

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

**The Hon'ble Justice Debangsu Basak
&
The Hon'ble Justice Prasenjit Biswas**

**C.R.A. 22 of 2021
With
IA No: CRAN 1/2025**

**Ganesh Chandra Das
-Versus-
The State of West Bengal**

For the Appellants : Mr. Meenal Sinha, Adv.

For the State : Ms. Sreyashee Biswas, Adv.,
Mr. Soumya Basu Roy Chowdhury, Adv.

Hearing concluded on : August 4, 2025

Judgment On : August 27, 2025

Prasenjit Biswas, J:-

1. The impugned judgment and order of conviction dated 22.06.2016 and 23.06.2016 passed by the learned Additional

Sessions Judge, 1st Court, Contai in connection with Sessions Trial No. 1/January/2015 arising out of Sessions Case No. 10th October, 2014 is assailed in this appeal.

2. By passing the impugned judgment this appellant was found guilty for commission of offence punishable under Section 302 of the Indian Penal Code and was sentenced to undergo imprisonment for life and to pay a fine of Rs. 5,000/-, in default of payment of fine to undergo further simple imprisonment for a period of six months.

3. Being aggrieved by and dissatisfied with the said impugned judgment and order of conviction, the present appeal is preferred at the behest of the appellant.

4. Brief facts relevant and essential for the disposal of this appeal are as follows-

“The instant case was started on the basis of a complaint lodged by the defacto complainant stating inter alia, that on 08.06.2014 when the victim Somnath Das was playing in the courtyard of the accused Ganesh Chandra Das with Ishan Jana at around 7 in the morning, then this appellant assaulted the victim Somnath Das with a

‘mugur’ on his head. As a result, the victim Somnath fell on the ground with severe bleeding injuries. Immediate to the incident the victim was taken to Balishai Primary Health Centre and from there, he was shifted to Contai Sub-Division Hospital. Ultimately, the victim was referred to Calcutta but he died before he could get there. Autopsy of the victim was done in Contai Sub-Divisional Hospital. Over the complaint, case being Ramnagar P.S. Case No. 124/14 dated 08.06.2014 was initiated under Sections 341/325/302 of the Indian Penal Code.”

5. Thus, the criminal law was set in motion. After completion of investigation police submitted charge-sheet against the accused under Section 341/325/302 of the Indian Penal code.

6. Charge was framed by the Trial Court under Section 302 of the Indian Penal Code against this accused person.

7. In order to establish the charge, prosecution has examined 12 witnesses and documents and the articles seized were marked as exhibits in this case on its behalf. Neither any oral, nor any documentary evidence was adduced by the side of the defence.

8. Mr. Meenal Sinha, learned Advocate for the appellant has said that the motive and intention of the accused in this case was not established by the prosecution and there is no sufficient oral and documentary evidences on record for which the impugned judgment and order of conviction may be set aside. It is further assailed by the learned Advocate that the prosecution has miserably failed to prove the motive against the appellant in committing such offence as allegedly done by the present appellant which is nothing but conjectured and surmised story created by the prosecution side.

9. It is further contended by the learned Advocate that on a total assessment on the evidence on record it would appear that the prosecution has not been able to bring home the charge leveled against this appellant beyond all reasonable shadow of doubt. The theory of last scene together has not been established by the prosecution or by any of the witnesses cited on behalf of the State. So, it is said that the impugned judgment and order of conviction passed by the learned Trial Court may set aside.

10. Ms. Sreyashee Biswas, learned Advocate for the State has said that there is no material in the case record for which the impugned

judgment and order of conviction may be interfered with. All the witnesses cited by the prosecution corroborate the contentions of the written complaint. It is further contended by the learned Advocate that the present case is based on circumstantial evidence and if the accused fails to offer reasonable explanation for facts within the special knowledge of the accused, then it provides an additional link in the chain of circumstances proved against him. So, it is said that the appeal filed by this appellant, challenging the impugned judgment and order of conviction may be dismissed and the impugned judgment and order passed by the learned Trial Court may be upheld.

11. We have given our thoughtful consideration to the submissions advanced at bar and have gone through the judgments of the trial Court as well as the evidences available on record.

12. PW1, Subodh Das has stated in his evidence that the incident took place on 08.06.2014 at about 7 A.M. when his son Somnath Das (victim) aged about two years, at that point of time was playing in the courtyard of the accused Ganesh Chandra Das with Eureka and Ishan Jana. This witness heard a hue and cry and having heard

the alarm raised by some villagers he went to the place of occurrence where one Uttam Giri handed over the victim to him in injured condition and the blood was oozing out from the head of the victim. It is further said by this witness that the victim was taken to Bararankua B.P.H.C. and from there he was referred to Darua Hospital, Contai for better treatment and management. It is said by this witness that as the condition of the victim was deteriorating, so he was referred to Kolkata for further and better treatment. The victim proceeded towards Kolkata but on the way his son succumbed to the injuries. The written complaint which was lodged before the police station by this witness is marked as exhibit 2 in this case.

13. PW2, Jyostna Bhunia has stated in her evidence that the incident took place on 08.06.2014 at about 7 A.M. and on that day while she was coming by the side of the road, she found that the victim Somnath Das and one Ishan Jana were playing at the courtyard of this appellant. It is said by this witness that while she had progressed towards 5/6 cubits from the place of occurrence, she heard a cry of a child as the appellant landed a blow by a weighty

blunt weapon (mugur) on the head of the victim. This PW2 said that she saw the accused Ganesh was standing with the 'mugur'. It is further said by this witness that as a result of assault the victim was lying on the ground and she took the child on her lap and water was poured on the head of the victim and she also raised her alarm. It is said by this PW2 that having heard the hue and cry, Eureka Das (PW5) and many other people assembled at the place of occurrence and she handed over the child to one Biswanath Maity (PW4) who handed over the victim to Uttam Giri and Uttam Giri handed over the said child to his father/defacto complainant on the road.

14. Biswanath Maity (PW4), Eureka Das (PW5), Dherendra Nath Das (PW6) and Nabakumar Das (PW7) echoed the same voice of PW2. PW4 has stated in his evidence that he heard a hue and cry and within a few minutes, he came out from the bathroom and found Jyostna Bhunia (PW2) was crying and the accused Ganesh Chandra Das was standing with a 'mugur'. It is said by this PW4 that he saw the victim was lying on the ground in injured condition and he took the victim from the lap of her mother and thereafter, the victim was handed over to Uttam Giri in order to admit the child in

the hospital. This PW4 has also stated in his evidence that police seized the offending weapon i.e. 'mugur' during course of investigation under a seizure list and the appellant confessed in his presence that he assaulted the victim by the said 'mugur'. The offending weapon was identified by this witness which is marked as MAT Exhibit 1 in this case.

15. PW5, Eureka Das and PW6 also stated in the same line of PW4 and have stated in their evidences that the incident took place on 08.06.2014 at about 7 A.M. PW5 has stated that on the relevant date and time she was playing with the victim at the courtyard of the accused. The wife of the accused asked her to call her aunt Shibani and while she was proceeding towards the house of her aunt, this witness heard a hue and cry and she came back and saw the victim was lying on the courtyard in the injured condition and blood was oozing out from his head. It is said by this witness that the accused was standing by the side of the courtyard with a 'mugur'.

16. PW6, Dherendranath Das also echoed the statement of PW4 and PW5 and has said that after hearing a hue and cry he rushed to the place and having reached there, he saw the victim was on the lap

of PW2 and blood was oozing from the head of the victim. This PW6 has stated that when he reached to the place of occurrence he saw that accused Ganesh Chandra Das was standing by the side of his courtyard with a 'mugur' in his hand. On cross-examination, this witness stated that his house is situated on the Northern side of the house of the accused person and the distance between his house and the house of the accused person is about one and half chain.

17. PW7, Naba Kumar Das also stated that hearing alarm raised by many people he went to the house of the accused and found that the victim was lying on the lap of PW2. It is further stated by this witness that he found the accused Ganesh Chandra Das was standing by the side of the place of occurrence with the 'mugur' in his hand. This witness is also the nearby resident of the house of the accused.

18. PW8, Dr. Udit Roy is the autopsy surgeon who conducted the post-mortem examination over the dead body of the victim. This witness has said in his evidence that on examination he found a fracture on the scalp of the victim. As per opinion of this witness the death was due to haemorrhage injury by 'batam' which is ante-

mortem in nature. The post-mortem report is marked as exhibit 5 in this case. In cross-examination, this PW8 has stated that there may be an incised wound if there is an assault by the sharpen side of the said batam and there is every possibility of lacerated wound if a person assaulted on the head of a person by a blunt substance like 'mugur' or 'batam'.

19. PW11, Sudgangshu Sekhar Layek, the Investigating Officer of this case who after completion of investigation submitted charge-sheet against this accused person.

20. It is a settled principle of criminal jurisprudence that conviction can be legally sustained on the basis of circumstantial evidence alone, provided that the chain of circumstances is so complete as to leave no reasonable ground for a conclusion consistent with the innocence of the accused.

21. In the present case, the prosecution relied upon circumstantial evidence to bring home the charge of murder against the accused. The material circumstance is that the accused was seen immediately after the assault, standing behind the injured with a 'mugur' in his

hand. The injured was found lying on the ground in a bleeding and unconscious state, and thereafter succumbed to his injuries.

22. It is the contention of the appellant that there is no witness to the incident who had actually seen the assault and the accused could not be convicted merely on suspicion.

23. PW4, PW5, PW6 and PW7 have categorically stated in their evidences that upon hearing a hue and cry they rushed to the spot and found the victim lying on the ground and blood was oozing from his head. At that very moment, they saw the accused standing at the place of occurrence behind the victim with the 'mugur' in his hand. Their testimonies remained consistent and unshaken during cross-examination. Pursuant to the disclosure made by the accused, the 'mugur' was recovered. The post-mortem report revealed that the death of the victim was occurred due to haemorrhage injury by 'batam' which is ante-mortem in nature.

24. PW10, Banga Baran Giri has stated in his evidence that the victim was brought before him by PW1 (defacto complainant/father). It is said by this witness that at that time the victim was unconscious and did not response to any stimulus and the victim

was primarily treated by him and the treatment-sheet of the victim was marked as exhibit 6 in this case. As per opinion of this witness that the injury was caused by the victim by any blunt instrument. The post-mortem report revealed that the death was due to homicidal injury by 'batam' and thus medical evidence corroborated the prosecution case.

25. In the instant case, the following incriminating circumstances stand firmly established:

- i) The accused was seen immediately at the scene of crime, standing behind the injured with the 'mugur' in his hand.
- ii) The deceased was found grievously injured at that very time and place.
- iii) Medical evidence shows injuries consistent with blows inflicted by the said weapon.
- iv) The recovery of the 'mugur' further strengthens the chain of circumstances.
- v) The accused failed to discharge the burden under Section 106 of the Evidence Act, which lay upon him

to explain his incriminating presence with the weapon near the injured.

26. Section 106 of the Indian Evidence Act entails that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. Once the prosecution succeeded in establishing the incriminating circumstances, the burden clearly shifted upon the accused under Section 106 of the Evidence Act to explain his presence with the offending weapon. When the facts were especially within the knowledge of the accused, and no one else could have reasonably explained them, then the accused must offer a reasonable explanation. In this case, cogent circumstances pointed towards the guilt of the accused. Once the prosecution proves incriminating circumstances, the burden shifts to the accused to furnish an explanation of facts within his special knowledge, when the accused fails to explain facts exclusively within his knowledge, the Court can draw an adverse inference. In this case, the appellant/ accused failed to discharge this burden. A mere denial in the face of strong circumstances cannot be treated as a satisfactory explanation under Section 313 Cr.P.C. as to why he was present at

the scene of occurrence and why he was seen holding the weapon in such suspicious circumstances.

27. We are not unmindful that Section 106 of the Evidence Act does not relieve the prosecution of its duty to prove its case beyond reasonable doubt, but once circumstances are proved, the accused must offer a reasonable explanation. In the present case, the prosecution has succeeded in proving a series of incriminating circumstances against the accused, which pointedly connected him with the crime. The time, place, and manner of occurrence, as well as the surrounding facts, were such as lay within the exclusive knowledge of the accused. In these circumstances, it was incumbent upon the accused to furnish a plausible explanation consistent with his innocence. However, the accused remained completely silent and offered no explanation at all at the stage when it was most crucial for him to do so. Such silence on the part of the accused, when the facts are within his special knowledge, provides a strong additional link in the chain of circumstances proved by the prosecution. The accused's failure to discharge this limited burden, therefore, strengthens the prosecution case rather than weakens it.

28. In light of the established circumstances, the prosecution proved beyond doubt that:

- i) The accused was seen with the ‘mugur’ at the scene immediately after the assault.
- ii) The deceased had injuries consistent with the weapon in his hand.
- iii) The accused failed to explain these facts which were exclusively within his knowledge.

29. Therefore, the Court is justified in drawing an adverse inference under Section 106 of the Evidence Act, holding that the accused was the perpetrator of the crime. His silence and failure to discharge the burden only reinforce the prosecution’s case. The accused’s unexplained incriminating presence with the weapon near the injured, coupled with corroborative medical evidence, conclusively establishes his guilt.

30. It is a well-settled principle that investigation lapses or omissions do not automatically vitiate the prosecution case, provided there is otherwise cogent, reliable, and trustworthy evidence to bring home the guilt of the accused. Any irregularity or even an illegality

during investigation ought not to enure to the benefit of the accused unless it has caused serious prejudice to him. Defects or omissions in investigation cannot be taken to be fatal unless they go to the root of the matter and cause miscarriage of justice.

31. A plea was taken by the side of the defence that the clothes of the accused which might have borne blood stains were not seized by the Investigating Agency. The defence argued that such omission weakened the prosecution case. However if the investigating officer does not seize the clothes, it is a lapse on his part. The accused cannot take advantage of an omission committed by the investigating agency when other evidence convincingly establishes guilt. If recovery of weapon, medical evidence, or other circumstantial links form a complete chain, non-seizure of wearing apparels is inconsequential. Unless the accused can demonstrate that non-seizure of his apparels has caused him prejudice in his defence or deprived him of material evidence, the omission cannot be treated as fatal. So, non-seizure of the accused's clothes does not by itself discredit the prosecution case when the chain of circumstances is otherwise complete. Mere defects in investigation by itself cannot

be a ground for acquittal when there is overwhelming evidence otherwise.

32. Therefore, while seizure of the accused's wearing apparels may strengthen the prosecution case, non-seizure does not demolish it if there is credible and consistent evidence establishing guilt. Court should look to the totality of circumstances and the quality of evidence, rather than technical lapses in investigation. Non-seizure of the wearing apparels of the accused is not fatal to the prosecution case, where other reliable ocular, medical, and circumstantial evidence sufficiently prove the guilt of the accused beyond reasonable doubt.

33. PW4 has stated in his evidence that police seized the mugur (offending weapon) during the course of investigation under a seizure list and the accused also confessed in his presence that he assaulted the child (victim) by the said mugur. The offending weapon (mugur) is marked as MAT Exhibit 1 in this case. Where a witness has deposed about the accused using a particular weapon, its recovery from the accused or on his disclosure lends strong corroboration to such testimony. The medical expert confirms that the injuries

sustained by the victim could be caused by the recovered weapon, the prosecution case gets materially strengthened. In cases resting on circumstantial evidence, recovery of the weapon is a crucial link in completing the chain of circumstances against the accused.

34. In this case, recovery of the offending weapon (mugur) is a highly incriminating circumstance against the accused and it supports the prosecution witnesses, matches with the medical evidence, and demonstrates the knowledge of the accused about its use in commission of crime. Thus, it acts as a powerful corroborative piece of evidence, strengthening the chain of circumstances and lending assurance to the overall prosecution case.

35. Recovery of the offending weapon (Mat Ext. I), when duly proved, materially strengthens the prosecution case by corroborating ocular and medical evidence, and constitutes a vital link connecting the accused with the commission of the offence. In the present case, the prosecution has successfully established that the offending weapon was recovered in the presence of witnesses, who have consistently supported the prosecution story during trial. The seizure list was duly prepared, and the signatures of witnesses were

obtained, thereby eliminating any scope of fabrication or false implication. Such recovery, being in the presence of witnesses, lends assurance to the Court regarding its genuineness. It is also noteworthy that the weapon recovered has been duly connected with the crime by the medical and forensic evidence, which establishes that the injuries sustained by the deceased are consistent with the use of the said weapon. Thus, the recovery is not an isolated circumstance but forms an important link in the chain of events leading to the guilt of the accused.

36. Therefore, the recovery of the offending weapon in the presence of witnesses stands as a strong incriminating circumstance, bolstering the credibility of the prosecution case and ruling out the possibility of false implication or concoction.

37. It appears from the evidences on record that the accused prior to the incident physically assaulted the brother of PW2 and the PW1/defacto complainant was one of the witnesses to the said case and out of grudge this accused committed the murder the son of PW1. The existence of such a grudge provides a strong motive for the accused to wreak vengeance upon PW1. The prosecution has further

established that, driven by this animosity, the accused, in a premeditated and vindictive manner, committed the murder of the son of PW1. The evidence, both ocular and circumstantial, consistently points towards the fact that the act was not one of sudden provocation, but rather a deliberate and calculated move to cause the gravest possible injury to PW1 by eliminating his son. Thus, the prosecution has successfully proved that the prior assault on the brother of PW2 and the role of PW1 as a witness in that case laid the foundation of enmity, which in turn became the motive for the accused to commit the present crime. The chain of events, therefore, establishes beyond reasonable doubt that out of sheer grudge and enmity, the accused murdered the son of PW1.

38. After appreciation of evidences of PW1 and PW2 the motive behind the offence in question is clear which also added link in the commission of crime.

39. In view of the above facts and circumstances and discussion made above we find nothing material in the record for which the impugned judgment and order of conviction passed by the learned Trial Court may be interfered with.

40. Accordingly, the instant appeal be and the same is hereby **dismissed**.

41. The impugned judgment and order of conviction passed by the learned Trial Court dated 22.06.2016 and 23.06.2016 is hereby affirmed.

42. Consequently, any application if filed in connection with this appeal is hereby dismissed.

43. Let a copy of this judgment and order along with the Trial Court Record be sent down to the Trial Court immediately.

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

[PRASENJIT BISWAS, J.]

45. I Agree

[DEBANGSU BASAK, J.]