

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 141 of 2021

Minakshi Biring

Versus

The State of West Bengal

For the appellants : Mr. Prabir Kumar Mitra, Adv.

: Mr. Pinak Kumar Mitra, Adv.

: Ms. Ariba Shahab, Adv.

For the State : Mr. Prasun Kumar Datta Ld. APP.

: Mr. Santanu Deb Roy, Adv.

For the respondent

nos. 2 to 6 : Mr. Anjan Dutta, Adv.

: Mr. Balaram Pandit, Adv.

Hearing

concluded on : 09th February, 2023

Judgment on : 01st March, 2023

Md. Shabbar Rashidi, J.:

1. The appeal is directed against the judgment dated December 21, 2020 passed by the learned, 2nd additional Sessions Judge, Contai in Sessions Trial No. 2/July/2013 arising out of Sessions Case No. 333/2013.
2. By the impugned judgment, the accused persons were acquitted of the offences punishable under sections 306/302 of the Indian Penal Code.
3. It is the case of the prosecution that one Minakshi Biring, the wife of the victim, lodged a written complaint before the officer in charge Contai Police Station within the district of Purba Medinipur, to the effect that her husband died on March 5, 2009. According to her, the said death was very much suspected due to the provocation of the relatives of her husband, namely Prakash Biring, Samarendra Biring, Poltu Biring and Swapan Biring. The written complaint further disclosed that the aforesaid relatives of her husband had taken loan from one Shakatipada Panda of Ma Kali medical

store. The husband of the de-facto complainant stood guarantor to the aforesaid loan of Rs. 4 lakh. The aforesaid relatives of her husband denied paying back the loan amount to the said Shakthipada Panda and he requested the husband of the de facto complainant to repay the loan amount. Since then, the said Shaktipada Panda and the afore-named relatives of the husband of the de facto complainant have been torturing her husband and also threatened to kill him.

4. The written complaint also disclosed that on March 4, 2009, the aforesaid four relatives of the victim called upon him to Bagdia village for a discussion over the loan money. In course of such discussion, the victim was scolded and abused for which the victim Prabir Kumar Biring felt very much insulted. On March 5, 2009, the de facto complainant came to know about the death of her husband at his native place. She went there and found the dead body of her husband lying in a field. She could observe that the entire face of the victim had turned

blackish and few drops of blood oozed out. The dead body was lying on the ground seemingly put in place by someone. There was no dust or anything on the dead body, no kerosene was available at the spot. She also noticed one Aandrocele bottle and two empty cold drink bottles lying there. The de facto complainant also stated that her husband used to tell her that he will be murdered if he visits his native village at Kanthi, Midnapore. She also stated that her husband also advanced a loan of ₹ 2 lakh to his brother Prabhat Kumar Biring for purchasing some land and a loan of ₹ 3.5 lakhs to his brother Prakash Kumar Biring for construction of his building.

5. On the basis of such written complaint, Contai Police Station Case No. 144/2009 dated July 12, 2009 under Section 306 of the Indian Penal Code was started against the four accused persons. The police took up the investigation and on completion of investigation submitted charge sheet against the six accused persons.

Accordingly, on the basis of materials in his diary, charges under Sections 306/302 of the Indian Penal Code were framed against the six accused persons on January 31, 2016. The accused persons pleaded not guilty to the charges and claimed to be tried. Consequently, the six accused persons were put on trial for the offences punishable under Sections 306/302 of the Indian penal code.

- 6.** Upon consideration of the evidence on record as adduced on behalf of the prosecution and examination of the accused persons under Section 313 of the Code of Criminal Procedure, the learned Trial Court found the accused persons not guilty of the offences punishable under Section 306 and alternatively Section 302 of the Indian Penal Code and acquitted all the accused persons.
- 7.** Such judgment of acquittal so passed by the learned Trial Court has been assailed by the appellant. In course of advancing argument, it is contended on behalf of the appellant that in the evidence on record, there are

materials to prove that the victim was murdered. As such, learned Trial Court was not justified in acquitting the accused persons. It was also contended that there are materials on record that the accused persons owed money to the deceased victim which the victim failed to realize. For such reason, the victim was murdered by the accused persons.

8. On the other hand, it has been argued on behalf of the private respondents that there was an inordinate delay in lodging the first information report on the part of the de facto complainant and the same has not been explained by the prosecution to the satisfaction of learned Trial Court. Learned Trial Court was quite justified in drawing an adverse inference in terms of the provisions of Section 114 (g) of the Indian Evidence Act, 1872. It was also pointed out that the written complaint which is the basis of the first information report was never proved and admitted in evidence.

9. The learned advocate for the private respondents have also stated that the prosecution has not been able to prove the fact of alleged loan advanced by the victim to the accused persons or even the financial position of the deceased to advance loan of such a hefty amount. On the contrary, the testimony of PW2 has been pointed out where the mother of the victim has stated that it was the victim who availed loan and could not repay for which he committed suicide. It was further contended that there is nothing in the evidence on behalf of the prosecution led at the trial to establish that the victim was murdered or he committed suicide for non-payment of loan by his brothers i.e. the accused persons.

10. Learned advocate for the private respondents have also relied upon the post-mortem report (Exhibit 7) where the cause of death has been shown to be due to poisoning which was suicidal and ante-mortem in nature.

- 11.** The learned Trial Court, according to learned advocate for the private respondents, has rightly acquitted the accused persons for want of cogent and convincing evidence suggesting the death of the victim to be homicidal.
- 12.** In order to bring home the charges leveled against the accused persons, prosecution examined 28 witnesses in all. In addition, the prosecution also relied upon certain documentary as well as Material evidences.
- 13.** An acquaintance of the victim deposed as PW 1. He could identify only one of the five accused persons present in Court on the date of his deposition namely Prabhat Biring. He also knew the de facto complainant and the victim. He, however, did not state anything about the incident.
- 14.** The mother of the victim and the accused persons deposed as PW 2. She stated in her deposition that she had heard that the dead body of Prabir Biring was found in a field by the side of a pond in the village Bagdia. She

was called by some villagers and then she saw the dead body. She further stated that she used to reside with the victim and saw that some persons used to come to take money from him. She also stated that there were some disputes regarding taking money from others and due to the aforesaid transaction, incident of death had occurred. She, however, stated that she could not say the exact reason of death of her son Prabir Biring.

- 15.** In her cross-examination, PW2 admitted that there was a criminal case pending regarding misappropriation of money in the office of the deceased. She also admitted that her deceased son had taken loan from some persons and had failed to repay the said loan in time and for that reason, he committed suicide by consuming poison. In her cross-examination on behalf of accused Swapan and another, PW2 admitted that the deceased had estranged relations with his wife and he left his village due to disputes with his wife.

16. The de-facto complainant herself deposed as PW3. She identified the accused persons in Court and stated that she had filed the written complaint against the accused persons. She further stated that the incident took place on March 4, 2009. On that day, there was a meeting at her residence. The accused persons were present in the said meeting. It was decided in the meeting that there would be another meeting at her in-laws' house at village Bagdia. At about 6.30/7.15 p.m. on March 4, 2009, husband of PW3 started for village Bagdia by the motorcycle of Samarendra Biring accompanied by Samarendra Biring and Swapan Biring. She further stated that before leaving, her husband stated before her that he would return home by that day but he did not return. At about 9.00 p.m. on March 4, 2009, she made a phone call to the phone of Samarendra Biring whereupon she was informed that the meeting was going on and her husband would return the next morning.

17. PW3 also stated that on March 5, 2009 at about 7.10/7.15 a.m., her son received a phone call informing that the dead body of the husband of PW3 was lying in the fields. Hearing this, PW3 started crying. Her eldest son made a phone call to the husband of her sister whereupon he came there and took the PW3 to Bagdia village where the dead body of her husband was lying. She stated that the place where the dead body of her husband was lying was 100/150 meters away from her in-laws house in a paddy field. Going there PW3 found that the face of the dead body had turned blackish and his legs were folded. There was no dust on the dead body she also found injury marks on the back side of the head of her deceased husband and a deep black mark on his right rib. She also found one bag and a sealed Androcele bottle and two cold drink bottles one of which was semi-empty. PW3 also found some boiled peas and grams lying there. Her husband was wearing a wrist watch. PW3 identified the said watch and the bottles which were

marked as material exhibits I and II. The Androcele bottle, sandals and bag belonging to her husband were also identified by PW3.

- 18.** Seeing the dead body, PW3 stated that, she was in belief that her husband was murdered by someone and the articles were placed beside the dead body. She further stated that when her husband was alive, Prakash Biring, the elder brother of her husband took a loan of about ₹ 3.5 Lacs from her husband. Similarly, Prabhat Biring also took a loan of ₹ 2 lakh from her husband in the year 2003. She further stated that Samarendra Biring and Swapan Biring also took loan from her husband. Her husband also stood guarantor to a loan of Rupees 4 lakh advanced by Shatipada Panda to Prabhat Biring and Prakash Biring. However, the said persons were not willing to repay the loan amount for which Shatipada Panda demanded money from her husband as a guarantor.

19. In her deposition, PW3 has stated that as Madhyamik examination of her eldest son was going on, she lodged the written complaint on March 7, 2009. Instantly thereafter, she stated that on March 7, 2009, the Officer-in-charge of Contai Police Station did not receive her written complaint. Thereafter, she sent the written complaint by post on April 4, 2009. Thereafter, she against sent the written complaint by registered post with A.D. on April 27, 2009. After that, she moved before Hon'ble High Court, Calcutta, and upon a direction from the Hon'ble court, case was started by the Police Station. She lodged a written complaint written by her uncle. She proved her signature on such written complaint which was marked as Exhibit 1.

20. PW3 was extensively cross-examined on behalf of the accused persons.

21. A resident of village Bagdia deposed as PW 4. He stated to identify the complainant, the deceased and the accused persons. He also stated that one of the accused

persons present in the court on the date of his deposition used to reside at Contai. He further stated that on the night preceding the incident, he was not at his house. After returning, he came to know that husband of Minaakshi died and his dead body was found lying in the fields, which he saw.

22. Another villager was examined as PW5. He could not add any substance either to the case of the prosecution or to the defence.

23. A primary school teacher from Jalalkhanbar was examined as PW6. He identified some of the accused persons. He also claimed to identify the de facto complainant and her husband. He, however, stated that he had no knowledge about the case filed by Minakshi Biring. He further stated that on April 10, 2009, after the death of Prabir Biring, there was a meeting at the house of Ashok Kumar Mishra which started at about 7.00 p.m. The de facto complainant Minakshi Biring was also present in the said meeting. In the said meeting, it was

discussed that Shakti Panda had advanced money to Prabir Biring and how it was to be returned. However, no definite conclusion could be arrived at in the meeting for which the meeting ended. He further stated that he came to know about the death of the Prabir Biring over telephone from his neighbor.

24. One relative of the deceased deposed as PW7. He identified the accused persons in court and also claimed to identify the de facto complainant. He has stated that he came to know that Prabir Biring committed suicide by taking poison. The defence declined to cross-examine the witness.

25. The police officer who conducted inquest over the dead body of the deceased victim was examined as PW8. He stated that on March 5, 2009, he held inquest at village Bagdia under Contai PS over the dead body of Prabir Kumar Biring. He prepared a report in this regard which he tendered which was marked as Exhibit 2. He further stated that at the time of conducting the inquest,

he also seized the wearing apparels of the deceased and an empty bottle of Androcele and some other articles under two seizure lists which were tendered and marked as Exhibit 3 and 4 respectively. He also identified the seized articles in Court. In an answer to the question put to him in his examination in chief itself, PW8 stated that the de facto complainant Minakshi Biring also signed on the inquest report in presence of him and other witnesses. The defence declined to cross-examine the witness.

26. Another villager from Bagdia deposed as PW9. He stated that he identified the de facto complainant, her husband and the accused persons. He identified the accused persons in court. He also stated that he heard that the husband of Minakshi died by taking poison. He however, could not say if he was examined by the Investigating Officer.

27. The witness was declared hostile by the prosecution and in his cross-examination on behalf of the

prosecution, he denied having made any statement before the IO of this case

28. The Counsel of the locality where the deceased used to reside was examined as PW 10. In his deposition, he claimed to identify the de facto complainant and her husband. He also identified the accused persons in Court. He further stated that Prabir Biring died in the year 2009 at his native place at village Bagdia. PW 10 however, could not say as to how Prabir died.

29. Another villager from Bagdia was examined as PW 11. He identified the accused persons in court. He also claimed to identify the de facto complainant Minakshi Biring and her husband. He, however, could not say as to why Minakshi filed the case against the accused persons. PW 11 was also declared hostile by the prosecution and in his cross-examination by prosecution, he denied having made any statement before the Investigating Officer. He, however, proved his signature on the inquest report (Exhibit 2/1).

30. The son of the deceased has deposed as PW 12. He identified the accused persons in the Court. He stated that on March 4, 2009, in the afternoon, there was a meeting held at his residence at Jalalkhanbar, Contai. His parents, Prabhat Biring, Kalpana Biring, Samarendra Biring and Swapan Biring were present in the said meeting. He further stated that at that time, his Madhyamik examinations were going on and his studies were affected. He complained the same to his father whereupon his father along with Samarendra Biring and Swapan Biring left the residence of PW 12 to complete the meeting at village Bagdia. He further stated that the accused Prabhat Biring and Kalpana Biring intended to attend the said meeting subsequently. He also stated that his father along with others left his house at about 6.30/7.00 p.m. by the motorcycle of Samarendra Biring accompanied by Swapan Biring. He further stated that his father did not return back on the same night. On March 5, 2009, at about 7.15/7.20 a.m., he received a

phone call informing that his father was no more. He instantly informed the matter to his Meso Tapas Prodhan over phone. Thereafter, PW 12, his mother and the said Tapas Prodhan went to village Bagdia. Reaching there at 9. 30/10.00 a.m., PW 12 saw his father lying dead on the land of the Bidyut Biring. He also found police at the spot when he reached. One empty Sprite bottle and another half filled Sprite bottle and also a bottle of Androcele were found by the side of the dead body. He further stated that the dead body of his father was taken by the police for post-mortem examination. He, however, could not say the cause of death of his father. He came to have been examined by the investigating officer.

- 31.** A co-employee of the deceased was examined as PW 13. He, in his deposition, claimed to identify the de facto complainant and also the accused persons by their faces. He, however, could not say the names of the accused persons. He further stated that the deceased Prabir Kumar Biring committed suicide. He further stated that

he was interrogated in connection with the case. He activated to have stated before police that Prabir Kumar Biring was a cashier at the office of Contai Central Fishermen Cooperative Society Ltd at Sankarpur pumping station. PW 13 also stated that chief executive officer of his office came to know that Prabir Kumar Biring had misappropriated money from the office for which he told him to bring account books from the said pumping station. One junior accountant Shobha Mishra scrutinized the said account book and informed that the statement of account was incomplete. She also reported to PW 13 that she had also informed the irregularities to the Chief Executive Officer and she was directed to complete the account book. He further stated that upon completion of the account, it revealed that there was a balance money in the hand of Prabir Kumar Biring and the Chief Executive Officer directed him to deposit the said amount in the bank account of the society. P 13, however, could not say if the said amount was deposited

by the deceased. He also did not know anything regarding the death of Prabir Kumar Biring.

32. In his cross-examination, PW 13 could not recollect if he stated before police that Prabir Kumar Biring had misappropriated a sum of ₹ 4, 40,014. He, however, admitted that the Chief Executive Officer had directed Prabir Biring to deposit the said amount in the bank account of the society and after such direction, Prabir Kumar Biring did not come to the office at Contai.

33. Another person from village Bagdia was examine as PW 14. He identified the accused persons and claimed to identify the de facto complainant Minakshi Biring. He, however, did not know anything about the complaint. The witness was declared hostile by the prosecution. In his cross-examination on behalf of the prosecution, PW 14 admitted that he was interrogated by police in connection with this case. However, he denied having made any statement before the police with regard to

taking the loan by the deceased from different sources and being in mental distress for repayment of such loan.

34. Another villager has deposed as PW 15. He also identified the accused persons and claimed to know the de facto complainant and her husband. He also stated that he did not know anything about the complaint in this case. This witness was also declared hostile by the prosecution. In his cross-examination on behalf of the prosecution, he denied having stated before police about suicide by Prabir Biring by consuming poison. He also denied having stated before police that Prabir Biring took loan from different sources and was under mental distress for the repayment of the loan amount.

35. Another villager from Bagdia deposed as PW 16. He is also a hearsay witness. He was declared hostile by the prosecution and in his cross-examination on behalf of the prosecution, he denied having made any statement before police with regard to this case.

36. PW17 is another villager from Bagdia. He knew the de facto complainant and her husband. He also identified the accused persons. He has stated that while working in the brickfield, he heard about the death of the victim and went to see the dead body. He, however, could not say as to who died.

37. A neighbor of the accused persons deposed as PW 18. He identified the accused persons in court. He also stated that he knew the de facto complainant and her husband. He further stated that he heard about the death of Prabir at his village. When he reached the house of deceased, he found police. He was interrogated by the Investigating Officer. He also signed on the inquest report. He proved his signature on the inquest report (Exhibit 2/2). He also signed on the seizure list through which wearing apparels of the deceased were seized. He proved his signature on seizure list which was marked Exhibit 4/1.

- 38.** PW 18 was also declared hostile by the prosecution and in his cross-examination, he admitted that stated before police that the seized Prabir Biring was an employee of Sankarpur oil pump. He, however, denied having stated before police that deceased Prabir Biring procured huge amount of loan from different persons which he could not repay or that he had strained relations with his wife.
- 39.** PW 19 could not state anything about the incident. He, however, stated that that Prabir Biring died after consuming poison.
- 40.** PW 20 is a villager from Bagdia. He witnessed the dead body of the deceased lying in the fields. He, however, had no knowledge about the reason of death of Prabir Biring.
- 41.** The son of de facto complainant has deposed as PW 21. He has stated that the de facto complainant is his mother. She filed the instant case against the accused persons. He identified the accused persons in court.

42. He further stated that on March 4, 2009, his mother along with his elder brother left their house in connection with Madhyamik examination of his elder brother. He further stated that on that day at about 2.00 p.m. his father called upon his uncle Prabhat Biring and they had disputes over some monetary transactions. At that time, the accused Prabhat Biring assaulted the father of PW 21. He was sleeping then and after waking he found the accused persons Swapan Kumar Biring, Samarendra Biring, Kalpna Biring, Prabhat Biring and his parents were discussing over some issues at about 6.00 p.m. He further stated that due to Madhyamik examination of his elder brother, the meeting between his father and the accused persons was held at village Bagdia. All the accused persons and the father of PW 21 left for village Bagdia at about 7.00/7.15 p.m. The mother of PW 21 made a phone call to his father at about 9.00 p.m. when she was informed that father of PW 21 informed her that he would return in the following morning. On the next

day at about 6.00/6.30 a.m., his elder brother received a phone call informing that his father was dead. Upon such information PW 21, his mother, elder brother, Masi and Meso went to Bagdia village and found his father lying on the bank of their pond at a very dirty place. PW 21 also stated that he found the right leg of his father in folded condition and the entire face and throat of his father was totally blackened having emission of cough mixed with blood from his nose. There were marks of injury on the back of head of his father and on upper part of right abdomen. Two bottles of cold drinks, some Chhola, Muri, one pair of shoes, one bottle of pesticides (Androcele) in locked condition were found in and around the dead body of his father. There was also a bag containing wearing apparels of his father. It was stated that the bedroom of his father was found close. He also found that police had arrived at the place of occurrence and he was interrogated by police.

- 43.** A villager from Bagdia deposed as PW 22. He is a hearsay witness. He has stated that at the relevant point of time, he was fishing in the sea and he came to know about the incident after returning back. He could not say anything about the reason for consuming poison by the victim.
- 44.** Another villager was examined as PW 23. He identified the accused persons. He also came to identify the de facto complainant and her husband. He further stated that on the date of occurrence, he went to fields with his child and found Prabir Biring lying dead in the field. He, however, could not say how and why Prabir died.
- 45.** PW 24 is also a villager from Bagdia village. He knew the de facto complainant, her husband and the accused persons. He stated that on the date of occurrence, he was out of village and as such it was not possible for him to state anything about the incident.

46. PW 25 is also a villager from Bagdia. He has stated to identify the de facto complainant, her husband and the accused persons. He also could not state anything regarding the reason of commission of suicide by deceased Prabir Biring.

47. The recording officer deposed as PW 26. He stated that on July 12, 2009, being posted at Contai police Station, he received the written complaint from one Minakshi Biring and started Contai PS Case No. 144/2009 dated July 12, 2009 under Section 306 of the Indian Penal Code. He proved the endorsement of receipt of the written complaint which was marked as Exhibit 1/1. He also tendered the formal First Information Report, prepared in his pen and signature (Exhibit 5).

48. The brother-in-law of the victim (husband of wife's sister) deposed as PW27. He stated that he knew the accused persons as brothers of deceased Prabir Biring. He further stated that in the night of March 05, 2009, he received information over phone from the son of the

deceased that his father was dead. He rushed to the house of Prabir at Contai and accompanied them to Bagdia. Upon reaching his residence, PW27 found the body of Prabir Biring lying on the ground and his face was completely blackened with marks of injury on his vault and right side waist. Thereafter, police came there and removed the dead body. PW27 also stated that Prabir Biring had disputes with his brother Prabhat Biring and others and he believed that Prabir was murdered. He, however, claimed that he was not interrogated by the investigating officer.

- 49.** In his cross examination, however, PW27 admitted that he was interrogated by police. He denied a suggestion to the effect that he stated before police that Prabir Babu advanced loan to the accused persons and when he failed to recover the loan amount, he committed suicide by consuming poison out of frustration. He admitted, in his cross examination, that he deposed for the first time in the court regarding the marks of injury

found on the person of Prabir Babu. He also admitted that Prabir Babu was an employee of Contai CFC. He, however, denied his knowledge that Prabir Biring misappropriated some government money while he was posted as cashier in his office and that a proceeding in this regard was initiated against him.

- 50.** The Investigating Officer of this case was examined as PW 28. He has further stated that the previous IO of this case had collected the post-mortem report in respect of deceased Prabir Kumar Biring. Being endorsed with the investigation, he visited the place of occurrence and compared with the sketch map prepared by the previous IO. PW 28 did not draw any sketch map. However, he proved the sketch map with index prepared by his previous Investigating Officer. He also examined the witnesses and recorded their statements under Section 161 of the Code of Criminal Procedure. On completion of investigation, PW 28 submitted charge sheet under Section 306 of the Indian Penal Code on April 4, 2015

against six accused persons. In his cross examination, PW 28 stated that the earlier charge sheet was also submitted under Section 306 of the Indian Penal Code.

51. Upon completion of the evidence on behalf of the prosecution, the accused persons were examined under Section 313 of Criminal Procedure Code. In such examination, the accused persons pleaded innocence and claimed that the case as made out by the prosecution is out and out, false. The accused persons, however, declined to adduce any defense witness.

52. However, upon conclusion of the trial on the basis of evidence on record and examination of the accused persons, the learned Trial Court acquitted all the accused persons.

53. The case made out by the prosecution in the written complaint discloses that the accused persons committed murder of the victim. The evidence advanced on behalf of the prosecution, however, hypothesizes two different propositions, one suggesting murder of the victim

committed by the accused persons and the other suggesting suicide committed by the victim.

54. In both the propositions, the common thread is that the victim has died. Although the autopsy surgeon has not been examined by the prosecution, the post mortem examination report, however, has been admitted in evidence as Exhibit 7. On the basis of evidence of the prosecution witnesses including PW3, together with the testimony of Exhibit 7, it goes to establish that the prosecution has been able to prove that the victim Prabir Kumar Biring is dead and that he died an unnatural death.

55. Also, at the trial, an alternative charge under Section 302 of the Indian Penal Code has been framed against the appellants. However, considering the narration of the prosecution witnesses together with the testimony of Exhibit 7, the possibility of murder of the victim at the behest of the appellants is completely ruled

out. Exhibit 7 ambiguously establishes that the victim died of consuming poison which was suicidal in nature.

56. So far as the circumstances leading to the death of the victim is concerned, the prosecution came up in the written complaint with a case that the appellants procured a loan to which the victim stood guarantor. When the appellants failed to repay the loan amount and the lender started to demand the loan amount from the victim as a guarantor, the victim was under tremendous mental pressure. Evidence on record also goes to show that the appellants had a meeting with the victim over the loan amount, firstly at the present residence of the victim and subsequently at their native village. The victim accompanied the appellants to his native village in the evening. On the following morning, PW3 received information about the death of her husband.

57. The contents of the written complaint submitted by PW3 as well as her deposition before Court discloses that she submitted that the prosecution in respect of murder

of her husband was totally based on assumption. Since, after going to the native village, she found the dead body of her husband lying in fields and that she noticed that the face of the victim had turned blackish. She also found an empty soft drink bottle, ½ filled soft drink bottle and a bottle of Androcele. The presence of the aforesaid articles beside the dead body showed her that her husband was murdered.

- 58.** The offence of murder has been defined in Section 300 of the Indian Penal Code, 1860 as:

300. Murder.—Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or—

2ndly.—If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or—

3rdly.—If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or—

4thly.—If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death, or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

59. From the four corners of evidence on record, it nowhere reveals that the appellant has been attributed with any overt act whatsoever, which attracts the provisions of Section 300 of the Code of 1860.

60. It cannot be denied that there is no ocular witness who has overseen the incident or anything being perpetrated upon the victim. The case is solely based on circumstantial evidence.

61. As regards the circumstances leading to the death of the victim, diverging cases have been made out by the prosecution witnesses. According to PW3, her husband was murdered by the appellants. PW3 has, in her

deposition, made out two different cases leading to the death of her husband. According to one proposition, the appellants had a loan of hefty amounts to which the victim stood guarantor. The appellants failed and refused to repay the loan amount and the lender started demanding money. It was for this reason, the appellants committed murder of her husband. The another case which has been made out by PW3 that the appellants availed loan of ₹ 3.5 lakh and ₹ 2 lakh from the victim and in order to avoid repayment of such loan amount, the appellants committed murder of the victim.

- 62.** It has come out from the evidence on record that the victim was an employee of fisheries Department as a cashier. No evidence whatsoever has been adduced on behalf of the prosecution to establish that the victim advanced loan of the hefty amounts of ₹ 3.5 lakh and his 2 lakh to the appellants. There is nothing in the evidence as to when the aforesaid loan was advanced to the appellants and what the purpose thereof was. The

evidence also goes to show that the victim has been residing at a different place totally separate from the appellants. The evidence on record is totally silent as to how and from which source, the victim arranged the aforesaid amount to which he advanced as loan to the appellants. We do find substance in the contention on behalf of the appellants with regard to the financial capacity of the victim to advance loan of such a hefty amount.

63. PW3, in her deposition, although stated after witnessing the dead body of her husband, she had an intuition that her husband was murdered by the appellants. However, no reason has been assigned behind such impression. We have already come to a conclusion that no specific overtact has been assigned to the appellants pointing to the commission of the murder of the victim. Moreover, PW3 has also stated that her husband after having a meeting with the appellants felt insulted. Such situation also points to a

suicide rather than murder. Although, the knowledge of PW3 with regard to the particular mental state of the victim at the material point of time is doubtful.

64. There are other propositions peering out from the evidence on record which is contrary to the case made out by the prosecution. According to the case of the prosecution, the victim is said to have been murdered or his suicide was abetted for the loan advanced in favour of the appellants where the victim was a guarantor. From the evidence of PW6, it transpires that it was the victim who owed money to a borrower and he was not able to repay the loan amount. In fact, there was a meeting over the said issue of repayment of loan amount owed by the victim, after his death. PW3, the wife of the victim, also attended the said meeting.

65. There is yet another proposition coming out from the possession of PW 13. According to such proposition, the victim was a cashier in the fisheries Department and in such capacity, he was blamed with defalcation of

huge amount of money belonging to the fisheries Department. He was directed by his superior to make good the defalcated money.

66. Therefore, as we have noted hereinbefore on the basis of materials on record that the post-mortem report (Exhibit 7) together with the case made out by the prosecution, the possibility of appellants committing murder of the victim cannot be sustained.

67. There is also no evidence on record to prove that the appellants actually abetted the suicide committed by the victim. The fact of alleged loan advanced by the victim to his brother's, the appellants, or that the victim stood guarantor for the loan advanced in favour of his appellant brothers has not been proved by convincing evidence. For the sake of argument, even if it is assumed that the appellants are refusing and are neglecting to repay the loan amount and the lender was demanding the loan advanced by him, such an act on the part of the appellants, at no stretch of imagination, can be said to

constitute an offence punishable under Section 306 of the Indian penal code.

68. The alleged incident of death of the victim is said to have on March 5, 2009. The information with regard to such an incident appears to have been given on July 12, 2009. There appears no endeavour on the part of the prosecution to explain the delay in reporting the incident. In her deposition, PW3 has stated that she submitted a written complaint on March 7, 2009 which was not received by the officer in charge. She then sent the written complaint by post on April 4, 2009 and on April 27, 2009. Ultimately, a first information report was registered following a direction from the Hon'ble High Court at Calcutta. However, the aforesaid documents i.e. the written complaint lodged on March 7, 2009, April 4, 2009 and April 27, 2009 and the postal receipt showing its dispatch through post has not been brought on record.

69. For the aforesaid reasons, the allegation that the victim committed suicide out of the abetment given by the appellants seems to have no legs to stand upon.

70. It is trite law that the Court should be so slow in reverting a finding of trial court unless an apparent illegality or wrong appreciation of materials is explicit on the face of such finding. The impugned judgment of acquittal recorded in the present case does not seem to suffer from such illegality or otherwise bad. The finding of the trial Courts appear to be well founded on the basis of convincing evidence.

71. Therefore, in the light of discussions made hereinabove, we do not find any reason to interfere with the impugned judgment of acquittal dated December 21, 2020 passed by the learned, 2nd additional Sessions Judge, Contai in Sessions Trial No. 2/July/2013. Consequently, we affirm the same.

72. Accordingly, the instant appeal being **CRA No. 141 of 2021** hereby stands dismissed.

73. Trial Court records along with a copy of this judgment; be sent down at once to the learned Trial Court for necessary action.

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

[MD. SHABBAR RASHIDI, J.]

75. I agree.

[DEBANGSU BASAK, J.]