

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

BEFORE:

The Hon'ble Justice Soumen Sen

And

The Hon'ble Justice Uday Kumar

C.R.A. 479 of 2017

Ranadip Banerjee @ Rinku

Vs.

State of West Bengal

For the Appellants	: Mrs. Subhasree Patel, Adv., Mr. Soham Banerjee, Adv., Ms. Saini Das, Adv.
For the Respondent	: Mr. Madhusudan Sur, A.P.P., Mr. Manoranjan Mahata, Adv.
Hearing concluded on	: 18 th September, 2024
Judgment dated	: 4 th October, 2024

Soumen Sen, J.-

1. The appellant is the younger brother of the victim.
2. Ranadip is convicted of an offence punishable under Section 302 of the Indian Penal Code by the learned Additional Sessions Judge, 11th Court at Alipore by judgment and order of conviction dated 25th May 2017 and 26th May 2017, in C.G.R No. 1724 of 2015 arising out of Gariahat Police Station Case No.86 dated 24th April, 2015.

3. Joydeep Banerjee is the cousin brother of the appellant. He has lodged a complaint on 25th April, 2015 at Gariahat Police Station alleging murder of his elder cousin brother Sudip Banerjee @ Piklu by the appellant on 23rd April, 2015.

4. The facts narrated in the FIR are stated below.

5. Sudip Banerjee @ Piklu and Ranadip Banerjee @ Rinku are the cousin brothers of Joydeep. They used to reside at one of their ancestral houses being 108A Ballygunge Gardens, Kolkata- 700 019 which was a two storied building. The ground floor was tenanted and the brothers used to occupy two separate rooms on the first floor with another room remaining empty and being used as a storeroom. Joydeep used to reside in another ancestral house at 74 Ballygunge Gardens, Kolkata- 700 029. He used to run a business of distributorship of Pepsi under the name and style of J.B. Enterprise from a small shop at 72 Ballygunge Gardens, Kolkata- 700 029.

6. Piklu had some neurological problem due to which he was unable to stand. He used to drag himself to move from one place to another inside the house. One full time maid named Champa, was engaged to look after Piklu as well as to do household work and cooking. Piklu was living in the said house since 2009 after he separated from his wife and son. They are residing at Behala Bakultala. His mother and middle brother Sandip @ Tukai also used to reside in the said premises. However, both of them died in the year 2012 and 2013 respectively.

7. Ranadip @ Rinku is a bachelor and unemployed. The rents collected from tenants on the ground floor are used for livelihood of the two brothers. Champa was engaged by Mrs. Rupa Banerjee wife of Piklu, from the very first day. Joydeep was concerned about the well-being of Piklu and he used to send one of his friends Subodh Sarkar @ Noa almost on a daily basis to find out the condition of Piklu and report to him about his condition. The relationship between Piklu and Rinku was not good and Rinku used to beat Piklu and demand money from him. On 23rd April, 2015 at around 11.30 am Joydeep visited the office of continental caterer opposite to his residence and asked Noa to look after his shop. At about 12.05 hrs. while he was gossiping with his friends near Arambagh Food Mart in the same locality one Indrajit of Amtala, Kakulia informed him that Piklu was seriously injured and sitting on the common passage in front of the main door of the building. Joydeep rushed to the said premises and found Piklu had bleeding injuries on right eye brow, head and leg. Rinku was standing at the landing of the staircase. On seeing Joydeep, Rinku started abusing him and said that he had assaulted Piklu. Joydeep was asked not to interfere in their family matters. Joydeep requested some local men like Suraj, Krishna, Dodan and Indrajit to take Piklu upstairs and apply first aid on him. Thereafter he left the place to call Dr. Amitava Roy whose chamber is near to the said house. Dr. Roy sent Shakti, his compounder to do the needful. Shakti on attending to Piklu advised Joydeep to hospitalize him immediately. However, Rinku opposed the idea. Champa was not present at that time. After that Joydeep left at about 1.15 pm. He asked Noa to visit the

house to find out the condition of Piklu. Later in the night of 23rd April, 2015 at about 9.15 p.m. Noa called Joydeep and reported that when he went to see Piklu, Rinku threatened him and made an attempt to assault Piklu in front of him. However, with Noa's intervention, Rinku was restrained. Noa expressed his anxiety about the well-being of Piklu and chance of further assault by Rinku. Thereafter, in the late night at about 1.30 a.m. Noa informed him that Rinku had once again brutally assaulted Piklu due to which Piklu had become unconscious and unresponsive. Joydeep rushed to their house and noticed that the room of Piklu was under lock and key. Piklu was found unconscious and motionless with severe bleeding injuries all over his body on the floor of the left side room on the 1st floor and appeared to be dead. Champa and Noa were present in the said room. Rinku at that time was in his room and on being confronted with regard to the condition of Piklu and the reason for the room of Piklu to be under lock and key, Rinku shouted at him and said that whatever he had done was justified and asked them to leave the place immediately. In view of such situation Joydeep informed the Gariahat Police Station over phone. Within a short time, police arrived and started investigation. They asked Rinku and Champa to open the room of Piklu but they failed to do so due to unavailability of the key. Police accordingly broke open the lock and found a blood-stained iron water pipe, some blood on the floor and on the bed. There were also signs of wiping out the blood stains from the floor.

8. With such narrative Joydeep lodged the complaint that Rinku had committed murder of his elder brother Piklu in his room and tried to conceal and suppress his offence.

9. The investigation started.

10. Prosecution had examined 21 witnesses.

Witnesses for the Prosecution:

11. The de facto complainant Joydeep (PW 3) in his chief has almost narrated the entire facts as stated in the letter of complaint. In his chief in addition he has stated that when Rinku's mother was alive, he had a habit of assaulting her too, a fact admitted by the neighbours of the house wherein Rinku and Piklu used to reside. In the evening of 23rd April, 2015 he had again sent Noa with a packet of chips to find out the condition of Piklu. Noa reported that Piklu was lying in the room of the 1st floor and was not in a position to chew the chips. Around 10.30 p.m. he went to sleep. Thereafter at around 12.05 a.m. in the night Joydeep received a phone call from Noa informing him that he had received information from Champa, the maid servant, that Rinku had again assaulted Piklu. Joydeep decided not to interfere and for that reason he also switched off his mobile. At around 1.45 a.m. he received a phone call on the mobile number of his wife from Noa who informed him that Piklu was not alive and requested him to go to the house to Piklu immediately. Joydeep instantly rushed to their house and found Piklu motionless and stiff on the 1st floor. The other statements in the complaint have remained the same.

12. In his cross-examination he has stated that Piklu and Rinku used to maintain themselves primarily by collecting rent. The wife of Piklu used to provide some maintenance for Piklu directly to Rinku. He generally switched off the mobile at noon for rest. Usually he did not switch off his mobile at night unless circumstances required otherwise. Neither did he instruct Noa nor did he personally take any measure to shift Piklu to the hospital although there were many hospitals within a radius of 3-4 kms with AMRI hospital being a 5-7 minutes' walk from Piklu's residence and SSKM hospital about 4-5 kms from his residence. He did not make any attempt to shift Piklu to any hospital during the day time as he had arranged for a local doctor/compounder for his first aid treatment after receiving information about the deceased's injuries.

13. Joydeep has also stated in his cross examination that they had inherited 80 bighas of land in the district of Burdwan and some portion of it had been sold to an outsider by him. He stated that he did not know whether Pinklu and Rinku were aware of such transfer and they had not claimed their respective shares from the consideration price of the property at Burdwan after sale.

14. Subodh Sarkar @ Noa is PW 4. He was working under Joydeep in his shop. J.B. Enterprise since August, 2014. Previously he was working under Ranadip Banerjee.

15. On 23rd April, 2005 at around 12.30 p.m., one Sonali, owner of a tea stall adjacent to the premises of the victim informed him that the appellant had assaulted the deceased and he was lying outside the house in a bleeding

condition. Sonali was looking for the de facto complainant (PW 3) and at the relevant time PW 3 had gone to Golpark for some work. After sometime two persons namely Indrajit and Dilip (PW 16) came to the shop on a motorcycle looking for the de facto complainant. They also reported that the deceased was lying outside the premises in bleeding condition and was unable to get inside the house due to his handicapped state.

16. Around 1p.m. during tiffin hours he went to Golpark where PW 3 and one Raja Dasgupta were found gossiping and he narrated the whole incident to PW3. Joydeep (PW 3) asked him to search for Shaktipada Banerjee (PW 13), a compounder for dressing the injuries of the victim. PW13 was found passing and informed him that he would directly go to the residence of Piklu after visiting the doctor's chambers. At around 1.20 p.m. on the basis of the instruction of PW 3 he went to see the victim and during such meeting the victim stated that he was well. Again at around 6.30 p.m. after informing the PW 3 he again checked the victim and found him lying in his cot in the first floor room in good condition. After 9 p.m. he left the shop and purchased a packet of potato chips for the victim and together they ate chips. The appellant was sleeping in his room and Noa was smoking. At that time the appellant came out from his room and chased him out of the house. After that when he was coming out, he heard hot altercations between the brothers and they were shouting at each other using abusive language.

17. On the very same day after returning home around 11:45 p.m. he was informed by Champa (PW 5) that the condition of the victim had worsened.

After hearing the incident he went to the house of the victim where he found that the victim was lying on a mattress on the floor with painful bleeding injuries. Blood was oozing out of his head and corner of one eye and he was found to be restless due to his pain. On being asked, Piklu stated that he was assaulted by Rinku. He also found the appellant sleeping in his own room. He took a pillow from Rinku's room, arranged it under the head of Piklu and also narrated the whole incident to Joydeep (PW 3) over telephone. Noa stayed in the next room of the appellant being requested by Champa (PW 5), as she was feeling nervous about managing the situation. He stayed in the appellant's room and after a while Champa (PW 5) told him that the victim was not responding. Thereafter he rushed to the room of the victim, called him twice by his name but the deceased did not respond. He instantly tried to contact PW 3 over phone and found his phone switched off. Failing to contact even the sister of PW 3, he contacted the wife of PW 3 and narrated about the incident to PW 3 at around 2 a.m. After a while PW 3 came followed by police personnel from Gariahat Police Station.

18. In his presence police recovered a blood clotted iron made water pipe, blood clotted pillow, bed sheet and control blood scattered on the floor after breaking open the lock on Piklu's room. They also seized a mattress, jeans trousers, pyjama, pillow and a white colour electric wire from the room where the dead body of Piklu was found. Each article was retained inside the packet and label was fixed on each packet. He along with one Biswajit Dey (PW 6) put their signature on each label of the packets. The signature of the witness on

the seizure list dated 24th April, 2015 was marked as Exbt. 5/1 collectively and the signature of the witness on the seizure list dated 24th April, 2015 by which the iron made water pipe and other articles were seized was marked exbt.6/1.

19. During his cross-examination he has stated that he used to reside at Kakulia Railway quarter. When he first heard from local people that Piklu was lying injured outside his house, neither did he visit the house nor did he inform Joydeep. Prior to informing Joydeep, he did not make any attempt to hospitalize Piklu when he first saw him in an injured condition at night. On the first half of the night he had left Piklu's house at 9.30 p.m.

20. Smt. Alpana Mallick, (PW5) in her deposition has stated that she used to work as an "aya" (care-giver) to look after Piklu as he was a paralytic patient since April 2012. After the death of the mother and middle-brother of the victim Tukai, the wife of the victim discharged her from the job. Thereafter the appellant engaged her with a monthly salary of Rupees 5000/- for looking after the deceased and for cooking. Her duty hours was from 10 pm to 10 am. She knew PW 4, who used to work with PW 3. She has also stated that PW 4 used to visit the said house to find out the condition of the victim as per direction of PW 3. The witness described premises no. 108/A, Ballygunge Gardens to be a two storied building of which the ground floor was occupied by tenants and the first floor, consisted of 3 rooms, out of which the right side room was occupied by the deceased, second room was occupied by the appellant, the left hand room of the staircase was used as a store room, the veranda was used as kitchen and the bathroom was situated at the corner of

the kitchen. On 23rd April, 2015 at around 11.45 a.m. she went to visit her daughter suffering from cancer at Jadavpur KPC Medical College and Hospital and thereafter returned to the house of the deceased at around 1:30 p.m. at noon. She found the left side of the forehead of the victim had a cut injury mark. When she asked the victim about the injury he pointed his finger towards the room of the appellant. At the time of his bath she found another line of wound marks on his back and again the victim told her that the appellant assaulted him with a stick, which he used to beat dog and she dressed the wounds initially. Thereafter Shakti, the compounder (PW 13) came to attend the victim and suggested stitching the wounds and hospitalisation. The appellant however prevented the victim from being hospitalised and told Champa to apply "Nevasal powder". She applied the medicine as suggested and made Piklu lie down on the cot. Thereafter after taking lunch and offering puja, she left the house at 8:00 p.m. She again returned at around 10:30 p.m. and found the victim sitting down outside the door of his room, which was locked, with bleeding injuries on his face. When she asked him the reason for such a condition, he pointed out finger towards the room of the appellant. She took the deceased to the other room on the left-hand side of the 1st floor from the staircase and dressed his injuries with Nevasal powder and laid him down on the mattress of the floor. At around 11.45 p.m. at night she saw the victim shivering and groaning in pain and being afraid she called PW 4 over phone. PW 4 came to the spot and talked with PW 3 over phone. At around 1.00 a.m. PW 4 intended to leave the house but on her request he remained in the house

and she arranged for his sleep in the room of the appellant. When she was arranging to take her food, she found that the victim was not responding. She instantly called PW 4 to check on the deceased. PW 4 came down to the ground floor of the house talking with PW 3 over phone and told her that the PW 3 had informed the police and asked her not to touch any articles lying around. At that time the appellant was sleeping in his own room.

21. In her cross-examination she has stated that she found Piklu whom she addressed as 'Barda' in a serious condition at night for which she called Noa over phone informing him about the condition of Borda. Throughout the night she remained present beside the room of Barda near the staircase but did not attempt to take him to the hospital early next morning. She was temporarily terminated from her job at the instigation of the wife of Piklu and thereafter she was again appointed by Ranadip Banerjee the appellant.

22. Sri Biswajit Dey, (PW 6) is a broker and seizure witness. He stated that he is a friend of PW3 and he received phone call from PW3 at around 2/2.15 a.m. informing him that the victim had died. He has stated that on entering the house, he found a police vehicle stationed there and found Piklu lying dead on the floor in a room on the first floor, covered in blood. In his presence the police collected one checkered trousers, one jeans, one mat, one blood stained pillow, one blood clotted white colour plastic pipe and portion of blood from floor through a cotton.

23. All the seized articles were packed and sealed in envelopes with labels affixed on the same and he signed on the labels as well as on the seizure list.

24. Sri Samiran Shome @ Rana Shome (PW 7) is a childhood friend of the appellant and the seizure list witness. He was asked by the Police to accompany them for search and seizure. They followed the appellant who pointed towards a lane going towards the railway quarters.

25. At the instance of the appellant a white colour plastic bag tied with a rope was recovered which contained a maroon colour piece of cloth, a brick colour handkerchief, a red and white coloured torn curtain, a lathi broken in three pieces and a key was seized in his presence and he signed the seizure list prepared at the place of recovery.

26. Sri Susanta Roy @ Babua (PW 8) is a neighbour. He stated that from his drawing room the verandah of Piklu's house was well visible and that he had witnessed Rinku quarrelling with and assaulting Piklu, which he had reported to Joydeep. He had also attempted to restrict Rinku when he used to quarrel with his mother, a cardiac patient having pacemaker. He has also stated that on the day of the incident, when he woke up in the middle of the night to use the bathroom, he saw a crowd in front of the house of the victim. He also saw lights of their house turned on. He saw two police vans waiting in front of their house when he went enquiring about the happenings. On the next morning, he heard that the appellant had murdered the deceased.

27. Sri Partha Sadhukhan (PW 9) is the seizure list witness. He is a friend of PW 7. He has stated that on 2nd May, 2015 at around 9.00 am PW 7 came to his shop and thereafter he accompanied PW-7 towards his home on a motorcycle. On reaching near the Kankulia Road rail gate they saw some police personnel present there. Thereafter, they came to know from police personnel that the appellant had taken them there to find out some hidden articles by which he had assaulted his elder brother (the deceased). He and PW 7 agreed to become witnesses of search and seizure. Thereafter, they proceeded beside the rail quarter towards a bush and as shown by the appellant, a white colour plastic packet tied with a rope was taken out from the bush by the police. After opening the plastic packet which contained a maroon colour piece of cloth, a brick colour handkerchief, a red and white coloured torn curtain, a lathi broken in three pieces and a key, the seized articles were sealed inside packets, labelled and he put his signature thereon.

28. Sri Abhirup Roy Chowdhury (PW10) is a friend of PW 4. He has stated that on 23rd April, 2015 at around 10 p.m. when he was returning home by driving, he saw the appellant, who was coming towards the right hand side rail quarter near Kakulia rail gate, holding a white colour polythene bag in his hand. On the next day he heard from PW 4 that the appellant had murdered the deceased the night before. Later he came to know from PW 4 that police had recovered some articles from that rail quarter as shown by the appellant after the incident. Hearing about it from PW 4, he informed PW 3 that

once he had also seen the appellant proceeding towards the rail quarter beside Kakulia rail gate holding a bag on 23.04.2015 at around 10 p.m.

29. Tapan Kumar Mondal (PW 11) is the ASI who prepared the inquest report. He examined the dead body of the victim and prepared the inquest report in the presence of PW 3 and PW 15.

30. Sri Suraj Singh (PW12) is the husband of a tea stall owner who ran the shop adjacent to the house of the appellant at 79, Ballygunge Gardens. He has stated that on the day of the incident, on returning to his tea stall at around 12-12:30 pm he found his wife absent there. Thereafter, he found that many people had assembled in front of the house of the appellant and his wife was also present there. There he found that the victim was seriously injured, in a bleeding condition and was sitting in the ground floor near the staircase of their house. He stated that PW 3 was present there and on being asked by PW-3 as to how the victim was injured, the appellant stated that he had assaulted the victim. PW 3 asked him to take the victim to the 1st floor but he declined. PW 3 then called other persons namely Dodon and Krishna who washed the blood from the face of the victim and then the deceased dragged himself towards the 1st floor. He also accompanied them to the 1st floor when PW 3 was arranging to call a doctor. After a while he left the house with Dodon and Krishna, while PW 3 left to arrange a doctor for treatment of the victim. On the next day at around 7 am when he came to open his tea stall, he found that many people had assembled in front of the house of the appellant along with police

personnel and thereby he came to know that the appellant had murdered the deceased.

31. Sri Shaktipada Banerjee (PW13) is an employee of Dr. Dasgupta's Clinical Laboratory, wherein he is a para-medical staff and works as a compounder. He has stated that on 23rd April, 2015 at around 12:45 pm, PW 3 called him over phone and asked him to dress the wound of Piklu at his house as he was assaulted by the appellant. As he was leaving Golpark he saw PW 3 gossiping with his friend near Mouchak sweet shop. PW-3 asked him whether he attended for dressing the wound to which he replied that after finishing the rest of his work he would attend to the victim. On the same day at around 2:30 p.m. he went to the house of the deceased and found him sitting on the floor. The appellant was in another room in the same house. From a close distance he found that the deceased had received a deep cut injury over his left eyebrow. He advised the appellant to hospitalise Piklu for stitching his wounds as the same was not a minor cut that can be healed by dressing. However the appellant did not agree to that. PW 5 Champa came out from the bathroom and told him that she would arrange for dressing. Thereafter he came and consulted Dr. Amitava Roy over phone narrating the nature of injury. On the next morning, he heard that the deceased had passed away. Police came to his chamber after 2 to 3 days after the incident in the evening at around 7:30/7:45 p.m. and interrogated him.

32. Sri Hiralal Ghosh @ Kaltu (PW14) is a labourer who does construction work and almost every day he used to assemble with his friends

near Ghosh Medical, which is close to Kankulia gate. After 10 days of the said incident police came to him and showed a photograph, which he identified as the deceased. He also stated to the police that on the date of the said incident he had seen the appellant along with a white colour plastic bag proceeding towards Kankulia level crossing at around 9.30-10 pm on the date of the incident in April, 2015. After a while he had also seen the appellant returning from the said place empty handed. He had called him twice to which the appellant did not answer. On the next morning he came to know that appellant had murdered the victim.

33. Smt. Rupa Banerjee (PW 15) is the wife of the deceased and the inquest report witness. She was married to the deceased in the year 1988 and their son was born in the year 1993. In the year 1994 she shifted with her husband to a rented accommodation at Jadavpur and in the year 1997 they shifted to Behala to her paternal home. Due to some neurological problems the deceased had to be hospitalized on several occasions and for that reason it was decided by her mother-in-law that the victim would reside with them. Finally her husband shifted to their residence at Ballygunge in the year of 2012 and since then they were separated. She stayed along with her son at her paternal home at Behala. As it was not possible for her to take care of her husband being a working lady, she decided to leave the deceased at his parental home under the care and custody of his family at the behest of his mother. Subsequently, his mother and brother-in-law (Sandip Banerjee @ Tukai) passed away. She used to bear her husband's attendant's charges and

medicine costs. After the death of Sandip she stopped making payments to her husband after learning that her husband and his surviving brother were earning well from tenants. On 24th April, 2015 in the morning she got the news about her husband's death from her sister-in-law Papai via messages. Thereafter, when she called her sister-in-law, she came to know that her husband was murdered by the appellant. Inquest report was prepared before her and PW-3 at the police station.

34. Dilip Dey (PW 16) is a cleaner of vehicles. He has stated that on 23rd April, 2015 at around 12:15/12:30 p.m. when he was cleaning vehicles in front of Dr. Amitava's chamber he was called by PW-3 for going to the house of the victim. After reaching there along with two others namely Krishna (not examined) and Suraj (PW 12) he found the victim with bleeding injuries from his forehead and other parts of the body. As per instruction of PW-3 he along with Krishna cleaned blood from the body of the victim and thereafter they left the house. The appellant was present at their home during such incident. On the next morning, he heard that the victim had died. He was interrogated by the police after 3 days from the date of the incident.

35. Dr. Swapan Kumar Mondal (PW 17) is a Medical Officer and he prepared an injury report. He has stated on that day at about 6:45 a.m. he examined the dead body of the deceased. On examination he found multiple lacerated injuries on the face and head, on the left shoulder and right leg. On 24th April, 2015, after examining the dead body he made the injury report.

36. Dr. Tapan Kanti Roy (PW 18) is the Forensic Doctor who performed the medical examination of the appellant. He has stated in his Chief that on 27th April, 2015 he examined the appellant. On examination he found following injuries:

- a. a bruise with abrasion on the right leg close to right knee joint 10 cm away from the knee.
- b. another abrasion reddish brown coloured found on his left dorso of the foot.
- c. 2 small infected spots were seen on the right wrist.

37. He opined that above mentioned injuries were sustained at motion and the age of the injury was about 84 to 92 hours before examination at 4.00 p.m. on 27th April, 2015. He stated that the reason of the injury was most probably due to a movable object of heavy weight and low velocity like pulling and pushing a heavy and blunt object.

38. Dr. Biswanath Saren (PW 19) the post mortem examiner in his chief has stated that on 24/04/2015 he examined the dead body the deceased. On examination he found 26 injuries on the dead body of the deceased. He opined that injuries sustained may be caused by iron rod and this type of iron rod can cause both bruises as well a fracture injuries. He stated that haematoma on the scalp tissue which he found may be caused due to fall from the stair case. He also stated that the injuries which were detected by him on the dead body may be caused by iron rod and stick which had been noted as ante mortem injuries and homicidal in nature in P.M report and these sorts of

injuries which he has noted are sufficient to cause death in ordinary course of events.

39. Sri Subhra Chandra Shee (PW 20) is the first investigating officer. He has stated in his Chief that on the midnight of 23rd April, 2015 and 24th April, 2015 at around 2:15 hrs, he received information from PW 3 that the deceased was lying injured and motionless on the 1st floor of the place of occurrence (P.O.). They reached the P.O at 2:35 hrs and raced to the 1st floor where they found a gathering of 4-5 people in a room on the left side of the staircase. PW 3 pointed towards a person lying on the floor of the room heading towards east with profuse bleeding injury on his head. He seized some articles from the room where the body of the victim was lying. After breaking open the lock of the room he seized some articles from there. He recorded the statement of PW 3, 4 and 6. After registration of the case on the basis of the statement of PW 3, he detained the appellant as per instruction of his superior officer.

40. Sri Bireswar Roy (PW21) is the 2nd Investigating Officer. He took up the investigation of the case from PW20 under the instruction of additional O.C of Gariahat Police Station on 20th April, 2015. He has stated during the post mortem examination, as per the instruction of the autopsy surgeon, the seized iron made water pipe was produced before him in sealed and packed condition which is reflected on the backside of the P.M. report. He interrogated the appellant but at the time of interrogation he remained silent. When he was examining the appellant, he found some cut marks on the back side of the right palm, left leg and foot and one abrasion mark on his right leg and the

marks of the injury were properly noted down in the inspection memo. During Police custody the appellant was interrogated again and there he stated before him that if he was taken to Kankulia gate, he would assist to recover a plastic bag containing wooden stick, key, blood stained clothes, handkerchief and curtains which were used by him during commission of offence. To verify the statement of the appellant, they reached Kankulia gate and recovered white colour plastic bag tied by a rope was recovered which contained a maroon colour piece of cloth, a brick colour handkerchief, a red and white coloured torn curtain, a lathi broken in three pieces and a key and the same were seized. On 24.04.2015, the appellant was produced before Dr. T.K. Roy ACMOH, who made a forensic examination of the injuries of the appellant. He recorded the statement of seizure list witnesses. He collected the forensic report and he submitted the chargesheet no: -108/15 dated 22nd July, 2015.

Submissions on behalf of the Appellant

41. The learned Counsel for the appellant has submitted that there are several discrepancies and inconsistencies in the evidence of the witnesses. It is submitted that the material evidence on record coupled with the statement rendered by the accused under Section 313 of the Cr.P.C. would clearly indicate that the de facto complainant, the first informant is the real culprit and he had carefully selected witnesses in order to inculcate the accused appellant.

42. The version of PW 3 and PW 4 are not in consonance regarding the morning incident of assault of the deceased.

43. PW 3 stated that he was informed by local men about the incident when he was standing near Arambagh at 12 P.M. but PW 4 stated that on 23rd April, 2015 around 12:30 pm, he was informed by one tea stall owner Sonali that the deceased had been assaulted by the appellant and was lying outside the house in a bleeding condition and at that time PW-3 was gossiping with one of his friends at Golpark. Strangely a vital witness like Sonali was not examined as a witness by the prosecution. PW 3 also claimed to have informed Dr. Amitava Roy for the check-up of the deceased who in turn sent his compounder PW 13 to the P.O. However, PW 4 contradicting PW 3 stated that PW 3 had asked him to search for PW 13 for dressing the injury of Piklu and PW 13 had told them that he would go to the house of the appellant after visiting the Doctor's chamber. PW 4 did not mention anywhere in his deposition that PW 3 went to the P.O. after hearing about the Incident in the afternoon and claimed to have visited the deceased at around 1:20 pm. PW 3 did not mention in his statement that he instructed PW 4 to visit the spot and rather deposed that he himself had visited the P.O. and requested PW 13 to do a check up on the deceased and that PW 13 had asked him to hospitalize the deceased. PW 3 stated that he had requested Dodon, Krishna and Suraj of the locality to take Sudip to the first floor and thereafter he had left for Golpark. PW-12 (Suraj) however, stated that the victim had gone to the first floor by dragging himself and PW 3 had tried to arrange a doctor. Krishna and Dodon, who had apparently gone to the P.O. in the morning and witnessed the deceased in a bleeding condition and had also cleared his blood, were not

examined by the prosecution. PW 4 also stated that one Indrajit and PW 16 also reported the incident to him but strangely Indrajit was also not examined. Dr. Amitaba Roy who was informed about injury sustained by the appellant in the morning was also not examined by the prosecution. PW-3 claims to have been informed by PW 16 and Indrajit about the morning incident while PW-16 states that it was PW-3 who called him to go to the house of the appellant on that morning.

44. Ms. Patel has submitted that there are apparent contradictions between the evidence of PW3 and PW4 with regard to the treatment of the victim after he was reported injured. While PW3 has stated that after being informed of the incident he had visited the victim and thereafter the doctor's house but the doctor had sent his compounder Shakti, PW4 the employee of PW3 has stated that he was asked to find the compounder to dress the injuries and when he requested the compounder to visit the house of the victim. For such purpose PW13 (compounder) informed that he would go there after visiting the doctor's chamber. Moreover, PW3 did not find it necessary to immediately admit the injured victim although he claimed that he found the victim severely injured. Being a cousin it would have been the natural and normal course of conduct to admit the victim to a nearby hospital. The prime witnesses of the case i.e., PW3, PW4 and PW5 contradicted in respect of certain factual aspects of the matter.

45. PW 4 stated specifically that he met the deceased again at 6:30 PM. when he was in good condition. On his next visit to the deceased at around

9 pm he offered chips to the appellant and they started having chips together. However, PW 3 completely reversed the said incident in his own way and deposed that PW 4 had informed him that the deceased was not in position to chew chips in the evening.

46. PW 15 stated that she had come to learn about the death of her husband from her sister-in-law, Papai on 24.04.2015 in the morning. However, the prosecution deliberately refrained from examining the said Papai who could have been a vital witness in the case. It is submitted that as per the deposition of PW 15, after the death of Tukai, she came to learn that there were other tenants in the house and with rent so collected by the appellant, both the appellant and the deceased were well maintained and hence she stopped making payments to her husband. However, the prosecution did not make any endeavour to adduce even a single tenant as a witness although the tenants could have been the most vital witnesses in substantiating and/or defending the prosecution story.

47. The learned Counsel for the appellant submits that there is no explanation by PW-3 as to what prevented him from taking the victim to the hospital despite being asked by Shakti to do so. Generally he switched off his mobile phone at noon for rest but at night he did not usually switch off his mobile unless required depending on the circumstances. On that fateful night he could not offer any plausible explanation for switching off his mobile though he claimed that he was aware of bleeding injuries of Piklu and the disturbance at the said residence between the brothers. Noa curiously did not inform PW3

after he heard that the victim was lying injured nor did he visit the victim. He also did not take the victim to hospital. Champa used to receive Rs. 5000/- per month from the appellant as a domestic help but she had to pay Rs. 520 for bed charge per day and about Rs. 20,000/- as monthly expenses for her daughter undergoing cancer treatment. After she found Borda in a serious condition she did not take any steps for hospitalization of the victim, although AMRI hospital is situated at a walking distance of 20 minutes from the house of the appellants.

48. There is nothing on record to prove that death was due to the injuries sustained in the morning.

49. Ms. Patel has submitted that PW6, Biswajit Dey has been planted by PW3. His evidence is unreliable as it is hearsay.

50. PW8, from whose drawing room the verandah of the appellant's house was clearly visible has stated in his cross-examination that he was not aware of anything that happened in the house of the deceased either in the morning of 23rd April, 2015 or at night. He did not hear any sound of altercation during the time of the incident and only came to know about the incident on the next morning.

51. PW 7 is a search and seizure witness along with PW9 and he also happened to know the appellant. PW9 in his cross has stated that adjacent to the rail quarters there is a bush spreading over a large area wherefrom the hidden articles were recovered by the police on being shown by Ranadip,

however, articles recovered by the police did not bear any special mark. The kind of articles seized by the P.O. are also available in the market.

52. PW10 is a friend of PW4 and PW3 told him to narrate the whole incident to police and on the very same day police interrogated him. The possibility of PW 10 being planted as a witness by the PW 3 cannot be ruled out in light of the fact that he admitted of being acquainted with PW 3 and PW 4 who apparently informed him about the murder of the deceased on the next day. PW14 is the labourer and hearsay witness but has stated that on the day of the incident he saw the appellant along with a white colour plastic bag proceeding towards Kankulia Level crossing in the morning of April, 2015.

53. PW11 the ASI and maker of inquest report has stated that he examined the dead body. He did not record the statements of the informant at the time of preparation of the inquest. PW15 the wife of the deceased has stated that PW5 used to look after her husband and that appellant had appointed her to look after the deceased and used to pay her salary for taking care of the victim. She heard that the paternal property of her husband at Burdwan has been sold out. PW16 cleaner of the vehicle is the hearsay witness. On 23rd April, 2015 at around 12/12.30 p.m. when he was cleaning vehicles in front of Dr. Amitava he was called by PW3 for going to the house of the victim which clearly contradicts the version of PW3 and PW4. The Medical Officer PW17 in his cross has stated that he did not find any bruise injury on the dead body. PW19 is the doctor who conducted the postmortem examination and stated that the nature of injuries found on the dead body may be caused

by an iron rod. In his cross he has stated that the nature of bruise mark can also be caused by bamboo like thing.

54. The learned Counsel has submitted that although it is alleged that the victim was found in the morning sitting on the staircase bleeding and hot altercations took place between the brothers and they were speaking to each other using abusive language in the evening, surprisingly neither any tenant nor any neighbour corroborating such fact was examined. The premises in question is a two-storied building of which the ground floor was occupied by tenants. It is improbable that PW5 attended the deceased in the afternoon after he was assaulted by the appellant as per the prosecution story since the PW5 herself has deposed that her duty hours at the house of the deceased was only between 10pm and 10am. In such a scenario, the tenants could have been possibly the best witnesses to the alleged offences but the prosecution in a motivated way chose to omit the production of such tenants in connection with the alleged offences. It is also striking that PW3 after reaching the PO at midnight called his friend PW6 at the PO instead of the tenants who ought to have been present in the same house, especially when he admittedly had a cordial relationship.

55. The learned counsel has submitted that it is interesting that all the witnesses excepting all the prosecution witnesses is somehow connected to Joydeep. The selection of the witnesses is also interesting as PW7 was picked up by the police to accompany the appellant in the endeavour to recover the offending weapon. The said witness happens to be a friend of Joydeep and he

had suddenly found Ranadeep in a police van and he was stopped and interrogated by the police. Thereafter he accompanied the police to the spot where the offending weapon was allegedly concealed by the appellant. It is not quite discernible why the police could not find any witness in and around the place where the offending weapon was concealed and the witnesses who accompanied the police and in whose presence such recovery was made are all chance/interested witnesses close to Joydeep. It is further submitted that all the recovery witnesses have given different times of having seen the appellant going near the railway station near Kankulia with a bag in his hand and returning thereafter. While PW10 had seen the appellant going to the Kankulia railway station at around night, PW14 had seen the appellant going in the morning which subsequently he rectified in his cross-examination and stated that he had seen the appellant at around 9.30/10 pm on the day of incident.

56. According to PW 4, he visited the deceased's house after 9 PM, where he ate chips with the deceased. PW 10 and PW 14 testified that they saw the appellant around 9:30-10 PM, heading towards the bush with a plastic packet in hand. Furthermore, as per PW 4 and PW 5, PW 5 informed PW 4 via phone at approximately 11:45 PM that the victim's condition had worsened. The testimonies of PW 4 and PW 5 confirm that the deceased remained alive until around 1 AM. Given this timeline, it seems improbable that the appellant could have disposed of part of the evidence while leaving some in the room accessible and then gone to sleep before the completion of the offence, especially without knowing the potential outcome of the alleged assault.

Additionally, the time between 9 PM and 10 PM is not so late that any sound resulting from an assault would go unnoticed and unheard. PW 8 explicitly stated in his deposition that he could ordinarily hear noises from his house when quarrel took place at the appellant's house. Even if, for the sake of argument, it is considered that the appellant assaulted the deceased on that night, it is highly unlikely that he would have had the foresight to anticipate the outcome of the assault and then conceal evidence that would implicate him as the perpetrator which clearly demonstrates the failed attempt of the prosecution to establish its case and implicate the appellant on poorly linked circumstances without actual evidences to back the prosecution's claim.

57. The learned Counsel was critical about the conduct of PW 3. It is submitted that despite being informed by PW 4 that the deceased had been assaulted by the appellant at 12:05 am, instead of visiting the deceased he switched off his phone on the pretext that he was feeling uneasy in interfering in their family business. The aforesaid excuse seems to be wholly unreasonable in light of the fact that he has repeatedly expressed his concern about the health of the deceased, prior to the incident, for which he used to send PW 4 to visit the deceased and monitor if he was keeping well.

58. On the contrary the conduct of the appellant specifically concern for his elder brother is reflected from the statement PW15 who has stated that PW5 was reappointed by the appellant to look after her husband and the appellant used to pay her salary. PW5 also corroborated the said fact.

59. The learned Counsel has submitted that the following events are required to be taken into consideration in deciding the culpability of the appellant in the commission of the crime.

60. The deceased did not die due to the injuries as alleged in the morning since as per PW4, around 1.20 p.m., being instructed by Joydeep, he went to meet Piklu. Piklu stated that he was well. Again at 6.30 pm, with knowledge of Joydeep, he had gone to meet Piklu and found him lying in his cot in good condition.

61. When PW-4 arrived, the deceased was alive. It is surprising that PW 4 went to the other room and slept instead of taking the injured to the hospital. Around 11.45 p.m, PW 5 had informed him that the condition of Piklu had worsened and he was shivering and groaning out of pain. However, neither PW 4 nor PW 5 had witnessed Piklu being further beaten up by the appellant. Appellant was found sleeping in the next room. There was no explanation as to why he did not inform anyone earlier or take him to the hospital or try to wake up the appellant. It is very strange that PW 5 called upon PW 4 to inform that the deceased was shivering and groaning in pain instead of informing the appellant sleeping in the next room.

62. The entire seizure is framed because it is very unlikely that some materials will be concealed in a bush and the rest kept locked in a room at the P.O. by the appellant herein. Moreover, if the incident took place prior to 9 p.m, it is very unlikely that no one heard any cry of the deceased while being beaten

up. The neighbour could hear from his house if anyone talked loudly at the P.O but did not hear or witness the incident at the time of occurrence.

63. PW-3 claims to have informed about the demise of the deceased to some neighbours and friends along with the police station but none of the neighbours and friends who came over seem to have been examined. Suspiciously, as per the deposition of both PW4 and 5 after being informed that the victim was not responding, PW3 asked them not to touch any articles laying around till the police arrived as if already certain that the victim had died and a police investigation would ensue.

64. The version of PW 4 and PW 5 certainly do not constitute a dying declaration.

65. The chain of circumstantial evidence misses links post evening since no one saw or heard about the incident.

66. Hence chain of circumstances is not complete.

67. The chain of circumstances has been fabricated by the police as per their whims and fancy, in absence of any direct evidence to the commission of the offence whatsoever.

68. The learned counsel relied on the case of **Nagaraj v State**¹ to submit that in a similar case wherein there were a number of inconsistencies in the case of the prosecution with contradictory statements given by prosecution witnesses, fingerprints not being lifted from the scene, murder weapon not being recovered, investigation by police being unsatisfactory,

¹ (2015) 4 SCC 739

absence of any credible motive, the Hon'ble Supreme Court had observed that there was as much opportunity and as much motive for other persons to have committed the crime which had been tenuously attributed to the accused and had bestowed the accused with the benefit of doubt considering the failure of the prosecution to prove its case beyond reasonable doubt.

69. Reliance has also been placed on ***Abdul Razak and Others v State of Karnataka***², to establish similarity. It is submitted that in a situation where the deceased had succumbed to injuries with his hands tied behind his back, his leg fractured and eyes burning with chilly powder for over 4 hours the Court acquitting the appellants, had opined that the conduct of the prosecution witnesses did not inspire confidence since they had firstly left the deceased to be assaulted without intervening and had also done nothing post the event to help the unfortunate soul, who was left to die without any succour coming from any quarter.

70. The learned counsel cited the case of ***Raja Naykar v State of Chhattisgarh***³, for the proposition that the circumstances should be such that they exclude every possible hypothesis except the one consistent with the guilt of the accused and that suspicion, however strong, cannot take the place of proof beyond reasonable doubt.

71. The learned counsel placed the landmark judgment of ***Sharad Birdhichand Sarda v State of Maharashtra***⁴, to reiterate the five golden

² (2015) 6 SCC 282

³ (2024) 3 SCC 481

⁴ (1984) 4 SCC 116

principles to constitute the ‘*panchsheel*’ of proof of a case based on circumstantial evidence and to submit that when there were two views possible on the evidence on record, one pointing to the guilt of the accused and another to his innocence, he was entitled to have the benefit of the one favourable to him.

72. In a case based on circumstance, motive assumes great significance and complete absence of motive definitely weighs in favour of the accused is well established by various judgments including the decision of the Apex Court in ***Nandu Singh v State of Madhya Pradesh***⁵,

73. The case of ***Chhote Lal v Rohtash and Others***⁶ was cited to buttress the argument that in a case wherein the complainant/appellant, the sole eyewitness happened to be the most interested witness, his testimony was to be examined with great caution and in view of the fact that the chain of circumstances was not complete and presence of eye-witness doubtful, the benefit of doubt was extended to the accused.

74. The decision in ***Pardeep Kumar v State of Haryana***⁷ was placed to demonstrate that when there existed a yawning gap between the charges against the appellant and evidence adduced by the prosecution which gave rise to doubts, improbabilities and inconsistencies it shall be held that the prosecution had failed to establish its case beyond reasonable doubt and consequently the appellant would be entitled to be acquitted.

⁵ 2022 SCC OnLine SC 1454

⁶ 2023 SCC OnLine SC 1675

⁷ (2024) 3 SCC 324

75. The counsel for the appellant also cited the case of ***Nagendra Sah v State of Bihar***⁸, for the proposition that Section 106 would only be applicable to those cases wherein the prosecution had succeeded in establishing facts from which a reasonable explanation could be drawn regarding the existence of said other facts. However, in a case governed by circumstantial evidence, if the chain of circumstances which is required to be established by the prosecution is not established, like in the present case, the failure of the accused to discharge the burden under Section 106 of the Evidence Act would not be relevant at all. Hence, when the chain was not complete, the falsity of the defence was no ground to convict the accused.

Submissions on behalf of the State:

76. Per contra, the prosecution put forth the following contentions on behalf of the State. Mr. Sur submitted that PW 3, 4, 5, 13 and 15 are the sterling witnesses of the case.

77. The learned counsel contended that Joydeep Banerjee had specifically spoken of the acrimonious relationship between the appellant and the deceased and even stated that incidents of the appellant assaulting the deceased had been reported to him by the neighbours. On the date of occurrence, at around 12 noon, on reaching the house of the victim Piklu, PW3 had found him sitting injured on the ground floor and the appellant standing on the staircase. On enquiring the victim had disclosed that the appellant had

⁸ (2021) 10 SCC 725

assaulted him and pushed him down the staircase resulting in him falling down and getting injured. Thereafter at night around 12.05 am he had received a call from Noa informing him that the appellant had again assaulted the victim but feeling uneasy to interfere with their family matters, he had switched off his phone. Subsequently, at about 1.45 am he had been informed by Noa on his wife's phone that the victim Piklu had expired.

78. The learned counsel submitted that PW 4 Noa had stated in his evidence that around 12.30 pm on the date of incident, one Sonali had informed him that the victim had been assaulted by the appellant and was lying outside in a bleeding condition. At 1.00 pm, he had informed Joydeep about the incident. At 6.30 pm and 9.00 pm he had again met the victim and was chased out by the appellant. While leaving he had allegedly heard hot altercations between the appellant and the victim. At around 11.40 pm he was informed by Champa that the condition of the victim had worsened and he had informed the same to Joydeep.

79. The learned counsel also drew attention the evidence of PW5, the maid Champa had stated that when she had come back to the house at around 1.30 pm she had found a cut injury mark on the left side of the victim's forehead and on query, the victim had pointed to the appellant's room. Further, while bathing him, Champa had noticed a line of wound marks on his back the cause of which the victim stated was being beaten with a stick by the appellant. Thereafter, at 10.30 pm she had found the victim sitting outside his locked room with bleeding injuries on his face and on being asked the reason,

he had again pointed towards the appellant's room. Finding the victim shivering and groaning in pain at around 11.45 pm she had called Noa who after his arrival had called Joydeep to inform him of the victim's condition at around 1 am.

80. Mr. Sur also referenced the evidence of PW13, Shaktipada Banerjee the compounder who had in his evidence stated that he had visited the victim's house at around 2.30 pm and told the appellant that the victim required hospitalisation for stitching his wounds as this was not a case of simple dressing but his medical advice was not paid heed to.

81. It is contended by the learned counsel that from the aforesaid evidence, it was established that a bitter relationship existed in between the two brothers, the appellant used to assault the victim and on the fateful day the appellant had caused injury to the victim and prevented proper treatment from being meted out to him. All throughout the day, the appellant had remained negligent with regard to the treatment of his brother even when it was suggested by PW-13, the compounder.

82. It was also submitted that the appellant ought to have special knowledge as to how and why his brother had received such physical injuries and was lying severely injured in his residence. The burden of explaining a situation, facts and circumstances of which should be within his special knowledge as per provision of Section 106 of the Indian Evidence Act is on the accused however, no such explanation was given under Section 313 of Cr.P.C.

Our Observations:

83. The conviction is based on circumstantial evidence.

84. In the landmark judgment rendered in the case of **Sharad Birdichand Sharda v State of Maharashtra**⁹ the Hon'ble Supreme Court laid down the five principles for conviction of an accused in a case based on circumstantial evidence.

“153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. It may be noted here that this Court indicated that the circumstances concerned ‘must or should’ and not ‘may be’ established. There is not only a grammatical but a legal distinction between ‘may be proved’ and ‘must be or should be proved’ as was held by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra [(1973) 2 SCC 793] where the following observations were made: 19. ...“Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between ‘may be’ and ‘must be’ is long and divides vague conjectures from sure conclusions.”

(2) The facts so established should be consistent only with 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,

(3) the circumstances should be of a conclusive nature and tendency,

⁹ (1984) 4 SCC 116

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a 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.

154. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence.”

(emphasis supplied)

85. It is a settled principle of criminal jurisprudence that in a case revolving around circumstantial evidence, the prosecution must prove the guilt of the accused ‘beyond reasonable doubt’ and the circumstances relied upon must point out only towards one hypothesis, that is, the guilt of the accused alone and none else [See **Guna Mahto v State of Jharkhand**¹⁰]. In the present case, the prosecution has miserably failed to form a chain of circumstances leading to the commission of the crime, much less prove it beyond all reasonable doubt, based on oral and documentary evidence.

86. To the contrary, as rightly pointed out by the learned counsel for the appellant, there are material contradictions in the evidence led by the most vital witnesses for the prosecution as discussed hereunder.

87. PW4, Noa had stated that after being informed by Sonali and thereafter Indrajit and Dilip, he had informed Joydeep of the victim lying in a bleeding condition at around 1pm when he had gone to Golpark. However, this contradicts the version of PW3 who had narrated that at around 12 after being

¹⁰ (2023) 6 SCC 817

informed by Indrajit and Dilip he had visited the appellant's house where he had found him in a bleeding condition and thereafter after arranging for a compounder, he had left for Golpark.

88. PW5, Champa the attendant had deposed that on returning to the house at 1.30 pm, and finding a cut injury mark on Piklu's forehead and thereafter a line of wound marks while bathing him, she had dressed his wounds. She claimed that on enquiring, Piklu had pointed his finger towards the door of the appellant and had also stated that the appellant had beaten him with a stick used to beat dogs. Even after the compounder advised hospitalisation, she had not taken any steps in persuading Ranadip or informing anyone else to hospitalise him and had only applied Nevasal powder, as suggested by the appellant. However, the evidence will show that the victim recovered from the initial trauma by the evening and he was found gossiping with Noa and was found to be cheerful and had also eaten chips with Noa.

89. The prosecution has heavily relied upon the evidence of Shaktipada Banerjee, the compounder who had clinically examined Piklu on 23rd afternoon at around 2.30 pm and suggested hospitalization as dressing would not be enough having regard to the nature of the wound. Shakti has further deposed that Ranadip had refused to take the victim to the nearby hospital and he instead suggested dressing of the wound. However prior thereto Champa claimed to have dressed the wounds with Nevasal powder.

90. Noa had also stated in his evidence that at around 6.30 pm when he visited the victim he had found him in his cot in the first floor room in good condition. At 9pm he had purchased a packet of chips and the victim had

shared chips with him. This version also contradicts that of PW3 who had deposed that when he had sent Noa with a packet of chips in the evening, the victim was not in a condition to chew chips.

91. The aforesaid evidence is contradictory as to time when the complainant Joydeep was informed of the victim's condition after the morning incident- whether he was informed by Dilip and Indrajit at around 12 pm and therefore he had visited Piklu and then left for Golpark after arranging for medical attention or whether he was informed by Noa at around 1pm in Golpark and had asked him to arrange for a compounder. Further, it also raises the question as to whether the victim was in a good condition at around 9 pm during the visit by Noa or whether he was in such a painful condition that he was unable to chew chips. The inherent contradictions in the testimonies of PW3 and PW4 in this regard, despite being essential witnesses shakes the trust to be reposed in them and raises doubt as to the chain of circumstances sought to be established. Moreover, the physical assault in the morning leading to injury of the victim was not the cause of his death.

92. Sonali and Indrajit would have been important witnesses in this regard to testify as to who had first seen Piklu lying in an injured condition and who had informed the complainant and Noa. Dilip Dey, PW16 has stated that he was called by Joydeep and he had gone to Piklu's house along with Krishna and Suraj but Champa was not present there. He testified that Piklu was found with injuries over his forehead and body on the first floor and they had cleaned the injuries as per instruction of Joydeep and had left. He has also notably

stated that they could hear the two brothers quarrel when they cleaned vehicles near their house. Suraj Singh, PW12 has stated in this regard that he had seen Piklu sitting on the ground floor with bleeding injuries and on being asked by Joydeep, Ranadip had stated that he had assaulted him. He has significantly stated that when he had refused to take the victim to the first floor, Dodon (not examined) and Krishna (not examined) had cleaned the blood from his face and Piklu had dragged himself to the first floor on his own. Though the evidence of Dilip and Suraj corroborates the version of PW3 to some extent, there are also contradictions as to whether they had informed Joydeep or were called by him and where they had found the victim.

93. It is also important to note that after returning to the house around 10.30 pm, Champa had found that Piklu was sitting in front of his room with the door locked from outside with bleeding injuries, asking for drinking water but she did not inform Ranadip about it. On asking him the reason for such a condition he had pointed towards the appellant's room. She had then given him water, dressed his injuries and laid him down on the mattress. Finding him shivering and groaning in pain, she informed Noa at 11.45 pm but neither of them took any steps either to inform the tenants or the neighbours or the police or made any attempt to take the victim to a nearby hospital or even arrange for a doctor. Curiously the appellant was not informed as he was found deep asleep when Champa returned to work at night.

94. Contrary to the evidence of Joydeep and PW6, that the victim was found covered in blood, no pool of blood was found but marks of wounds with

blood oozing were visible from the photographs exhibited. Further, his unusual conduct of not taking any steps to hospitalise Piklu even after the compounder and Noa informed him of the victim's condition and switching off his mobile phone at night knowing well that his cousin brother was injured and lying bleeding in pain, casts a veil of doubt on his role as a complainant and evidence adduced. Surprisingly, the first reaction of Joydeep on learning that his cousin brother was injured and not responding was not to call for medical help or hospitalisation, but calling the police and asking Noa and Champa to refrain from touching any items lying around. This creates an impression that the complainant had already formed the opinion that the victim had no chances of survival and instead of ascertaining his death first or trying resuscitation, he informed the police so as to initiate a case.

95. The evidence of Joydeep is also interesting as in the FIR he has stated that when he arrived at the place of occurrence on the night of incident he confronted Ranadeep and at that time Ranadeep had stated that “ami ja korechi besh korechi tora beriye ja” which means “whatever I have done I have done the correct thing and you must all leave immediately”. However, in his evidence he has stated that Ranadip was asleep when the police arrived and did not refer to any conversation/confrontation with Ranadip or Ranadip having said any such thing. The I.O. has also not stated in his evidence of such exchange of words between the accused and Joydeep in his presence. This statement is also not corroborated by Noa and Champa who were present at the relevant time.

96. If Joydeep's version is taken to be true, then he was informed by Dilip and Indrajit that Piklu was pushed down the staircase in the morning and resultantly had sustained injuries and a deep cut injury on the left side of his forehead. Though he was attended to by a compounder, having regard to the nature of this injuries which was not a simple case of dressing as stated by PW13, his condition had not improved even by 9 pm as he was prevented from being hospitalised by Ranadip. However, as Noa was chased out and he felt uncomfortable interfering in their family matters, the victim was left without any medical help. Subsequently, as informed by Champa through Noa at 12.05 am, his condition had worsened being assaulted again by the appellant in the evening and had finally succumbed to his fatal injuries at around 1.45 am at night.

97. However, if Noa's version is to be believed, he had been informed by the tea-stall owner Sonali (not examined) and subsequently by Dilip and Indrajit (not examined) that the victim was laying outside the house in an injured condition. He had not gone to visit Piklu's house immediately but had informed Joydeep when he went to Golpark at around around 1 pm. When he visited Piklu around 1.20 pm he stated that he was well. Even at 6.30 pm in the evening he had found the victim in a good condition and had also shared chips with him at 9 pm. Noa admitted to have been present till 9.30 until he claimed to have been chased out by the appellant. The victim by that time had recovered and was in no discomfort. Subsequently, he was allegedly freshly assaulted by Ranadip though witnessed by no one and had suffered more

bleeding injuries as a result. On finding the victim with painful bleeding injuries at 10.30 pm, Champa had dressed his wounds with Navasal powder and claimed that he had pointed to the appellant's room when asked the reason for such condition. Noa stated that when he was called at 11.45 pm and arrived, the victim had told him that Ranadip had assaulted him. The victim failing to get any professional medical help, had succumbed to his injuries around 2 am.

98. Interestingly, PW8 who happens to a neighbour and a friend of Joydeep, had deposed that he had witnessed Rinku quarrelling with and assaulting Piklu on previous occasions and had reported such incident to Joydeep. However, he did not hear any commotion or quarrel between the brothers on the date of the incident even though his house is adjacent to the house where Ranadip and his brother used to reside.

99. It appears from the testimonies discussed hereinabove that Piklu had sustained a deep cut injury over his left eyebrow in the morning along with other bruises. As opined by the compounder he required hospitalisation but was deprived of such urgent professional medical attention. His condition had deteriorated over time and he had eventually succumbed to his painful bleeding injuries due to lack of care and attention even from people like his attendant Champa, regular visitor Noa and cousin brother Joydeep who was informed of his physical condition and claimed to have taken good care of his cousin brother.

100. The police found one checkered trousers, one jeans, one mat with blood-stains, one blood stained pillow, one blood clotted white colour plastic pipe with electric wiring and portion of blood from floor through a cotton in the room where the victim was lying. On breaking open the locked door of the victim, one white iron made water pipe with blood stain, old pillow with blood stains, white bed cover with blood stains and blood samples collected in cotton were recovered and seized.

101. The prosecution claims that the blood-stained rod recovered from the room is the offending weapon but did not take any steps for forensic examination to ascertain whether the blood found on it matched that of the victim or whether fingerprints of the accused were present on it. Though PW19, the post mortem doctor opined that the nature of injuries on the dead body could be caused by an iron rod which can produce both bruise as well as fractures and bruise injuries may also be caused by a wooden stick, there is no evidence that the said weapon was used by the appellant to commit the crime. Though blood samples were collected from the place of occurrence and fingerprints of the accused were taken, these were not forensically examined to ascertain whether the accused had indeed used said iron pipe to assault the victim.

102. The evidence of all the witnesses who claimed to have seen the appellant going towards Kankulia railway station with a bag in his hand is irreconcilable with the evidence of Noa and Champa. The crime is presumed to have happened between 9.30 and 10.30 pm. That would involve brutally

assaulting Piklu, proceeding towards Kankulia railway gate to hide the offending weapons and returning within this one hour period. The appellant was seen to have been walking. PW 10, Abhirup Roy Chowdhury had allegedly seen Rinku coming towards the right hand side rail quarter near Kankulia rail gate wearing a grey colour formal pant and grey orange color t-shirt holding a white colour polythene bag in his hand. He was again a witness close to Joydeep as would appear from his deposition where he has stated that he had informed Joydeep that he had seen Ranadip on 23rd April, 2015 at about 9.30 pm. going towards Kankulia rail gate. PW 14, Hiralal Ghosh had also allegedly seen the accused proceeding with a white colour bag towards Kankulia level crossing and returning empty-handed a while later. Significantly none of the witnesses have described the apparel of Ranadip on the date of incident.

103. One would wonder the incredulity of a proposition that the accused was reckless enough to keep the offending weapon preserved together inside a locked room and walk down Kankulia road for hiding a maroon colour piece of cloth, a brick colour handkerchief, a red and white coloured torn curtain, a lathi broken in three pieces and a key. None of these offending materials mentioned above, claimed to have been seized at the instance of the accused and in the presence of PW7 and 9, were sent for forensic examination. There is no evidence suggesting that the said materials and objects which are also commonly found in the marketplace contain the fingerprint of Ranadip or

that they were used in the commission of the offence or were at all connected with the crime.

104. It is strange that investigating agency had selected PW7 and PW9 who were riding a motorcycle on 2nd May 2014 in the morning as seizure list witnesses to the recovery of the offending weapon. It is situated near railway quarters and none of the residents of the quarters were found suitable as witnesses. It is normally the residents of the locality who are invited as witnesses and in their presence recovery is made. The manner of selection of PW7 and PW9 casts enough doubt on the reliability of the witnesses.

105. Several witnesses such as PW3,4,5 and others had seen the victim after the initial morning incident and no attempt was made to hospitalise the victim. After the alleged second incident of assault in the evening, which had no eye-witnesses, Champa and Noa were present in the place of occurrence. Champa had been making dinner arrangements while Noa had slept in the same room as that of the appellant while the victim lay writhing in pain, injured. It is preposterous to shift the burden on the accused to explain away the circumstances leading to the death of the victim when the conduct of Champa and Noa shows that there were no signs of urgency shown in calling any medical professionals or hospitalisation if the victim was indeed so grievously and fatally injured so as to suddenly his death. Even after his demise, Joydeep was called followed by the police, instead of neighbours, tenants, family members or urgent medical help to ascertain his death or chances of revival.

106. The object of the provision *i.e.* Section 27 is to provide for the admission of evidence which but for the existence of the section could not in consequence of the preceding sections be admitted in evidence. Under Section 27 the evidence leading to discovery of any fact is admissible, provided the information must emanate from an accused in the custody of the police. The statement which is admissible under Section 27 is the one which is the information leading to discovery. This doctrine is founded on the principle that if any fact is discovered as a result of a search made on the strength of any information obtained from an under-trial, such a discovery is a guarantee that the information supplied by the prisoner is true. The information might be confessional or non-inculpatory in nature but if it results in discovery of a fact, it becomes a reliable information. [see ***Salvi & Ors. v. State of Karnataka***¹¹ and ***State of Karnataka v. David Rozario***¹².]

107. In ***Jaffar Hussain Dastagir v. State of Maharashtra***¹³ in this case it was succinctly stated that “the essential ingredient of the section is that the information given by the accused must lead to the discovery of the fact which is the direct outcome of such information. Secondly, only such portion of the information given as is distinctly connected with the said recovery is admissible against the accused. Thirdly, the discovery of the fact must relate to the commission of some offence.”

¹¹ AIR 2010 SC 1974: 2010 (7) SCC 263

¹² 2002 (7) SCC 728: AIR 2002 SC 3272

¹³ 1969 (2) SCC 872

108. From the aforesaid position of the law, it can be unequivocally stated that the fact discovered must be related to the crime committed. Further, mere recovery is not proof of the appellant having committed the crime. [See ***Laxman Prasad v State of Madhya Pradesh***¹⁴] However, in the present case, even if the evidence adduced by PWs 7 and 9, the seizure witnesses coupled with the evidence of PWs 10 and 14 who allegedly witnessed the accused proceeding towards Kankulia rail gate to hide the said objects and offending weapon is considered to be unimpeachable, the prosecution has not been able to prove by a single shred of evidence that any of the items recovered from the bush at the instance of the accused were used at all in the commission of the offence or how it linked the accused to the crime committed or whether said objects belonged to the accused or victim. Hence, the applicability of Section 27 in the present case becomes a nullity.

109. It is extremely surprising if not baffling that the investigating officer did not record the statement of the immediate neighbours and tenants of the said premises or any other relative of the appellant to find out the relationship between the two brothers or whether in the past there was any attempt by Ranadip to kill his brother or that there were past incidents of any such physical assault on the victim. The tenants would have been the best witnesses for the prosecution. It is unbelievable that when such offence is committed the tenants would not be aware of such assault or quarrel between the two brothers leading to murder. Champa, Noa and Joydeep have remained

¹⁴ (2023) 6 SCC 399

conspicuously silent about the tenants and all the information Joydeep claimed to have received are from his known persons. Only one neighbour had come to depose of quarrel and earlier physical assault and he also claims to be close to Joydeep. He however, stated that he did not hear any sound or quarrel in and around the time the victim was assaulted that resulted in his death.

110. The motive behind the murder against the appellant is also not established. The entire case of the prosecution is based on circumstantial evidence. It has been held in a catena of decisions that motive is required to be proved in a case based on circumstantial evidence.

111. In the decision in **Sarbir Singh v. State of Punjab**¹⁵, the Apex Court observed, “7. *It has been impressed that suspicion and conjecture should not take the place of legal proof. It is true that the chain of events proved by the prosecution must show that within all human probability the offence has been committed by the accused, but the court is expected to consider the total cumulative effect of all the proved facts along with the motive suggested by the prosecution which induced the accused to follow a particular path. The existence of a motive is often an enlightening factor in a process of presumptive reasoning in cases depending on circumstantial evidence.*”

112. In **Nandu Singh v State of Madhya Pradesh**¹⁶, the Court observed in paragraph 12:

“12. *In a case based on substantial evidence, motive assumes great significance. It is not as if motive alone becomes the crucial link in*

¹⁵ 1993 SCC (Cri) 860

¹⁶ 2022 SCC OnLine SC 1454

the case to be established by the prosecution and in its absence the case of Prosecution must be discarded. But, at the same time, complete absence of motive assumes a different complexion and such absence definitely weighs in favour of the accused."

(emphasis supplied)

113. In the decision in Nandu Singh's case an earlier decision of the Apex Court in **Anwar Ali v. State of Himachal Pradesh**¹⁷, was quoted with agreement, thus:—

"24. Now so far as the submission on behalf of the accused that in the present case the prosecution has failed to establish and prove the motive and therefore the accused deserves acquittal is concerned, it is true that the absence of proving the motive cannot be a ground to reject the prosecution case. It is also true and as held by this Court in Suresh Chandra Bahri v. State of Bihar (1995 Supp (1) SCC 80) that if motive is proved that would supply a link in the chain of circumstantial evidence but the absence thereof cannot be a ground to reject the prosecution case. However, at the same time, as observed by this Court in Babu (Babu v. State of Kerala, (2010) 9 SCC 189), absence of motive in a case depending on circumstantial evidence is a factor that weighs in favour of the accused. In paras 25 and 26, it is observed and held as under: (Babu case, SCC pp. 200- 01).

"25. In State of U.P. v. Kishanpal (2008) 16 SCC 73), this Court examined the importance of motive in cases of circumstantial evidence and observed : (SCC pp. 87-88, paras 38- 39)

'38. ... the motive is a thing which is primarily known to the accused themselves and it is not possible for the prosecution to

¹⁷ (2020) 10 SCC 166

explain what actually promoted or excited them to commit the particular crime.

39. The motive may be considered as a circumstance which is relevant for assessing the evidence but if the evidence is clear and unambiguous and the circumstances prove the guilt of the accused, the same is not weakened even if the motive is not a very strong one. It is also settled law that the motive loses all its importance in a case where direct evidence of eyewitnesses is available, because even if there may be a very strong motive for the accused persons to commit a particular crime, they cannot be convicted if the evidence of eyewitnesses is not convincing. In the same way, even if there may not be an apparent motive but if the evidence of the eyewitnesses is clear and reliable, the absence or inadequacy of motive cannot stand in the way of conviction.'

26. This Court has also held that the absence of motive in a case depending on circumstantial evidence is a factor that weighs in favour of the accused. (Vide Pannayar v. State of T.N. (2009) 9 SCC 152)". (emphasis supplied)

114. In the decision in **Shivaji Chintappa Patil v. State of Maharashtra**¹⁸, after referring to the decision in Anwar Ali's case (supra), Supreme Court observed thus:—

"27. Though in a case of direct evidence, motive would not be relevant, in a case of circumstantial evidence, motive plays an important link to complete the chain of circumstances."

¹⁸ (2021) 5 SCC 626

115. Though several witnesses have testified that the two brothers used to have a bitter relationship and Ranadip used to allegedly assault Piklu, no such incident was ever narrated to any of them by the victim. Champa did not say that she had seen Ranadip assaulting the victim at earlier points in time. Noa who used to visit regularly as he claimed did not say that he had seen Ranadip assaulting Piklu earlier or that Piklu had reported any such incident of physical assault to him. On the date of the occurrence, neither any tenant nor any neighbour testified to having seen or heard of any commotion or assault. Even Joydeep, Noa and Champa had not witnessed the appellant physically assaulting the victim. Further, even on the consideration that such was true, no motive has been assigned to the appellant at all for such assaults. No possible reason either has been advanced to support the theory that he used to physically assault his elder, handicapped brother without any rhyme or reason.

116. In the present case, Ranadip had taken care of his brother as is evident from the deposition of PW 4,5 and 13. He was paying salary to Champa of Rs. 5000/- per month. Champa had more requirement as her daughter was undergoing cancer treatment and it cannot be ruled out that Joydeep was providing the financial support. Two important witnesses namely Champa and Noa appear to be under the control of Joydeep. Noa was a past employee of the appellant and he was dismissed from service. Noa is fully dependent upon Joydeep, financially or otherwise. Although no evidence has come for the financial dependency of Champa on Joydeep, the fact remains that she used to

work in the house from 10pm to 10am and her daughter required treatment for cancer and it is not possible for Champa to have a decent living with such salary. According to Champa the treatment of her daughter cost Rs. 520 for bed charge per day and about Rs. 20,000/- as monthly expenses. Champa did not inform the health condition of the victim to his wife on the date of incident.

117. PW3, the complainant Joydeep Banerjee has notably stated in his cross-examination that he had transferred some portion of their ancestral property in Burdwan district to an outsider without the appellant or the deceased having claimed their shares from the consideration price. He also testified that he had not visited the house of Piklu for the last six months prior to his demise and had also not stated to the police that there was an ongoing conversation between him and the brothers concerning the partition of the entire property. Such evidence coupled with the evidence of the appellant in his statement under Section 313 regarding Joydeep's intentions to hand over the residence to promoters raises suspicions regarding the intentions of the complainant in relation to the ancestral property that he jointly owned with the two brothers.

118. It would evince from the statement of the accused appellant Ranadip, under Section 313 of the Cr.P.C. that he used to look after Piklu, his older brother and pay for the attendant Champa who took care of him. Further that Noa used to come to the appellant's house for drinking and Ranadip used to raise objections to it. The accused has also stated that Noa and Joydeep maintained a cordial relationship with the tenants living downstairs and they

used to come upstairs to collect water. Joydeep also had an intention of handing over the ancestral house to a promoter.

119. In the instant case there is no eye witness. There are missing links to connect the appellant with the crime. There are major discrepancies and inconsistencies going to the root of the matter. We cannot completely disregard the submission made on behalf of the appellant that having regard to the choice of witnesses and selling of joint ancestral property the motive behind the murder by a third person could not be completely ruled out. We are not expressing any definite opinion in this regard but this much is clear to us that the appellant is not the perpetrator of the crime. It seems that the prosecution has also allowed itself to be guided by Joydeep both with regard to the investigation and choice of witnesses, albeit unintentionally.

120. The Hon'ble Supreme Court in **Nagendra Sah v. State of Bihar**,¹⁹ has observed as under:

“22. Thus, Section 106 of the Evidence Act will apply to those cases where the prosecution has succeeded in establishing the facts from which a reasonable inference can be drawn regarding the existence of certain other facts which are within the special knowledge of the Accused. When the Accused fails to offer proper explanation about the existence of said other facts, the Court can always draw an appropriate inference.

23. When a case is resting on circumstantial evidence, if the Accused fails to offer a reasonable explanation in discharge of burden placed on him by virtue of Section 106 of the Evidence Act, such a failure may provide an additional link to the chain of circumstances. In a

¹⁹ 2021 (10) SCC 725

case governed by circumstantial evidence, if the chain of circumstances which is required to be established by the prosecution is not established, the failure of the Accused to discharge the burden Under Section 106 of the Evidence Act is not relevant at all. When the chain is not complete, falsity of the defence is no ground to convict the Accused.”

121. Matters pre-eminently or exceptionally within the knowledge of the accused were lucidly stated by Justice Vivian Bose in **Shambu Nath Mehra v. The State of Ajmer**,²⁰ paragraph 11 which is reproduced below:

“11.The word “especially” stresses that it means facts that are pre-eminently or exceptionally within his knowledge. If the Section were to be interpreted otherwise, it would lead to the very startling conclusion that in a murder case the burden lies on the accused to prove that he did not commit the murder because who could know better than he whether he did or did not.” (emphasis supplied)

122. The conviction is predicated on circumstantial evidence alone. While circumstantial evidence is sufficient to return a conviction, this is possible if it contains all the links that connect the accused to the incident. The court can ignore extremely trivial and insignificant inconsistencies. However, material contradictions are fatal and demolishes a case based on circumstantial evidence due to failure to establish the links. As observed in **Nagaraj** (*supra*):

“13. The conviction is predicated on circumstantial evidence alone. Fingerprints have not been lifted from the scene, the murder weapon

²⁰ AIR 1956 SC 404

has not been recovered, and any credible motive is absent. It cannot even be contended that the accused was the last person to be seen with the deceased since several persons including the Manager, PW 1, and the guests in the adjoining rooms could have accessed the room where the deceased was eventually found. While circumstantial evidence is sufficient to return a conviction, this is possible if it contains all the links that connect the accused to the incident, and the inconsistencies are extremely trivial in character. Furthermore, motive assumes great significance where a conviction is sought to be predicated on circumstantial evidence alone, and its absence can tilt the scales in favour of the accused where all links are not avowedly present. We think that the High Court erred in concluding that the complicity of the accused in the murder of the deceased had been proved beyond reasonable doubt.”

123. The principles that emanate from the decided cases of interpretation of Section 106 of the Evidence Act is that the said section is designed to meet certain exceptional cases in which it would be impossible for the prosecution to establish certain facts which are particularly within the knowledge of the accused. The said Section is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt but it would apply to cases where the prosecution had succeeded in proving facts for which the reasonable inference can be drawn regarding the existence of certain other facts, unless the accused by virtue of special knowledge regarding such fact failed to offer any explanation which might persuade the court to arrive at a different inference.

124. It is only after the prosecution discharges its duty of proving the case beyond all reasonable doubt that the false-explanation or non-explanation

of the accused could be taken into consideration. In a case based on circumstantial evidence, the non-explanation or false explanation of the accused under Section 313 of the Cr.P.C. cannot be used as an additional link to complete the chain of circumstances. It can only be used to fortify the conclusion of guilt already arrived at on the basis of other proven circumstances. [See ***Raja Naykar v State of Chhattisgarh***²¹]

125. Thus, the benefit of Section 106 can only be bestowed upon the prosecution in a case where it has successfully proved its case beyond reasonable doubt and offers an additional link to the chain of circumstances aimed to be established. This provision cannot come to the aid of the prosecution in the present case where it has failed to form and link the chain of circumstances, even in the slightest.

126. In light of the aforesaid findings, the impugned judgment is set aside.

127. The conviction of the appellant is quashed. The appellant should be released forthwith.

I agree

(Soumen Sen, J.)

(Uday Kumar, J.)

²¹ (2024) 3 SCC 481