also stated that on September 13, 2002 at about 19.00 hours the police seized blood stained shirt under a seizure list to which he signed. The appellant and one Alimuddi also signed on the seizure list. He proved his signature on the seizure list (Exhibit 8/1) and

the seized blood stained blue/black shirt (Mat. Exhibit XVII). He also identified his signature on the label attached to the seized shirt (Exhibit 9/1).

41. One of the seizure list witnesses deposed as PW 26. He stated that the police seized 10 bags containing human body cut into pieces. He identified the ninth sandbags and one chat bag. He also identified his signature on the seizure list dated September 11, 2002 (Exhibit 10/1).

42. A resident of 25/A, Topsia Road deposed as PW 27. She identified the appellant in court. She stated that she used to reside on the second floor of the building whereas the appellant used to reside on the first floor. The appellant used to deal in the manufacture of leather bags and used to take meal at her house for a remuneration of ₹ 200 per week. She further stated that on September 10, 2002 at about 9.30/10.00 p.m. the appellant came to her and handed over some money and left the house telling her that he will come back shortly. PW 27 kept the

money in an Almira of her room. On the following day at about 10.00 am, she heard hue and cry in the locality. She got scared and left for her parent's house.

- 43.** The husband of PW27 was examined as PW28. He has corroborated the statement of PW27. He stated that he used to reside on the 2nd Floor of the premises where the appellant used to reside on the 1st floor. He identified the appellant in court. He further stated that at that time, the appellant used to deal in the business of leather bags and used to take meals at his house in lieu of Rs. 200/-per week. He further stated that on September 9, 2002 at about 8.00 pm, the appellant asked him to take him to a shop for purchasing sands whereupon PW28 took him to the shop of PW12. He purchased ten bags of sand and came back to his residence. PW28 also stated that on the following morning at about 7/7.30 am the appellant asked him to bring a van/rickshaw whereupon he introduced a deaf and dumb rickshaw puller to the appellant. The rickshaw puller brought the rickshaw at

his house. Thereafter, PW28 left for his duty and returned at 10.00 am. He again went to his duty and returned at 1.00/1.30 pm and heard from local people that the appellant had committed murder. He then left the place out of fear.

44. The photographer deposed as PW 29. He stated that on September 10, 2002 at about 2.30/3.00 p.m. police took him to the premises at 25/A, Topsia Road where he took some photographs as per the instructions of the police showing blood stained shoes, sand et cetera. He tendered the photographs along with its negatives which were marked as Mat. Exhibit XIX collectively.

45. A witness to the seizure list dated September 11, 2002 was examined as PW 30. He stated that he was a resident of the premises near the premises of the appellant. On September 11, 2002, at about 12.30/1.00 in the night, the police visited his locality with the appellant and recovered some currency notes in the denomination of Rs. 500, Rs. 100/- and Rs. 50 totaling to

₹ 90,000/- from the Almirah kept in the house of PW 28.

The currency notes were seized by police under a seizure list where the appellant, PW 25 and PW 30 signed (Exhibit 6/2). He also identified the appellant in court.

46. The police officer who carried the dead body deposed as PW31. He stated that on September 11, 2002 he carried a dead body to Medical College & Hospital at Calcutta for post mortem. He proved the dead body 'challan' (Exhibit 11). PW31 also produced the wearing apparels of the victim and sand bags which were seized by the police under a seizure list. He proved his signature on such seizure list (Exhibit 10/2) and the two gunny bags as well as nine plastic bags (Mat. Exhibit XX and Mat. Exhibit I respectively).

47. The mother of the victim deposed as PW32. He stated that in the morning of September 9, 2002, he was present in his house with the wife of his elder son's wife Rukhsana. At about 10.00 am he received a phone call from the appellant. He further stated that before

receiving the phone call the victim had left with some money to meet the appellant by his motorbike. PW32 also stated that the victim did not return till 10.00/10.30 pm so he informed the matter to the local people and kept searching for the victim throughout the night. The eldest son of PW32 lodged a GDE in this regard. On September 10, 2002, PW32 received information that the victim was murdered. He tendered the photograph of his victim son (Exhibit 12).

- 48.** The sister-in-law (brother's wife) of the victim deposed as PW33. She stated that on September 9, 2002, at about 9.00 am the victim took some money from his mother left the house. Shortly thereafter, he returned and again left the house after taking the papers of his motorbike. She further stated that at about 10.30/10.45 am, PW33 received a phone call from the appellant in presence of her mother-in-law. He asked for the victim whereupon, she informed that he had already left. The victim did not return on that day. On the following day,

PW33, received information that the victim was murdered and cut into pieces. She also identified the photograph of the victim (Exhibit 12) and that of the dead body of the victim (Exhibit 13 series).

49. A police officer of Beniapukur Police Station deposed as PW34. He stated that he recorded a GDE being number 895 dated September 9, 2002 at 5.20 hrs on the basis of information received from one Md. Sajid. He proved the GDE which was marked as Exhibit 14.

50. The father of the victim was examined as PW35. He stated that on September 9, 2002, his son left the house with cash of ₹. 1, 00,000/- and his motorbike four purchasing leather. He did not return on that day. His wife informed PW35 that the appellant had called her over phone and was asking for the victim. His another son lodged a missing diary on September 10, 2002. At about noon, PW35 came to know from Tiljala PS that the appellant had murdered his victim son, cut the dead body into pieces and had thrown it into a canal.

51. The Assistant Director of Forensic Science Laboratory deposed as PW 36. He stated that on September 17, 2002, his department received 20 paper packets and five paper covered cardboard cases with specific markings in connection with Tiljal PS Case No. 286 dated September 10, 2002 through the Sub divisional Judicial Magistrate, Alipore. PW36 examined the contents of the said parcels and prepared his report. He tendered his report which was marked as Exhibit 15.

52. The Senior Scientific Officer, posted in the Physics Division of Forensic Science Laboratory, Government of West Bengal was examined as PW37. He has stated that on September 28, 2002 his department received certain articles with specific marking from Biological Department of FSL in connection with Tiljal PS Case No. 286 dated September 10, 2002. PW37 examined the aforesaid articles and prepared his report which was marked as Exhibit 16.

53. The autopsy surgeon deposed as PW38. He stated that on September 11, 2002, he conducted post mortem over the dead body of the victim Md. Samir in connection with Tiljal PS Case No. 286 dated September 10, 2002. PW38 tendered the post mortem report prepared in his pen and signature which was marked as Exhibit 17. He further stated that the dead body was produced before him in a Jute bag and nine polythene bags which he examined individually and after matching with the dismembered parts of body in physico-morphological appearance and their fittings at their respective site anatomically and opined that the said parts belonged to one single human being aged about 25 years. PW38 also opined that the cause of death was due to the effect of head injury ante mortem and homicidal in nature. According to his opinion, the time of death was between 48 to 52 hours prior to the post mortem examination.

54. PW38 also opined that in view of the ante mortem reactions at the several margins of the neck part it

appeared that severance of the body parts at different sites were made immediately after the death of the deceased. The injuries found by PW38 were opined to be sufficient to cause death in ordinary course of nature. At the trial, PW38, after being confronted with Iron Chopper (Mat. Exhibit VI) and hackshaw blade (Mat. Exhibit XII) opined that the dismemberment of the body could be done by such weapons. He was also confronted with the hammer (Mat. Exhibit V) whereupon he opined that the injury found on the head of the victim could be inflicted by such weapon.

- 55.** A Judicial Magistrate was examined as PW39. He stated that on October 10, 2002 he conducted Test Identification Parade at Alipur Central Correctional Home in respect of the appellant as suspect. He stated that the witness PW12 identified the suspect as the person who purchased 20 bags of sand from him 23/24 days ago. PW18 identified the suspect as the person whom he saw purchasing sands from the shop of PW12. He further

stated that PW11 identified the suspect as the person who purchased hackshaw frame, hackshaw blades, axe, half kilogram of rope and one gunny bag from his shop on September 9, 2002. PW 39 also stated that another witness Sk. Moklai @ Ganga, interpreted by a teacher of Calcutta Deaf and Dumb School also identified the suspect as the person who carried few tied bags through his rickshaw van and threw those bags in the canal and paid ₹.30/- to him. PW39 prepared a report upon such Test Identification Parade which he tendered in evidence and marked as Exhibit 18.

- 56.** Investigating officer of the case deposed as PW40. He stated that on September 10, 2002 he was posted as Tiljala PS as Sub-Inspector of Police. At that time Inspector Subir Chatterjee was the Inspector In-Charge of the PS. On the same date a written complaint was lodged by PW1. On the basis of such written complaint, Tiljala PS case no. 286 dated September 10, 2002 under Sections 302/201 of the Indian Penal Code was started.

He tendered the formal first Information Report which was marked as Exhibit to and the written complaint which as marked as Exhibit 1. PW40 also stated that he was endorsed with the investigation of the case.

57. PW40 also stated that in course of investigation, he visited the place of occurrence and arrested the appellant who was detained by PW3, PW4, PW9 and PW5. He examined the aforesaid witnesses who stated the appellant had admitted before them that he had committed murder of the victim in a room on the first floor of the premises 25/A, Topsia Road. Thereafter, PW40 identified the appellant in court. He also visited the said room with the appellant and the aforesaid witnesses and found the articles therein were scattered. He discovered bloodstains in different parts of the room and in the attached bathroom. Heap of sand and some bags filled with sand were also recovered in the said room.

58. PW40 interrogated the appellant who stated that he had committed murder of the victim by hitting on his

head by a hammer at 11.00 am on Monday. The appellant also stated that thereafter, he purchased 20 bags of sand, one frame of hacksaw and some hacksaw blades. Thereafter, the appellant returned to his room and cut the dead body into ten pieces. He further disclosed that he kept the parts of the body in nine half filled sand bags whereas the middle part of the body was kept in a gunny bag. Thereafter, in the early morning, he carried the said bags to a bridge at Chowbhanga pumping station through the rickshaw van of one deaf and dumb rickshaw puller. When the rickshaw puller left the place, he dropped the bags into the water of the canal. PW40 tendered the portion of the statement of the appellant recorded under Section 161 of the Code of Criminal Procedure, leading to recovery, which was marked as Exhibit 19.

- 59.** PW40 also stated that he along with the Inspector-in-charge Subir Chatterjee, PW31, PW15, his father, PW13, PW16, PW14, and four local people namely PW7,

PW10, PW6, and PW8 went to the bridge as per identification of the appellant. The appellant pointed to the place where he had dropped the bags. Thereafter, with the help of PW7, PW10, PW6, and PW8 the nine bags and one gunny bag was recovered from the water. The bags were found to contain different parts of the dead body whereas the gunny bag contained the middle portion of the dead body. The head of the victim was kept in a cement bag. The relatives of the victim identified the dead body.

60. PW40 conducted inquest over the dead body on September 10, 2002 at 3.25 pm. He tendered the inquest report which was marked as Exhibit 3/4 which was signed by the witnesses. He then sent the dead body through a police constable for post mortem under a dead body challan (Exhibit 11/1). In course of investigation, PW40 examined the available witnesses and recorded their statements under Section 161 of the Code of

Criminal Procedure, seized the sand found in the bags under seizure list (Exhibit 20).

61. PW40 returned to the place of occurrence i.e. the tenanted premises of the appellant and prepared rough sketch map with index (Exhibit 2). He also seized 18 number of articles as shown by the appellant which he used in commission of the crime under a seizure list prepared under his dictation, in presence of the appellant and witnesses (Exhibit 4/4). He also identified and tendered the Driving License, Hammer, iron chopper, and other articles (Mat. Exhibits IV to Mat. Exhibits XV). PW40 also stated that the appellant lead him to a room on the 2nd floor of the premises and took out ₹. 90, 000/- from an steel almirah which was seized by him under a seizure list (Exhibit 6/3) which was later handed over to the father of the deceased under order from court.

62. PW40 also stated that the appellant lead him to the garage of PW24 from where the motorbike of the victim was recovered and seized by him under a seizure list

(Exhibit 5/1). He also examined the owner of the garage under Section 161 of the Code of Criminal Procedure.

63. PW40 also received nine white and yellow color bags and portions of two gunny bags containing different part of the dead body from the Forensic Science Laboratory and seized the same under a seizure list (Exhibit 10). He also identified the said bags (Mat. Exhibit I and XX). He also seized the van rickshaw of Ganga @ Sk. Moktar PW22, through which the bags were carried from the place of occurrence to the canal under a seizure list (Exhibit 22). As shown by the appellant, he also seized the wearing apparel of the appellant under a separate seizure list (Exhibit 8) and identified the said wearing apparel in court (Mat. Exhibit XVII). He arranged for sending the seized article to Forensic Science Laboratory and received its report. He also received the post mortem report on September 18, 2002. PW40 also examined PW22 and Dilip Kumar Chatterjee and recorded their statements under Section 161 of the Code of Criminal

Procedure. He also arranged for the Test Identification Parade of the suspect and collected its report.

64. Thereafter, PW40 submitted charge sheet against the appellant on October 6, 2002 and after submitting the charge sheet received the FSL report on October 29, 2002 and submitted a supplementary charge sheet on November 11, 2002. After that, PW40 examined PW28 under Section 161 of Criminal Procedure Code and submitted a further supplementary charge sheet on November 22, 2002.

65. PW40 also proved the GDE Nos. 937, 939 dated September 10, 2002, GDE No. 965 dated September 11, 2002, GDE No. 1081 dated September 13, 2002, which were marked as Exhibits 23, 23/1, 23/2 and 23/3 respectively.

66. As noted above, the appellant has been charged with the offences punishable under Section 302/201 of the Indian Penal Code for intentionally causing death of one Md. Samir, the victim and for causing disappearance

of the evidence with regard to such murder. The dead body of the victim was found in an amputated condition in ten parts of sand and jute bags each containing difference parts of the dead body. The dead body was sent for post-mortem examination. The autopsy surgeon PW38 conducted post-mortem over the dead body on September 11, 2002. He stated in his deposition that he received one jute bag and nine polythene bags containing the parts of the body. He examined the parts individually and opined that considering the matching of the dismembered body part with each other in physio-morphological appearance and their fitting at their respective site anatomically it can be said that the parts were belonging to a single human being aged about 25 years. PW38 also opined after post-mortem examination of the dead body that the cause of death was due to the effect of head injury ante-mortem and homicidal in nature. According to the opinion of PW38, the time of death was between 48 to 52 hrs. prior to the post-

mortem examination. He further opined that the head injury found on the dead body was sufficient to cause death in ordinary course of nature. PW38 tendered and proved the post-mortem report which was marked as Exhibit 17. In post-mortem examination, PW38 noted the injuries on the dead body of the victim at great length. The injuries worth mentioning have been described as (a) one lacerated injury line x 0.5 inches x bone deep placed over lat. x end of left eye bore with evidence of fissure fracture 1.5 inches long over corresponding frontal bone and ante-mortem reaction, (b) one lacerated injury 1.5 inch x 0.5 inch into muscle deep placed over right occipital region , one inch middle and below deep of right mastoid of the process with evidence of ante-mortem reaction, (c) one lacerated injury 1 inch x 0.5 inch x muscle deep placed over right occipital region 0.5 inch above external occipital perturbation with evidence of ante-mortem reaction, (d) one lacerated injury 1.5 inches x 0.5 inch into muscle deep placed over occipital region

0.5 inch below external occipital perturbation with evidence of ante-mortem reaction, (e) one lacerated injury 3 inches x 1 inch into bone deep of the place over right parietal region 2.6 inches middle to right parietal eminence with evidence of depressed commuted entry 2.1 inches into 1.7 inches over the corresponding right parietal bone with that ante mortem reaction. There were several other injuries noted by PW38 in Exhibit 17. It was also noted that the body was found in ten parts.

67. PW38 was confronted with MAT Exhibit V, the hammer weapon PW38 had opined that the injury found on the head of the dead body could be caused by such weapon. He was also confronted with MAT Exhibits VI and XII (chopper and hack saw blades which according to PW38, could have been used for severing the parts of the dead body.

68. Thus, on the basis of the testimony of PW38 together with Exhibit 17, it can be safely held that the victim Md. Samir died an unnatural death due to certain

injuries inflicted upon him, which were ante mortem, homicidal in nature and sufficient to cause death in the ordinary course. Consequently, the prosecution has been able to establish that the victim was murdered.

69. The evidence on record goes to show that there no eye-witnesses to the occurrence. The case is based on circumstantial evidence.

70. The evidence on record goes to show that the victim went out of his residence in the morning of September 9, 2002 with certain amount of money for the purchase of leather. He left his house, came back and again left with his motorcycle. It is the case of the prosecution that at about 10.00 a.m. on the said date, the relatives of the victim received a phone call from the appellant. The appellant was asking for the victim whereupon he was informed that the victim had already left. Such fact was testified by PW 32. She has stated that at about 10.30 a.m. she was at her residence with the wife of her elder son when they received a phone call from the appellant

looking for the victim. She also testified that before receiving the phone call, the victim had already left with some money to meet the appellant and such fact was informed to the appellant over telephone. The daughter in law of PW 32 has deposed as PW 33. She overrated this statement of PW 32. She also testified that at about 9.000 a.m. the victim took some money from his mother, PW 32 and he left the house. Later he came back and again left after taking the documents of the motorbike. At about 10.30/10.45 AM, PW 33 received a phone call from the appellant who asked for the victim. She informed the appellant that the victim had already left the residence.

71. PW 32, PW 33, PW1 and other witnesses have stated that after leaving the house in the morning, the victim did not return till late-night. Thereafter, the relatives of the victim started searching for the victim. The search for the victim continued throughout the night and having failed to trace out the victim, PW1 lodged a GDE with Beniapukur police station at about 5 AM on

the following day. Exhibit 14 is the GDE lodged by the brother of the victim.

72. The matter was also brought to the notice of the local people. PW3 stated that he was informed by PW1 that his brother had left the house with some money for purchasing leather and he was not traceable. He also requested PW3 to give the information if PW3 received. PW3 was the games secretary of the National Club in the locality. Besides PW3; PW4, PW5 and PW9 were also in the National Club. At that time, PW23 came there. PW23 was a sub-tenant under the appellant in respect of the premises where the occurrence took place. PW23 stated that the appellant was a tenant in respect of the premises situated at 25/A, Topsia Road under PW19. PW23 took the said premises from the appellant as sub-tenant for running a factory. It was stated by PW23 that on September 08, 2002, the appellant asked for delivery of the vacant possession of the said premises for two days and accordingly, he delivered the vacant possession to

the appellant. The appellant stayed in the premises for two days. On September 10, 2002, PW23 demanded the key of the premises from the appellant whereupon he refused to give the keys. Thereafter, PW23 went to the National Club and reported the matter to PW3, PW4 and others that the appellant was not giving back the keys. PW3 has also stated that PW3 and PW9 went to the premises demanding the key. At first, the appellant told them that the key is lying with the possession of one Tenia. Thereafter, the appellant went on the first floor and tried to flee away but he was apprehended by PW3 and PW9.

73. PW3 has testified such facts that he was reported by PW23 that the appellant was not giving the keys of the premises to him. He along with others went to the appellant and asked him to open the factory. He disclosed that the keys of the victim were lying with one Tenia. Incidentally, at that time, the said Tenia was found going. Seeing the Tenia going, the appellant went to the

first floor and tried to flee away. PW3 along with PW4, PW9 and PW5 caught hold of the appellant. The appellant offered money to them for releasing him. On enquiry, the appellant disclosed before the aforesaid witnesses that he had murdered the victim and his body was thrown into the canal of Corporation near Pumping Station. Such fact has been corroborated by PW4, PW5 AND PW9. Thereafter, the witnesses went to Tiljala PS arrested the accused, recovered the dead body and sent the same for post mortem examination. Exhibits 23 and 23/1 are the GDE which contains the information to the effect that PW3 along with others reported to the Police Station that the appellant was caught by them but had confessed before them that he had murdered the victim.

- 74.** After the appellant was sought, apprehended and arrested, he was said to have confessed the murder of the victim and having thrown the dead body after cutting into pieces into the canal. He was taken by the Police to the canal near the pumping station as identified by him. As

per the identification by the appellant of the place where he had thrown the dead body, the Police engaged some local people who dived into the canal and recovered nine plastic bags and also jute bags containing different parts of the body of the victim in such bags. PW6 stated that he along with PW7, PW8 and PW10 dived into the canal as per the direction of the Police and recovered ten bags each containing different parts of the body of a human being. PW7, PW8 and PW10 have corroborated the statement of PW6. The aforesaid witnesses have also stated that the recovery of the dead body from the canal was made upon the statement of the appellant by the Police and other witnesses. The recovered articles were seized by the Police under the proper seizure list.

75. As noted above, the appellant was arrested. He was interrogated by Police. He made a statement before Police under Section 161 of the Code of Criminal Procedure and gave out that he will lead to recover the dead body of the victim as well as the motor-cycle belong to him. The

relevant portion of the statement of the appellant leading to recovery of various articles including the dead body was admitted in evidence (Exhibit 19).

76. Not only that, the motor cycle belonging to the victim was also recovered pursuant to the statement of the appellant. The motor cycle was recovered from a garage as per the leading statement of the appellant. PW24 has testified that the motorcycle of the victim was handed over to him by the appellant for the purpose of repairing from where it was seized by the police lead by and in presence of the appellant.

77. The Police also seized a driving license of the victim along with the offending weapons, plastic bags, some quantity of sand and other articles from the room of the appellant under a seizure list (Exhibit 4). Some of the articles were stained with blood. There appears no explanation on behalf of the appellant as to how the personal belongings of the victim came to be recovered from the room of the appellant. The sand samples

recovered from the room of the appellant along with the sand in the bags containing the parts of the dead body recovered from the canal were sent for chemical examination. The report of the forensic science laboratory (Exhibit 16) goes to show that the sand samples were found to be similar in respect of the grain size distribution.

78. The case submitted by the prosecution appears that the appellant called upon the victim. The victim went to the appellant with huge amount of money for the purchase of leather. The appellant snatched the said money from the victim and committed his murder. In order to destroy the evidence of murder, the appellant cut the dead body of the victim into several pieces, put the parts in a number of cement bags, carried the said bags to a canal and thrown such bags into the canal.

79. PW1, PW13, PW33 and PW35 have stated that the victim left his house with some money for the purchase of leather. PW35, father of the victim has stated that he left

with sum of Rs.1,00,000/-. Such testimony of the prosecution witnesses has not been dislodged by the defence.

80. As noted, the appellant used to reside at the first floor of the premises at 25/A, Topsia road. He used to take meal at the house of PW27 and PW28 for a remuneration of Rs. 2,00/- per week who resided on the second floor of the same premises. PW27 has stated that on September 10, 2002, the appellant came to her and handed over a bulk of money for keeping. He had stated that he will go back and take the money. She kept the money in the almirah of her room. The statement of PW27 has been corroborated by her husband PW28. Later on, a sum of Rs. 90,000/- was recovered from the residence belonging to PW 28 and led by the appellant under a seizure list (Exhibit 6). Exhibit 6 also contains the signature of the appellant. The Police also recovered and seized the blood stained plaster from the residence of the appellant (Exhibit 7) and the blood stained wearing

apparel of the appellant at the time of commission of the murder (Exhibit 8). Both the seizure lists bear the signatures of the appellant.

81. The Police seized some bags of sand containing sand and parts of the dead body of the victim (Exhibit 2). Nine plastic bags of sand were also recovered and seized by police from the residence of the victim (Exhibit 4).

82. It is the case of the prosecution that prior to the alleged incident, the appellant purchased fifteen bags of sand from a shop belonging to PW12. PW12 has stated in his deposition that on September 09, 2002, the appellant purchased fifteen bags of sand from his shop. He identified the appellant in Court as the purchaser of sand. He has also stated that after purchasing the sand bags, he took the same by van/ rickshaw of PW17 and PW18. PW17 and PW18 have corroborated the statement of PW12 regarding purchase transportation of the sand bags. Similarly, PW11 has stated that he dealt hardware business. On September 09, 2002, the appellant

purchased hacks of frame and hacks of blades from his shop. He also identified the appellant as the purchaser of the said article. PW11 also identified the articles (MAT Exhibit III collectively) as the articles purchased from his shop. PW22 is another rickshaw/van puller. He has stated that the appellant brought some bags from his room and loaded on his rickshaw. The articles were carried to a calvart where the appellant threw the ganny bags in the water. He also identified the appellant as the person hired his rickshaw/ van. He also identified the bags (MAT Exhibit- XV) in Court.

- 83.** PW11, PW12, PW18, PW17 and PW22 also identified the appellant put on Test Identification Parade. Exhibit 18 goes to show that PW12 identified the appellant as the person who purchased twenty bags of sand from his shop. PW18 identified the appellant as the person whom he sent to the shop room of PW12 for the purchase of the sand. PW17 identified the appellant as the person who purchased sand bags from the shop of PW18. PW11

identified the appellant as the person who purchased hacks of frame, ten hacks of blades, one axe, half kg rope and a gunny bag from his shop. PW22 identified the appellant in such Test Identification Parade as the person who carried some tied bags from his van rickshaw and threw the said bags into the canal and paid Rs. 30/- to him.

84. Therefore, from the evidence so adduced on behalf of the prosecution, it transpires that the appellant purchased sand and sand bags, and the offending weapons which were used for the purpose of amputating the parts of the dead body. The evidence on record goes to establish that the victim went to the appellant with huge amount of money which he carried for the purpose of purchasing leather. The circumstances establish that the appellant murdered the victim, cut the dead body into pieces and tied up them in a bag and threw the bags into a canal which contained the parts of the dead body. The alleged time of incident is consistent with the purchase of

the sand bag for disposal of the dead body. In fact, PW22 has testified that the dead body was disposed of by the appellant. The money carried by the victim was recovered at the instance of the appellant. The appellant has not been able to give any explanation for the money kept by him at the residence of PW27. The appellant has also failed to give any explanation as to why the driving license of the victim was found to be recovered from his residence. The motor-cycle belonging to the victim was also recovered as per the leading statement of the appellant. The circumstances brought forth by the prosecution with the help of the evidence on record are neatly weaved, which gives rise to the only position with regard to the guilt of the appellant. There appears to be no scope of any position leading to his innocence.

85. Therefore, in the light of discussions made hereinbefore, we are of the view that the impugned judgment of conviction and order of sentence passed by

the learned trial court are well founded and require no interference.

- 86.** Accordingly, the appeal being CRA 65 (DB) of 2022 and IA No. CRAN 1 of 2022 are hereby dismissed.
- 87.** Connected applications, if, stands disposed of.
- 88.** Period of detention suffered by the appellant during investigation, enquiry and trial shall be set off from the substantive sentence imposed upon the appellant in terms of Section 428 of the Code of Criminal Procedure.
- 89.** Copy of the judgment along with Trial Court Records be sent down to the trial court at once for necessary compliance.
- 90.** Urgent Photostat Certified copy of this order, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

[MD. SHABBAR RASHIDI, J.]

- 91.** I agree.

[DEBANGSU BASAK, J.]