

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:-

HON'BLE JUSTICE CHITTA RANJAN DASH.

AND

HON'BLE JUSTICE PARTHA SARATHI SEN.

CRA 184 of 2007
With
CRAN 2 of 2012(Old CRAN 503 of 2012)
With
CRAN 4 of 2022

Ziaul Haque
Versus.
The State of West Bengal

For the Appellant : Mr. Somopriyo Chowdhury, Adv,
Mr. Saikat Debnath, Adv.

For the State : Mr. Prasun Kumar Dutta, Ld. APP,
Md. Kutubuddin, Adv.,
Mr. Santanu Deb Roy, Adv.

Last Heard on : **26.07.2023**

Judgment on : **18.08.2023**

PARTHA SARATHI SEN, J. : –

1. In this appeal the judgement of conviction dated 02.12.2006 and the order of sentence dated 04.12.2006, as passed by the Learned Additional District and Sessions Judge, 3rd Fast Track Court, Bichar Bhavan, Calcutta, in connection with Sessions Trial No.1 of January, 2003 arising out of Sessions Case no. 58 of 2002 has been impugned. By the impugned judgement learned trial court found the appellant guilty under Section 302 IPC and thus convicted and sentenced him to suffer R.I for life and to pay

fine of Rs. 5000/- i.d. to suffer further R.I for one year. The convict of the said trial felt aggrieved and thus preferred the instant appeal.

2. For effective disposal of the instant appeal the facts leading to initiation of the aforesaid sessions trial is required to be discussed in a nutshell.

3. One Ibrar Chowdhury @ Tinku of 6/14 Nilmani Halder Lane, Kolkata-700013 gave a statement on 16.01.2002 to one Partha Sarathi Mukherjee (PW15), S.I of Taltala Police Station to the effect that his father Farookh Chowdhury is the owner of a hotel namely 'Sanjar Guest House' at 6/25 Nilmani Halder Lane and the said hotel was a three storyed building having 20 rooms therein; nine rooms on the first floor and eleven rooms on the second floor. It was the further version of the informant that on the said day at about 4:30 p.m one Md. Idris (PW5) who was a room service boy of the said hotel rushed to him from the second floor when the informant was sitting in the ground floor at the reception of the said hotel and informed in a tensed condition that he (Md. Idris-PW5) had heard an alarm of a person as well as sound of scuffle from room no.202 on the second floor. It has been stated further by the informant that immediately thereafter the informant, the said Idris and another room service boy, Benajir (PW4) rushed to room no.202 on the second floor and noticed that the door of the said room was closed. It was his further version that thereafter they pushed the door and it was opened then and then and at that time they noticed that one of the boarders of the said room viz; Ziaul Haque was sitting on the cot of the said room with a blood smeared knife and another boarder namely; Rafiqul Haque was lying on the floor of the said room in a pool of blood. It

was his further version that immediately thereafter seeing the informant and the other two room service boys the said boarder, Ziaul Haque threw the knife on the floor and said that he had murdered his younger brother and thereafter he (the assailant) made an attempt to flee away from the said room. The informant pushed him inside the room and locked the door from outside by hatch bolt and thereafter after coming to downstairs, informed Taltala Police Station regarding the said incident.

4. In his version the informant stated further that both the aforementioned boarders checked into his hotel at 5 a.m on 16.01.2002 in room no.202 and at that time they wrote their address as residents of Ranaghat. It was his further version that after 20 minutes the police arrived at the P.O and when he again entered the said room no.202 with the police he noticed that the victim Rafiquel was lying in a dead condition while the other boarder i.e. the appellant herein was sitting at the corner of the bed.

5. PW15 reduced the statements of the informant in writing and got it signed by him and thereafter started Taltala P.S Case no. 24 of 2002 dated 16.01.2002 under Section 302 IPC against the accused Ziaul Haque. Investigation was taken up and on completion of the same charge sheet was submitted under Section 302 IPC against the accused.

6. Trial Court Record reveals that the present appellant was explained of the charge under Section 302 IPC against him, which he denied and claimed to undergo trial. The prosecution before the learned trial court examined 15 witnesses in all and they have exhibited various documents and materials. Before the learned trial court the defence has also adduced evidence of one witness. From the trend of cross-examination of the prosecution witnesses,

the evidence adduced by DW 1 and the answers as given by the accused in his examination under Section 313 Cr.P.C it reveals that the defence case is based on clear denial and false implication.

7. The prosecution witnesses before the learned trial court can be categorized in the following manner:-

Private individuals	Government officials	Police personnels
PW2- Son of the owner of the guest house and the informant.	PW12- Autopsy surgeon.	PW1- Police photographer.
PW4- An employee of the guest house.	PW13- Assistant Director, FSL.	PW3- Plan maker of police department.
PW5- An employee of the guest house.		PW8- S.I of Police of Taltala P.S.
PW6- An employee of the guest house (seizure witness).		PW14- Inspector of police and hand writing expert.
PW7- An employee of the guest house (seizure witness).		PW15- R.O+I.O
PW9- Wife of the deceased.		
PW10- Father-in-law of the deceased.		
PW11-mother-in-law of the deceased.		

8. In course of his argument Mr. Chowdhury, learned advocate for the appellant at the very outset draws attention of this Court to the evidence of PW2, PW4 and PW5. It is contended by him that learned trial court committed serious error of fact as well as of law in holding that the evidence of the three prosecution witnesses are consistent and the learned trial court has miserably failed to appreciate the contradictions as available in their evidences especially in their respective cross-examinations. It is further

argued that since before the learned trial court the check-in and check-out register of the relevant day had not been proved, the presence of the present appellant in the alleged P.O room has become doubtful which the learned trial court has failed to visualize. It is also argued that though in course of investigation the alleged weapon of offence was seized but subsequently in course of evidence of the prosecution witnesses it reveals that the finger print of the appellant did not match with the finger prints available in the seized weapon. Mr. Chowdhury, further submits that for the sake of argument, though not admitted, even if this court finds that the present appellant is found guilty, his sentence may be altered either under Part I or Part II of Section 304 IPC and considering the long detention of the present appellant, the present appellant be released invoking the provision of Section 57 IPC. In course of his argument Mr. Chowdhury, learned advocate for the appellant placed his reliance upon the reported decision of **K. Ravi Kumar vs. State of Karnataka** reported in **(2015) 2 SCC 638**.

9. Per contra, Mr. Prasun Kumar Dutta, Learned Additional P.P for the State submitted before this Court that the learned trial court is very much justified in passing the impugned judgement. It is further argued by him that before the learned trial court all the circumstances as available against the present appellant have been proved beyond reasonable doubt which unerringly point out to the guilt of the present appellant without any shadow of doubt. It is thus submitted on behalf of the State that the present appeal may be dismissed.

10. The factual matrix in which the appellant came to be prosecuted and convicted has been set out in detail by the trial court in the impugned

judgement. Therefore, we need not recapitulate the same all over again except to the extent it is necessary to do so for the disposal of the instant appeal.

11. Admittedly, the instant case is based on circumstantial evidence. At this juncture we propose to peruse the evidence of PW12 who was at that material time was an Associate Professor, Department of Forensic and State Medicine, Calcutta Medical College and in that capacity he performed the post mortem examination over the dead body of the deceased. The relevant portion of the testimony of PW 12 is as under:-

*“.....
During examination I found that there were some injuries over the dead body.*

Injury No.1 : Incised punctured wound, 1”X3”X Thoracic cavity, front of lower part of chest, “above coastal arch.

Injury No.2: Above right heel there was injury, ½” to the right.

Injury No.2: One incised penetrating wound 1.3” X .4” X Thoracic Cavity pressed obliquely over lower part of front of left side chest.

Injury 3: One incised penetrating wound 1” X 3” abdominal cavity pressed over the upper part of left side of abdomen.

Injury 4: One incised penetrating wound 1.5” X .5” X abdominal Cavity with Protrusion of coils of small Intestine through the wound.

Injury 5: One incised wound, 1.2” X .4” X Muscle pressed over outer aspect of lower 1/3” of right thigh.

Injury 6: One incised wound, 4” X 3” X Muscle pressed over the front of left elbow and adjoining part of lower part of left arm.

Injury No.7: One incised wound .6” X .2” X Muscle and tenders over back of left thumb.

Injury no.8: Multiple nail scratch abrasion sizes varying between .3” X .2”.

All the injuries showed evidence of vital reactions.

The case of death was due to the effect of injuries, as noted above which was anti mortem and homicidal in nature.”

It is pertinent to note that the cross-examination of PW12 has been declined.

In view of such clinching evidence as adduced by PW12 we have no hesitation to hold that the learned trial court is absolutely justified in holding that the death of the deceased Rafiqul was homicidal in nature.

12. On comparative study of the testimonies of PW2 (the informant), PW4, PW5 and PW6 (all room service boys/employees of the said guest house) it is evident that on the fateful day both the deceased and his elder brother, who is the appellant before us checked into room no.202 of the said hotel together in the morning. Such fact has been admitted by the appellant in his examination under Section 313 Cr.P.C.

13. It further appears to us that the case of the prosecution is that at the time of alleged occurrence of the incident the deceased and the appellant were present together in the P.O room gets due support from the evidence of PW2, PW4 and PW5 since all the three aforesaid prosecution witnesses have adduced coherent evidence to the effect that on the said day at about 4:30 p.m PW5 heard a hue and cry from the said room and when he reported such incident to PW2 who at that time was sitting in the reception room with PW4, then PW2, PW4 and PW5 together rushed to the P.O room i.e. room no.202 on the second floor and on opening the door of the said room by a push, they found the deceased was lying on the floor in a pool of blood while the present appellant was sitting on a cot with a knife in his hand. We have minutely gone through the cross-examinations of PW2, PW4 and PW5 but we are unable to detect any contradiction to establish that the accused

was not present at the P.O room when the alleged incident occurred and therefore the plea of alibi as taken by the present appellant in his examination under Section 313 Cr.P.C, in our considered view, cannot stand.

14. In our considered view another salient feature as involved in this appeal is the alleged extrajudicial confession as made by the appellant before PW2, PW4 and PW5 immediately after the occurrence of the incident when he was sitting in room no.202 on the second floor of the said guest house. At this juncture if we look to evidence of informant (PW 2 herein) we find that PW1 testified thus:-

“.....
Soon I, Idris and Benazir rushed to the room no.202 of the second floor. We pushed open the door of that room and we saw Ziaul Haque, one of our boarder was sitting on the bed with blood stained knife in his hand and he was telling that he had killed his brother Rafiqul Islam who was also one of the boarder of our guest house. We also saw that Rafiqul Islam was lying on the floor in a pool of blood all over the body.”

15. We have also scrutinized the cross-examination of PW 2 and found that PW2 could not be shaken in this regard in any way. It further appears to us that in their respective depositions PW4 and PW5 had also testified in the same line as testified by PW2 with regard to the alleged extra judicial confession of the appellant.

16. Learned advocate for the appellant was vehement in his argument with regard to the acceptability of the said alleged extra judicial confession on the part of the learned trial court. In this regard we propose to rely upon the reported decision of **Md. Azad @ Samin vs. State of West Bengal**

reported in **2008 (11) JT 658** wherein the Hon'ble Apex Court expressed the following view:-

“An extrajudicial confession, if voluntary and true and made in a fit state of mind, can be relied upon by the court.....It is not open to the Court to start with a presumption that extra judicial confession is a weak type of evidencesuch a confession can be relied upon and conviction can be founded thereon if the evidence about the confession comes from the mouth of the witnesses who appear to be unbiased, not even remotely inimical to the accused and in respect of whom nothing is brought out which may tend to indicate that he may have a motive of attributing an untruthful statement to the accused .”

The same view was taken in the reported decision of **Siva Kumar vs. State by Inspector of Police** reported in **AIR 2006 (SC) 653: 2006 (1) SCC 714**.

17. Keeping in mind the propositions of law as discussed in the aforementioned two decisions if we consider the testimonies of PW2, PW4 and PW5 we find that there is least possibility on the part of PW2, PW4 and PW5 to implicate the present appellant unnecessarily with the alleged offence since the said three prosecution witnesses in considered view of us are independent, unbiased and remotely inimical to the accused. In view of such, we thus find little justification in accepting the argument of the learned advocate for the present appellant that the learned trial court is not justified in placing his reliance upon the extra judicial confession as made by the present appellant in presence of PW2, PW4 and PW5.

18. There is no doubt in our mind that since before the learned trial court from the evidence of PW12 it has been established beyond reasonable doubt that the cause of death of the deceased is homicidal in nature and since

before the learned trial court it has been proved beyond the shadow of reasonable doubt from the evidence of PW2, PW4 and PW5 that at the time of the occurrence of the alleged incident the present appellant was found to be in the company of the deceased in a closed door room i.e. room no.202 of the said guest house, burden lies upon the present appellant under Section 106 of the Evidence Act as to how the incident occurred since the same is evidently within the special knowledge of the present appellant. It appears to us that inspite of thorough cross-examination of the prosecution witnesses and inspite of adducing evidence by DW1, the appellant has failed to discharge such burden and therefore learned trial court is very much justified in drawing the adverse presumption of guilt against the present accused.

19. In course of his argument learned advocate for the respondent was also very vocal with regard to the failure on the part of the prosecution to prove the motive since according to him such motive is considered to be a strong link to complete the entire chain of circumstances to prove the guilt of the present appellant. At this juncture we propose to look to the evidence of PW9 being the wife of the deceased, PW10 and PW11 being the parents-in-law of the deceased. From the evidence of PW9 it appears to us that initially the marriage between Rafiqul, since deceased and his wife (PW9) was not accepted by the family members of Rafiqul, including the present appellant who is his elder brother and thus after marriage when Rafiqul, since deceased took PW9 to his house, at that time the present appellant and his mother resisted them in entering into the matrimonial home of PW9 and she was threatened by Ziaul (the appellant herein) if she made an

endeavour to enter their house. She further testified that subsequently her parents had to pay Rs.25,000/- and thereafter she was allowed to enter into her matrimonial home and even during her stay in her matrimonial home both she and Rafiqul, her husband, since deceased were threatened by the present appellant that they would be killed by him. On thorough scrutiny we find from the cross-examination of PW9 that she repeated her version in such cross-examination though she admitted that neither she nor her deceased husband had ever reported the incident of such threat to the police. PW10 and PW11 being the parents of PW9 in their respective examination-in-chiefs also stated about such threat. On perusal of the evidence of PW9, PW10 and PW11 it thus appears to us that those three witnesses in their respective examination-in-chiefs were found to be consistent with regard to the alleged threat by the present appellant to the deceased and his wife though they never reported the said incident to the police at any point of time.

20. The relevance of motive in a case based on circumstantial evidence has been dealt with on a number of occasions by the Hon'ble Supreme Court and in one such case **Ganesh Lal vs. State of Maharashtra** reported in **(1992) 3 SCC 106** the Hon'ble Apex Court expressed the following view:-

“ Even in a case of circumstantial evidence absence of motive which may be one of the strong link to complete the chain would not necessarily become fatal to the prosecution where other circumstances are such as to complete the chain connecting the accused with the crime.”

21. The same view was taken by the Hon'ble Apex Court in the reported decision of **Md. Mustafa Sk. vs. State of West Bengal** reported in **(2011) 2**

CHN 990 and **Vivek Kalra vs. State of Rajasthan** reported in **(2013) 2 CCrLR (SC) 826**.

22. In view of the propositions of law as discussed in the aforesaid three reported decisions it thus appears to this Court that the presence of motive is not a *sine-qua-non* in a case based on circumstantial evidence provided there are circumstances which are sufficient enough to complete the chain connecting the accused with the crime.

23. Another glaring feature of the case before us is as to what prompted the present appellant to write a wrong address at the hotel register since in course of investigation it was found that both the appellant and the deceased are residents of Village Rampur under P.S Ratua in District Malda and not of Sagun Bagan, Ranaghat, Quarter no.4/C , District Nadia. In this regard we find no explanation on the part of the appellant in the answers as given by him in the examination under Section 313 Cr.P.C.

24. In view of the discussion made hereinabove we thus find that before the learned trial court the prosecution is successful in establishing five golden principles of circumstantial evidence namely; (as held in the reported decision of **State of Rajasthan vs. Raja Ram** reported in **(2003) 8 SCC 180** and **Sarad Birdhichand Sarda vs. State of Maharashtra** reported in **AIR 1984 SC 1622**):-

- “i. The circumstances from which the conclusion of guilt is to be drawn should be fully established;*
- ii. The facts so established should be consistent only the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;*
- iii. The circumstances should be of a conclusive nature and tendency;*
- iv. There should be every possible hypothesis except the one to be proved.*

v. There must be chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.”

25. In view of the discussion as made hereinabove we are convinced that the prosecution before the learned trial court is successful in proving the chain of evidence in a complete manner as against the present appellant and therefore the learned trial court is absolutely justified in finding that it is none but the appellant who has caused the death of the deceased.

26. Since in course of his argument learned advocate for the appellant argued that the learned trial court is also not justified in convicting the present appellant under Section 302 IPC and on the contrary though not admitted, even if the appellant is found guilty he ought to be convicted either under Part I or Part II of Section 304 IPC we propose to look to the reported decision of ***State of Andhra Pradesh vs. Rayavararapu Punnya And Anr.*** reported in **(1976) 4 SCC 382** wherein the Hon'ble Supreme Court duly considered the distinction of applicability of culpable homicide and murder in the following manner:-

“12. In the scheme of the Penal Code, “culpable homicide” is genus and “murder” its specie. All “murder” is “culpable homicide” but not vice-versa. Speaking generally, “culpable homicide” sans “special characteristics of murder”, is “culpable homicide not amounting to murder”. For the purpose of fixing punishment, proportionate to the gravity of this generic offence, the Code practically recognises three degrees of culpable homicide. The first is, what may be called, “culpable homicide of the first degree”. This is the greatest form of culpable homicide, which is defined in Section 300 as “murder”. The second may be termed as “culpable homicide of the second degree”. This is punishable under the first part of Section 304. Then, there is “culpable homicide of the third degree”. This is the lowest

type of culpable homicide and the punishment provided for it is, also, the lowest among the punishments provided for the three grades. Culpable homicide of this degree is punishable under the second part of Section 304.

13. *The academic distinction between “murder” and “culpable homicide not amounting to murder” has vexed the courts for more than a century. The confusion is caused, if courts losing sight of the true scope and meaning of the terms used by the legislature in these sections, allow themselves to be drawn into minutae abstractions. The safest way of approach to the interpretation and application of these provisions seems to be to keep in focus the keywords used in the various clauses of Sections 299 and 300. The following comparative table will be helpful in appreciating the points of distinction between the two offences.*

14. *Clause (b) of Section 299 corresponds with clauses (2) and (3) of Section 300. The distinguishing feature of the mens rea requisite under clause (2) is the knowledge possessed by the offender regarding the particular victim being in such a peculiar condition or state of health that the internal harm caused to him is likely to be fatal, notwithstanding the fact that such harm would not in the ordinary way of nature be sufficient to cause death of a person in normal health or condition. It is noteworthy that the “intention to cause death” is not an essential requirement of clause (2). Only the intention of causing the bodily injury coupled with the offender's knowledge of the likelihood of such injury causing the death of the particular victim, is sufficient to bring the killing within the ambit of this clause. This aspect of clause (2) is borne out by Illustration (b) appended to Section 300.*

Section 299	Section 300
A person commits culpable homicide if the act by which the death is caused is done —	Subject to certain exceptions culpable homicide is murder if the act by which the death is caused is done —

INTENTION

(a) With the intention (1) With the intention of causing death; or

*of causing death;
or*

- (b) *With the intention of causing such bodily injury as is likely to cause death; or*
- (2) *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*
- (3) *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*

KNOWLEDGE

- (c) *With the knowledge that the act is likely to cause death*
- (4) *With the knowledge that the act is so imminently dangerous that it must in all probability cause death or such bodily injury as is likely to cause death, and without any excuse for incurring the risk of causing death or such injury as is mentioned above.*

15. Clause (b) of Section 299 does not postulate any such knowledge on the part of the offender. Instances of cases falling under clause (2) of Section 300 can be where the assailant causes death by a fist blow intentionally given knowing that the victim is suffering from an enlarged liver, or enlarged spleen or diseased heart and such blow is likely to cause death of that particular person as a result of the rupture of the liver, or spleen or the failure of the heart, as the case may be. If the assailant had no such knowledge about the disease or special frailty of the victim, nor an intention to cause death or bodily injury sufficient in the ordinary course of nature to cause death, the offence will not be murder, even if the injury which caused the death, was intentionally given.

16. In clause (3) of Section 300, instead of the words “likely to cause death” occurring in the corresponding clause (b) of Section

299, the words “sufficient in the ordinary course of nature” have been used. Obviously, the distinction lies between a bodily injury likely to cause death and a bodily injury sufficient in the ordinary course of nature to cause death. The distinction is fine but real, and, if overlooked, may result in miscarriage of justice. The difference between clause (b) of Section 299 and clause (3) of Section 300 is one of the degree of probability of death resulting from the intended bodily injury. To put it more broadly, it is the degree of probability of death which determines whether a culpable homicide is of the gravest, medium or the lowest degree. The word “likely” in clause (b) of Section 299 conveys the sense of “probable” as distinguished from a mere possibility. The words “bodily injury ... sufficient in the ordinary course of nature to cause death” mean that death will be the “most probable” result of the injury, having regard to the ordinary course of nature.

17. For cases to fall within clause (3), it is not necessary that the offender intended to cause death, so long as the death ensues from the intentional bodily injury or injuries sufficient to cause death in the ordinary course of nature. **Rajwant v. State of Kerala [AIR 1966 SC 1874 : 1966 Supp SCR 230 : 1966 Cri LJ 1509.]** is an apt illustration of this point.

18. In **Virsa Singh v. State of Punjab [AIR 1958 SC 465 : 1958 SCR 1495 : 1958 Cri LJ 818.]** Vivian Bose, J. speaking for this Court, explained the meaning and scope of clause (3), thus (at p. 1500):

“The prosecution must prove the following facts before it can bring a case under Section 300, ‘thirdly’. First, it must establish quite objectively, that a bodily injury is present; secondly the nature of the injury must be proved. These are purely objective investigations. It must be proved that there was an intention to inflict that particular injury, that is to say, that it was not accidental or unintentional or that some other kind of injury was intended. Once these three elements are proved to be present, the enquiry proceeds further, and fourthly it must be proved that the injury of the type just described made up of the three elements set out above was sufficient to cause death in the ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender.”

19. Thus according to the rule laid down in Virsa Singh case of even if the intention of accused was limited to the infliction of a bodily injury sufficient to cause death in the ordinary course of nature, and did not extend to the intention of causing death, the offence would be “murder”. Illustration (c) appended to Section 300 clearly brings out this point.”

27. Keeping in mind the proposition of law as discussed in the reported decision of **State of A.P vs. Rayavararapu Punnya and Anr.** (supra) if we once again look to the evidence of PW12 we find several (at least 6) incised penetrating wounds on the vital part of the person of the deceased and that is why PW12 categorically stated that the injuries showed evidence of vital reaction and the cause of death was due to the effect of injuries which are ante mortem and homicidal in nature. Admittedly in the case in hand the bodily injuries of the deceased both in the vital and non vital organs have been proved which indicates the scuffling between the appellant and the deceased prior to his death as testified by PW5. The prosecution has also proved the nature of such injuries and from the analysis of evidence as adduced by the relevant prosecution witnesses, in our considered view under no stretch of imagination it can be said that such injuries occurred on account of accident or due to unintentional activity of the present appellant and therefore it can be safely presumed that the present appellant has every intention of causing such bodily injury and that such bodily injuries have been intended to be inflicted are sufficient in the ordinary course of nature to cause death of the deceased.

28. In view of the discussion made hereinabove we have thus no hesitation to hold that the present appellant is not entitled to get the order of sentence either under Part I or Part II of Section 304 IPC and thus learned

trial court is absolutely justified in convicting the present appellant under Section 302 IPC.

29. In course of his submission learned advocate for the appellant submits before this court that considering the fact that the present appellant is suffering incarceration for more than 21 years, the present appellant may be released from judicial custody in view of the provisions of Section 57 IPC since according to Section 57 IPC imprisonment for life is equivalent to imprisonment for 20 years.

30. In order to answer the issue as raised by the learned advocate for the appellant we propose to look to the provision of Section 57 IPC and the same reads as under:-

“Section 57 of The Indian Penal Code-

57. Fractions of terms of punishment.—In calculating fractions of terms of punishment, imprisonment for life shall be reckoned as equivalent to imprisonment for twenty years.”

31. We also propose to look to the reported decision of **Ashok Kumar @ Golu vs. Union of India and Ors.** reported in **(1991) 3 SCC 498** where the Hon’ble Apex Court while interpreting Section 57 IPC expressed the following view:-

“12. Counsel for the petitioner next submitted that after this court's decision in Bhagirath's case permitting the benefit of set off under section 428 in respect of the detention period as an under trial, the ratio of the decision in Godse's case must be taken as impliedly disapproved. We see no basis for this submission. In Godse's case the convict who was sentenced to transportation for life had earned remission for 2963 days during his internment. He claimed that in view of section 57 read

with section 53A, IPC, the total period of his incarceration could not exceed 20 years which he had completed, inclusive of remission, and, therefore, his continued detention was illegal. Section 57, IPC reads as follows:

"57. Fractions of terms of punishment-In calculating fractions of terms of punishment, imprisonment for life shall be reckoned as equivalent to imprisonment for twenty years." The expression 'imprisonment for life' must be read in the context of section 45, IPC. Under that provision the word 'life' denotes the life of a human being unless the contrary appears from the context. We have seen that the punishments are set out in section 53, imprisonment for life being one of them. Read in the light of section 45 it would ordinarily mean imprisonment for the full or complete span of life. Does section 57 convey to the contrary? Dealing with this contention based on the language of section 57, this Court observed in Godse's case at pages 444-45 as under:

"Section 57 of the Indian Penal Code has no real bearing on the question raised before us. For calculating fractions of terms of punishment the section provides that transportation for life shall be regarded as equivalent to imprisonment for twenty years. It does not say that transportation for life shall be deemed to be transportation for twenty years for all purposes; nor does the amended section which substitutes the words "imprisonment for life" for "transportation for life" enable the drawing of any such all embracing fiction. A sentence of transportation for life or imprisonment for life must prima facie be treated as transportation or imprisonment for the whole of the remaining period of the convicted person's natural life."

This interpretation of section 57 gets strengthened if we refer to sections 65, 116, 120 and 511, of the Indian Penal Code which fix the term of imprisonment there under as a

fraction of the maximum fixed for the principal offence. It is for the purpose of working out this fraction that it became necessary to provide that imprisonment for life shall be reckoned as equivalent to imprisonment for 20 years. If such a provision had not been made it would have been impossible to work out the fraction of an in-definite term. In order to work out the fraction of terms of punishment provided in sections such as those enumerated above, it was imperative to lay down the equivalent term for life imprisonment.”

32. The duration of life sentence within the meaning of IPC has also been considered in the reported decision of ***Duryodhan Routh vs. State of Orissa*** reported in **(2015) 2 SCC 783** wherein the Hon’ble Apex Court held thus:-

“28. From the aforesaid decisions rendered by this Court, it is clear that a sentence of imprisonment for life means a sentence for the entire life of the prisoner unless the appropriate Government chooses to exercise its discretion to remit either the whole or a part of the sentence under the provisions of the Criminal Procedure Code.”

33. In view of such we are unable to accept the contention of the learned advocate for the appellant for releasing the present appellant from his incarceration on account of his detention for more than 21 years.

34. As a result the present appeal being CRA 184 of 2007 fails and is dismissed. Consequently, the judgement of conviction dated 02.12.2006 and the order of sentence dated 04.12.2006, as passed by the Learned Additional District and Sessions Judge, 3rd Fast Track Court, Bichar Bhavan, Calcutta, in connection with Sessions Trial No.1 of January, 2003 arising out of Sessions Case no. 58 of 2002 is hereby affirmed.

35. However, considering the long detention of the present appellant we direct the department to forward a copy of this judgement to the Additional Chief Secretary, Home Department, Government of West Bengal, Nabanna, Howrah who may after obtaining reports from appropriate authorities place the same before the appropriate committee for considering the remission of sentence of the present appellant, if, situation so demands.

36. Department is further directed to forward a copy of this judgement along with LCR to the learned trial court at the earliest.

37. Urgent Photostat Certified copy of this judgment, if applied for, be supplied to the parties expeditiously after complying with all necessary legal formalities.

I agree.

(Chitta Ranjan Dash, J.)

(Partha Sarathi Sen, J.)