

IN THE HIGH COURT AT CALCUTTA

Criminal Appellate Jurisdiction

APPELLATE SIDE

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Prasenjit Biswas

C.R.A. (DB) 16 of 2022

Suresh Yadav @ Yadav

-Versus-

The State of West Bengal

For the Appellant : Ms. Jharna Biswas.

For the State : Mr. Rudradipta Nandy, Ld. APP.
Ms. Sonali Das.

Hearing concluded on : July 11, 2025

Judgment On : July 31, 2025

Prasenjit Biswas, J:-

1. The judgment and order of conviction dated 16.03.2021 passed by the learned Additional Sessions Judge 1st Court, Sealdah, South 24 Parganas in Sessions Trial No. 2(08) of 2011 is assailed in this appeal.

2. By passing the impugned judgment this appellant was found guilty for commission of offence punishable under Section 302/394 of the Indian Penal Code and was sentenced to suffer imprisonment for life along with a fine of Rs. 10,000/- and in default of payment of fine to undergo further rigorous imprisonment for one year for the offence punishable under Section 302 of IPC and he was also sentenced to suffer rigorous imprisonment for 10 years along with a fine of Rs. 5,000/- and in default of payment of fine to suffer rigorous imprisonment for 10 months for the offence punishable under Section 394 of the IPC.

3. Being aggrieved with the said impugned judgment and order of conviction the present appeal is filed at the behest of the appellant Suresh Yadav @ Yadav.

4. In short campus the story of the prosecution in nutshell is that:-

“The de-facto complainant Radhe Mohan Singhania, husband of the victim lodged a written complaint on 26.02.2010 before the police station stating interalia that at the evening of 26.02.2010 when he returned home from his

business place he found the entrance door of his flat was under lock and key. He rang the calling bell but nobody responded from the inside and neither his wife nor his servant Rajendra came out from the flat and the de-facto complainant waited for sometime there and further rang the calling bell but he did not get any response. Then he called his wife and servant over phone but both the phone found switched off. The de-facto complainant called his elder daughter to come with a duplicate key and with the said key they unlocked the door of the flat and entered inside the room and found his wife Sudha Debi was lying unconscious on the floor inside their eastern side bedroom. It was found by this de-facto complainant/husband that the chest and hands of the victim were tied up by plastic ropes and her neck was wrapped by sharees and cloths and the bed was ransacked and gold ornaments were missing from the body of the victim. The accused Rajendra who was their servant was found absent from the flat. Over the complaint a case was started by the concerned police station being

Phoolbagan P.S. Case No. 65 of 2010 dated 27.02.2010 under Sections 302/34/394/411 of the Indian Penal Code.”

5. Thus, the criminal law was set in motion. Police investigated the case and submitted charge-sheet against this appellant along with other accused persons under Sections 302/34/394/411 of the Indian Penal Code. Charge was framed by the Trial Court against three accused persons including this appellant for offence punishable under Sections 394/302/34/411 of IPC.

6. In this case 22 witnesses were cited by the prosecution to prove its case. Documents as well as seized materials are marked as exhibits in this case. Neither any oral nor any documentary evidence was adduced by the side of the defence.

7. Ms. Jharna Biswas, learned Advocate appearing for the appellant said that the entire case of the prosecution rests upon the circumstantial evidences. No witness saw this appellant to commit murder and other witnesses have failed to give proper evidence which can implicate this appellant with the instant crime and the whole case of the prosecution is doubtful. It is said that there is no call details record (CDRS) in respect of phone calls

made between PW5 (de-facto complainant) and his daughter (PW3). PW6 and PW7 who are security guards of the flat failed to produce their duty cards to prove that they were on duty on the relevant date. As per submission of the learned Advocate the chain of circumstances has been broken up. Moreover, there are contradictions and omissions in the evidences of the prosecution witnesses and as such impugned judgment and order of conviction passed by the learned Trial Court is not sustainable under the provision of law.

8. It is further assailed by the learned Advocate that in a case based on circumstantial evidence, the inference of guilt can be drawn only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused which is lacking in this case. It is said that in a criminal trial, suspicion however, grave cannot substitute proof. It is said by the learned Advocate that all the vital witnesses who were cited by the prosecution are either relatives to the deceased or the victim and as such no reliance can be placed upon the said interested witnesses. Accordingly, it is said that the impugned judgment and

order of conviction passed by the learned Trial Court may be set aside.

9. Mr. Rudradipta Nandy, Ld. APP., appearing for the State said that there is nothing material in the record for which the impugned judgment and order of conviction may be interfered with. It is said by the learned Advocate that PW5, de-facto complainant categorically stated in his evidence that when he returned to his house in the evening in between 7:00 to 8:00 pm he rang the bell of their flat but even after repeated ringing of the bell there was no response from inside of his flat for long time. It is said by the learned Advocate that PW5 further stated that after opening the door by duplicate key he and his daughter (PW3) saw the dead body of the victim. The attention of this Court is drawn to the evidences of the witnesses of PW4, PW6 and PW7 who saw lastly this appellant along with other accused persons on 26th February, 2010 at the place of occurrence in between 2:30 to 4:00 pm. It is further said by the learned Advocate that in this case at the instance of the appellant/accused gold ornaments were recovered. So, it is apparent that this appellant along with other

accused persons committed murder and robbery and took out the valuable articles from the flat of PW5 and the victim.

10. Learned Advocate further stated that all the circumstances if taken cumulatively form a complete chain and there is no escape from the conclusion that the crime was committed by the appellant and none else. The attention of this Court is drawn to the post-mortem report of the victim and the deposition of autopsy surgeon (PW17) wherein the doctor opined that the death was due to facts of manual strangulation and ante mortem and homicidal in nature. The Post Mortem Report is marked as exhibit 62 in this case. PW17 has stated in his evidence that the strangulation might have been caused by more than one person. The learned Advocate stated that the evidences of the witnesses as well as the exhibits unerringly pointed guilt of the appellant and therefore, conviction of sentences of the appellant may be upheld after dismissing the present appeal.

11. We have considered the rival submission advanced by both the parties.

12. The case of the prosecution is solely rested upon circumstantial evidence and there was no ocular witness to the incident. It is well to remember that in case where evidence is of circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. The conducts of the witnesses are important facet to determine their creditworthiness. The Trial Court had found the appellant guilty on the basis of circumstantial evidence which is challenged before this Court.

13. It is trite law that in a case of circumstantial evidence, the prosecution is bound to establish the circumstances from which the conclusion is drawn must be fully proved; the circumstances should be conclusive in nature; all the circumstances so established should be consistent only with the hypothesis of guilt and inconsistent with the innocence. The circumstances should exclude the possibility of guilt of any person other than the accused, so that, the accused can be convicted of the offences

charged. The court must satisfy itself that the circumstances from which inference of guilt could be drawn have been established by unimpeachable evidence and the circumstances unerringly pointed to the guilt of the accused and further, all the circumstances taken together are incapable of any explanation on any reasonable hypothesis save and except the guilt of the accused.

14. PW5 de-facto complainant and husband of the victim has stated in his evidence that on 26.02.2010 he came out from this flat at about 1:55 pm to 2:00 pm and when he left his flat only his wife (victim) and his servant Rajendra (another accused) were in that flat. PW5 returned from his office from 7:00 pm to 7:30 pm and he rang up the bell of his flat but after repeated ringing up the bell there was no response from inside of his flat for long time. This witness tried to contact with his wife over mobile phone as well as over the land line but it had no response and then this witness made call over the phone to the other accused Rajendra but the same was found unresponsive. It is said by this PW5 that as the door was closed, he made call to his daughter Rachana

Kayan (PW3) and asked her to bring duplicate key of their flat which always remained with PW3. It is said by this PW5 that thereafter he went to the house with his driver and brought PW3 to his flat and they were able to open the flat with the said duplicate key. After entering into the flat these witnesses noticed the dead body of the victim which was lying on the floor and the upper side of the nose of the victim was fully covered with sari and on the neck also it was wrapped. Both the hands of the victim were tied on her back and even the leg of his wife was tied on the back with nylon rope.

15. PW12 Siblal Yadav, the driver of the de-facto complainant (PW5) stated in his evidence that on 26.02.2010 he took PW5 to his office at about 2 pm at Strand Road. It is said by this witness that the servant of PW5, the accused Rajendra brought one bag and tiffin carrier for PW5 and thereafter the de-facto complainant sat in the car and he drove PW5 to his office. The driver further said at about 8 pm he drove PW5 to his house from his office and after getting down of the car PW5 went upstairs of his flat and after a short while PW5 came down and told this witness to take

him to his daughter's house which is situated at a little distance of his flat and his daughter (PW3) then came back to their flat. It is further said by this witness that after a short while he found PW5 and PW3 began to weep and cry and the other persons residing in other flat began to assemble near the flat of PW5 and then he went there and found the hands, legs and mouth of the victim was tied by some saris and she was dead lying by the side of the bed of the floor but the accused servant Rajendra was not found there.

16. PW3 Rachana Kayan is the daughter of PW5 and the victim corroborated the evidence of PW5 by stating that her mother (victim) was murdered on 26.02.2010. It is said by this witness that PW5, victim and the accused Rajendra (another accused) were in the said flat. The said Rajendra was their servant. It is said by this witness that his father (PW5) called her and told that he was ringing the bell of the flat repeatedly but nobody opened the door and picked up the phone. As this witness had a duplicate key in her possession, PW5 came to her place and she accompanied PW5 with the duplicate key to the said flat. It is said by this witness in her evidence that PW5 opened the door of the

flat with the said key and they found that the victim was lying there having lay down with the back side portion and the hands and legs of the victim were tied. Mouth of the victim was also tied and found that the victim was murdered.

17. PW4 Anupama Singhania stated in her evidence that PW5 is her cousin father-in-law and on 26.02.2010 she was in her house and about 11:30 am/ 12:00 noon she left her house for marketing and returned to her house at about 3:00/3:30 pm and while she was about to enter her flat she saw that near her aunt's house the accused Rajendra with two boys were standing outside of her house. It is stated by this witness that the name of the servant of PW5 and victim is Rajendra and when she asked Rajendra the reason for standing there he told her in reply that because of Holi he was inclined to go to his native place and for such reason he wanted to engage some other boys as his replacement in aunt's house. PW4 further stated that thereafter she entered into her own flat which is adjacent flat to the victim and at about 6:00 pm or about 7:00 pm while she was in her flat she heard some noise outside his flat and hearing the hue and cry she came out from

his flat. It is said by this witness that PW5 and PW3 were crying and they told this witness that the victim is no more and thereafter she entered into the flat of PW5 and saw the victim was lying dead on the floor having both legs and both hands tied. So, this witness lastly saw the accused Rajendra with two boys who stood outside of the flat of the victim. There was a talk in between this witness and the other accused Rajendra and on query the accused Rajendra disclosed the reason for standing there.

18. The evidences of PW5, PW3 and PW4 get corroboration from the evidence of PW6 Subrata Sarkar who is the security guard of the flat. It is said by this witness that he was performing his duty on the relevant date i.e. 26.02.2010 and on that date at about 2:45 pm PW5 came to the ground floor along with his servant, the other accused Rajendra who was carrying containing some foods and thereafter PW5 went out by his own car. This witness stated that after seeing off PW5, the accused Rajendra crossed the road and went just opposite to Chamaria House and started talking with two boys and sometime later the accused Rajendra came back. It is said by this witness that at that time he asked the

accused Rajendra about those boys who were with him and in reply Rajendra told that as his landlady was searching for servant so he talked with those boys and then the said accused Rajendra went upstairs.

19. This PW6 further stated in his evidence that about 1/1:30 hours later the accused Rajendra came to the ground floor from second floor and took those boys with whom he was talking earlier on that date to the upstairs and at about 4/4:15 pm the accused Rajendra came down along with those two boys and went away. This PW6 has stated in his deposition that about 7:15/ 7:20 pm PW5 came back to his room and next he went upstairs to his flat and a few months later PW5 again came back and was uttering that the door was not opened by anybody from inside and thereafter he left the place. It is said by this witness that after lapse of 10/15 minutes PW5 came back to his flat along with a young lady and went again upstairs and after few minutes this witness heard sound of crying from 2nd floor and then he went upstairs and found the victim was murdered inside her flat and her body was lying in the bedroom situated in the right hand of

the main door. At the time of giving deposition before the Trial Court this witness identified the present appellant/convict Suresh Yadav on dock. This witness went to the correctional home to attend Test Identification Parade of the suspects and there he identified this accused Suresh Yadav inside the correctional home at the time of T.I. Parade. So, this PW6 along with PW4 had last seen the accused person at the place of occurrence.

20. PW7 Nakul Barman, another security guard of the flat has stated in the same line that at about 3:30/4:00 pm he saw the accused Rajendra, Chottu and another boy moving though the road in front of Anjana Sari House and this witness was on duty at Anjana Sari House on 26.02.2010 from 10 am to 8 pm. This witness previously knew accused Rajendra and as such he enquired from Rajendra from where he was going and reply to that accused told him that he got leave for 'Holi' and he was going to his native place and after 7 days he would come back. This PW7 stated in his evidence that he knew the present appellant Suresh as well as the another person namely Raju as they came to Rajendra from time to time and the accused Rajendra introduced

this appellant Suresh and Raju with this witness. This witness stated in his evidence that $1\frac{1}{2}$ to 2 months later from the date of incident he went to the Alipur Correctional Home to identify the accused Rajendra and this witness again went to the correctional home to identify this appellant/accused Suresh and he identified both of them inside the correctional home at the time of Test Identification Parade. In cross-examination this PW7 reiterated that he stated before the police that he knew Suresh and Raju as they came to the accused Rajendra from time to time. So, PW4, PW5 and PW7 are the witnesses cited by the prosecution who had last seen this appellant with the other accused persons at the place of occurrence.

21. It appears from the post mortem of the victim that her death was occurred due to effects of manual strangulation and ante mortem and homicidal in nature. So, the death of the victim is homicidal and it cannot be termed as otherwise. PW3 (Rachana Kayan), PW5 (Radhe Mohan Singhania husband of the victim), PW6 (Subrata Sarkar) and PW12 (Siblal Yadav, driver of the de-facto complainant) stated that the accused Rajendra was the

servant of PW5 in their flat. It is evident from their evidences that on the 26.02.2010 PW5 left his flat at about 1:45 pm to 2:00 pm and at that time the victim was alone in that flat. The accused Rajendra brought bag and tiffin carry of PW5 to car and thereafter he went upstairs to the flat. It appears from the evidence of PW5 that on the relevant date he returned to his flat at about 6:00 to 8:00 pm and when he along with PW3 entered into their flat they found victim was murdered and lying on the floor tied up with the cloths. PW4 Anupama Singhania stated that when she about to enter her flat on the relevant date she saw that near to her aunt's house his servant with two boys were standing and this witness stated that the name of the servant is Rajendra. When she was asked by this witness for the reason of his standing outside the flat of the victim he (Rajendra) told her in reply that because of 'Holi' he was inclined to go to his native place and for such reason he wanted to engage some other boys as his replacement in aunt's house. The flat of this witness is adjacent to the flat of PW5 and the victim. This witness at the time of giving deposition before the Trial Court identified the appellant Suresh Yadav in the Court

room. This appellant was also identified this witness in the correctional home during Test Identification Parade. The statement of this witness along with statement of PW6 and PW7 regarding identification of this appellant gets support from the exhibit 63 and 63/1. These witnesses identified this appellant Suresh Yadav along with another accused Rajendra.

22. We have already said that PW7 Nakul Barman another guard stated that on the relevant date when he was on duty at the shop of Anjana Sari House near the Chamaria house where he was engaged on duty from 10:00 am to 8:00 pm he saw at around 3:30/4:00 pm that the accused Rajendra along with this appellant accused Suresh being accompanied with another unknown person were moving together through the road in front of the shop where he was on duty. On 26.02.2010 PW5 left his flat at about 1:45/2.00 pm leaving the victim alone in the flat and on that date PW6 the security guard of the flat saw this appellant along with the other persons Rajendra and one unknown person going upstairs towards the flat. PW4 the adjacent flat owner saw the accused Rajendra at about 3:00/3:15 pm was standing and

talking with the appellant Suresh and another unknown person at the main gate of the flat. On the said date i.e. 26.02.2010 PW7, another security guard of the flat saw the accused Rajendra with the present appellant Suresh being accompanied with another unknown person walking together at the main road in front of the shop where he was on duty at around 3:30/4:00 pm. PW5 the husband of the victim came back on the said fateful date in the evening in between 6:00 pm to 8:00 pm after and after entering into the flat PW5 and PW3 saw the dead body of the victim. So, it is evident from the testimony of those witnesses who had seen this appellant with other accused persons lastly that they are the persons who committed murder of the victim at her flat. There is no such evidence on record that after leaving the flat by PW5 he came back to his flat or somebody else except the accused person entered into the said flat.

23. Some of the stolen articles which were marked as exhibit in this case belonging to the victim were recovered from the possession of this appellant/accused Suresh Yadav. PW20 Jyotish Kr. Das as stated in his evidence that on being asked this

appellant disclosed his name as Suresh Yadav and thereafter, Kolkata police team searched the room of the appellant and arrested this appellant and he was taken to Kolkata from his native place. It is said by this witness that this appellant accused produced goods to police from the hole of a wall of his room and the said goods are gold coin, ear ring and the same was seized in the presence of local witnesses and in his presence by preparing a seizure list on which this witness puts his signature. PW22 also echoed the same voice of PW20 regarding recovery of articles of the victim as per leading statement of this appellant Suresh. The leading statement is marked as exhibit 70 as per provision of Section 27 of the Indian Evidence Act. Same as to PW20 this witness (PW22) stated that this appellant brought out one plastic from the hole of the wall of his house and from the packet he brought out one gold looking coin for the year 1956 and pair of gold looking ear top. Those articles were seized by preparing seizure list in presence of the witnesses. The said seizure list was prepared on 16.07.2010 and signed by this witness and is marked as exhibit 64/1 in this case. These witnesses identified those

seized articles at the time of giving evidence before the Trial Court. The said seized articles were also identified by PW5 and PW3 which indicate about the involvement of the accused Suresh Yadav in this case.

24. In this case to establish the three links of the chain in case of circumstantial evidence i.e. motive, last seen, and recovery of articles at the pointing out of the appellant is proved. The circumstantial evidence is the evidence that relies on an inference to connect it to a conclusion of fact and the said reasonable inference can be drawn from the testimony of each witness. After appreciation of the evidences brought on record by the prosecution we are of the opinion that each one of the circumstances is proved individually and if they are taken collectively, they formed an unbroken chain consistent only with the hypothesis of the guilt of the accused. In this case the incriminating circumstances were proved beyond reasonable shadow of doubt and they do form a chain so complete from which it would be inferred with a degree of certainty that it is the accused along with other accused persons within all human

probability committed the crime. The last seen circumstance conclusively pointed towards the guilt of this appellant by excluding all hypotheses and inasmuch as there was no time gap between the date and time when these accused persons was last seen at the place of occurrence.

25. In view of above facts and circumstances and discussion made above we are of the opinion that the prosecution has conclusively discharged the burden of prove the charges under Section 302/394 of IPC against the accused Suresh Yadav. The ingredients of the charges framed against him have been proved beyond reasonable shadow of doubt and as such there is nothing in the material to interfere with the said impugned judgment and order of conviction passed by the learned Trial Court.

26. Accordingly, the instant appeal stands **dismissed**.

27. The judgment and order of conviction dated 16.03.2021 passed by the learned Additional Sessions Judge 1st Court, Sealdah, South 24 Parganas in Sessions Trial No. 2(08) of 2011 is hereby affirmed.

28. Let a copy of this order along with the Trial Court Record be transmitted to the appropriate Court for taking appropriate steps.

29. A copy of this judgment be sent to the concerned Superintendent, Correctional Home through the District Judge concerned.

30. Urgent Photostat certified copy of this order, if applied for, be given to the parties on payment of requisite fees.

[PRASENJIT BISWAS, J.]

31. I Agree

[DEBANGSU BASAK, J.]