

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

Appellate Side

Present:

The Hon'ble Justice Rajasekhar Mantha

And

The Hon'ble Justice Ajay Kumar Gupta

C.R.A. 8 of 2016

Papan Sarkar @ Pranab & Ors.

Versus

The State of West Bengal

For the Appellants : Mr. Sekhar Basu, Adv.
Mr. Diptangshu Basu, Adv.

For the State : Ms. Faria Hossain, Adv.
Mr. D. Datta, Adv.

Heard on : 11.09.2025

Judgment on : 15.09.2025

Ajay Kumar Gupta, J.:

1. The correctness of the judgment and order dated 08.12.2015 and 10.12.2015 passed by the Learned Additional Sessions Judge, Fast Track Court -II, Raiganj in Sessions Trial No. 12 of 2013 arising out of Sessions Case No. 21 of 2013 has been assailed by the appellants.

2. By the said Judgement and order, the Learned Sessions Judge convicted the appellants for commission of the offence punishable under Sections 302/201/34 of the Indian Penal Code, 1860 and sentenced them to suffer imprisonment for life each without remission and to pay a fine of Rs. 10,000/- each, in default, to suffer simple imprisonment for two years each for commission of offence under Sections 302/34 of the IPC.

3. All of them are further sentenced to suffer for rigorous imprisonment of three years each and to pay fine of Rs. 5,000/- each, in default, to suffer Simple Imprisonment for two months each for commission of offence under Sections 201/34 IPC. Both the sentences will run concurrently. Benefit of set off under Section 428 of the CrPC was rejected.

PROSECUTION CASE:

4. Prosecution case, as alleged against the appellants, is to the effect that on 30.10.2012 at about 4.00 PM, Samir Kundu, son of the de-facto complainant, aged about 23 years, left his residence on his motorcycle as usual, but he did not return at night. He was in the habit of not returning home at night occasionally, so it was not unusual.

5. However, on the following morning, he came to know that the appellants murdered his son at Mukundapur under the Kaliyaganj police station. The local people apprehended Swapan Baroi and Papan Sarkar and beat them, which led them to confess before the local people that they killed Samir on the previous night i.e. on 31.10.2012, at Mukundapur and left the dead body thereat.

6. The de-facto complainant lodged a written complaint alleging the aforesaid facts at Kaliyaganj Police station, which resulted in registration of Kaliyaganj P.S. Case No. 313/2012 dated 31.10.2012 under Sections 302/201/34 of the IPC against the appellants.

INVESTIGATION:

7. Inquest was conducted, and the body was sent for post-mortem examination. In course of investigation, the appellants were arrested, statements of the witnesses were recorded under sections 161 and 164 of the Cr.P.C, the offending weapons were seized, along

with motorcycles, wearing apparel, leather sandals etc. After the culmination of the investigation, charge sheet was submitted under Sections 302/201/34 of IPC against the appellants.

PROCEEDINGS BEFORE THE TRIAL COURT:

8. In course of trial, charge under sections 302/201/34 of the IPC was framed against all three appellants and the contents of the respective charges were read over and explained to the respective appellants, to which each of them pleaded not guilty and claimed to be tried. Accordingly, they were put on trial.

9. To establish the case, the prosecution examined as many as 16 witnesses and exhibited several documents marked as exhibits 1 to 40 and Mat. Exhibits I to XI, respectively, for the prosecution.

10. The defence of the appellants was one of innocence and false implication based on the trend of cross-examination of the prosecution witnesses and examination of the accused under Section 313 of the Cr.P.C. though the case of the prosecution is wholly based on circumstantial evidence and victim was seen last together with appellants just before his death, but even then, they did not prefer to led evidence on their behalf.

11. The Learned Trial Court, after considering the oral and documentary evidence presented by the prosecution, concluded that the appellants were the assailants of the victim and declared them as

guilty of the charges. They have been convicted and sentenced as aforesaid.

ARGUMENTS AT THE BAR: -

12. Mr. Sekhar Basu, Learned Sr. Counsel for the appellants, strenuously argued and submitted that the prosecution has miserably failed to prove its case beyond reasonable doubt. PW.1 (de facto complaint/father of the victim) is an unreliable witness. Oral evidence adduced by PW1 in court is different from the version of the written complaint.

13. P.W.1 has exaggerated his deposition in court. He stated in his deposition that on 30.10.2012 at 4 PM, Papan Sarkar, Bablu Sarkar and Kalyan Barui came to their house and asked Samir to accompany them. They came on a motorcycle (Hero Honda Pulsar). Thereafter, his son left his house with them along with his motorcycle, but he did not return on that day. The written complaint is silent about such vital facts and such omissions affect the prosecution case.

14. Counsel for the appellants has placed reliance on a judgment passed in the case of ***Ram Kumar Pandey v. State of M.P.***¹ particularly paragraphs 8 to 12 and 18 thereof in support of his submission that the omissions of such important facts in FIR would

¹ ***AIR 1975 SC 1026: (1975) 3 SCC 815***

affect the probabilities of the prosecution case. It is relevant under Section 11 of the Evidence Act in judging the veracity of the prosecution case.

15. It was further submitted that prosecution case is based on circumstantial evidence and the last seen theory, but the prosecution failed to establish and complete the whole chain of circumstances. The evidence of PWs 1, 3, 11 and 14 are inconsistent and vital contradictions which go to the root of prosecution case.

16. P.W. 14, who had seen the victim alive lastly in the company of the appellants at 5.00 PM on 30th October, 2012 was examined by the Investigation Officer after 60-65 days of the alleged incident. He was not at all a reliable witness as it was an afterthought, and his evidence cannot be relied upon for conviction of murder.

17. Mr, Basu further submitted that extra judicial confessions made by the appellant no. 1 before the P.W.3 to the effect that Kalyan and Bablu had killed the victim, were not brought before the knowledge of the investigating officer in course of investigation. He further indicated the evidence of PW3 that Papan stated to have not been involved in the murder of the victim. As such his extra judicial confession before the witnesses is exculpatory in nature and a very weak piece of evidence, and is hardly of any consequence. He has

also placed reliance on three judgments to bolster his submission passed in the cases herein under: -

1. *Chhittar v. State of Rajasthan*² particularly paragraph Nos. 3 thereof;

“3. The case of the prosecution rests on retracted extrajudicial confession. It is well-settled that the retracted extrajudicial confession is a very weak type of evidence and strong corroborating circumstances should be there. Before we proceed further, it is necessary to examine whether the death was a homicidal one. Unfortunately, for the prosecution, the body was recovered 20 days later and it was in a highly decomposed state. The doctor (S.B. Raha) who conducted the post-mortem found only fracture of the third cervical vertebra of the spine and no other injuries. He noted that the same could not be ascertained whether it was the ante-mortem or post-mortem injury. No doubt, in his further deposition he has answered to a question that the injury was sufficient in the ordinary course of nature to cause death. The answer given does not in any manner improve the prosecution case, in view of the fact that the doctor could not categorically say whether the fracture was ante-mortem or post-mortem. That apart, according to PW 11, the accused is alleged to have confessed that he hit the deceased on the head and other parts of the body. But the doctor did not find, as noted above, any fracture of the skull or any other internal injuries. Therefore, the version as per the extrajudicial confession is inconsistent with the medical

² AIR 1994 SC 214;

evidence. The extrajudicial confession should be taken as a whole and should not suffer from any infirmity even if it is to be acted upon. But in this case, we find that the belated confession itself becomes doubtful in the light of the medical evidence apart from being the same retracted. We think it is highly unsafe to sustain the conviction. In the result, the conviction and sentence awarded by the lower courts are set aside. The appellant should be set at liberty, if he is in jail.”

2. Makhan Singh v. State of Punjab³ particularly paragraph no.11 thereof;

“11. On 10-8-1985 FIR was lodged by Nihal Singh (PW 2) and on 13-8-1985 the appellant went to Amrik Singh (PW 3) to make an extrajudicial confession. Amrik Singh says that the appellant told him that as the police was after him, he had come and confessed the fact so that he might not be unnecessarily harassed. There is nothing to indicate that this Amrik Singh was a person having some influence with the police or a person of some status to protect the appellant from harassment. In his cross-examination he admits that he is neither the lumbardar or sarpanch nor a person who is frequently visiting the police station. He further admits that when he produced the appellant there was a crowd of 10 to 12 persons. There is no other corroborative evidence about the extrajudicial confession. As rightly conceded by the learned counsel for the State that extrajudicial confession is a very weak piece of evidence and is hardly of any consequence. The counsel however, mainly relied on motive, the evidence of last

³ AIR 1988 SC 1705

seen, the evidence of recovery of dead bodies and the conduct of the appellant in not making a report about the missing father and son.”

3. *Heramba Brahma & Anr. v. State of Assam*⁴ particularly paragraph no.16 thereof;

“16. The examination of the evidence of witness PW 2 Bistiram was postponed by us because, his evidence would reflect upon bona fides of investigation. Witness Bistiram Basumatari was examined to prove an extra-judicial confession by Accused 1, 2 and 3 to him. This is how his evidence in examination-in-chief has been recorded. Let it be extracted:

I know Heramba Brahma (Appellant 1) and Amar Singh (Appellant 2). They were with me in Hajat. They told me that they had assaulted Amiya's son. Amar Singh, Heramba and Inder (Accused 1 since acquitted) told me that they had assaulted Amiya's son.”

18. Furthermore, the evidence of P.W.16 became vital in favour of the appellants, as it goes against the prosecution case, He denies the extra judicial confessional statement made by the appellant. He clarifies that they had never stated before him about the same. It creates a serious doubt about the prosecution case, therefore, benefit of doubt always lies in favour of the appellants.

19. Per contra, the learned Additional public prosecutor submitted PWs 1, 3, 11, and 14 as the vital witnesses. They saw the victim with the appellants on the date of the incident, i.e., on

⁴ AIR 1982 SC 1595

30.10.2012, prior to the death of the victim. Their evidence proves prosecution case beyond doubt, that the victim was last seen together with the appellants. Apart from that, the appellant Papan made an extra judicial confession in the presence of PWs 3, 8, 12 and 14 and other local inhabitants and stated that the appellants, Bablu and Kalyan, murdered the victim.

20. It was vehemently submitted that the prosecution has been able to prove the case beyond reasonable doubt and completed the whole chain of circumstances with reliable evidence. The offending weapons, like stones and broken glass were recovered from the place, where they were concealed. The statements led to the discovery of the accused and the offending weapons. The motorcycles of the victim and appellants were also recovered in course of investigation.

21. P.W. 11 narrated that he had seen them together with victim prior to his death, consuming liquor with the appellants in the evening and P.M. report corroborates the fact of smell of liquor in his stomach. The blood found in the stone and a glass was human blood as per Serological report.

22. The whole evidence adduced by the prosecution proved the guilt of the appellants beyond all reasonable doubt and successfully established whole chain of circumstances of the murder. There are no

other probabilities to exonerate the appellants. The appellants are the actual perpetrators.

23. He has referred to a judgement of the Hon'ble Supreme Court passed in the case of ***Jagroop Singh v. State of Punjab***⁵ particularly paragraph Nos. 27 to 29, 32, 34, 36 and 37 thereof in support of his submission that in a similarly situated case, the Hon'ble Supreme Court held that where there is no trace of doubt that all circumstances complete the chain and singularly lead to the guilt of the appellants. Finally, he prays for dismissal of the appeal.

24. It is not disputed by the prosecution that the present case, in hand, is wholly based on circumstantial evidence since none of the witnesses saw the occurrence from their ends. There are no ocular witnesses. So, this case is not based on direct evidence. Let me scan and analyse whether the prosecution case may be sustained on circumstantial evidence.

25. In cases based specially on circumstantial evidence and/or basically last seen theory, the court must be very careful and cautious while assessing the oral and documentary evidence of the prosecution.

26. It is well settled that in a case resting on circumstantial evidence, the circumstances put forward must be satisfactorily

⁵ (2012) 11 Supreme Court Cases 768

proved, and the chain of circumstances must be completed without any doubt, and those circumstances should be consistent only with the hypothesis of the guilt of the appellants.

27. In the case of **Hanumant Govind Nargundkar and Anr. v. State of Madhya Pradesh**⁶, the Hon'ble Court observed that:

"It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should be 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. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused."

28. In another decision in the case of **Sharad Birdhichand Sarda v. State of Maharashtra**⁷ while dealing with circumstantial evidence, it was held that the onus is on the prosecution to prove that the chain is complete and the infirmity or lacuna in prosecution cannot be cured by false defence or plea. The conditions precedent in

⁶ **AIR 1952 SC 343**

⁷ **AIR 1984 SC 1622**

the words of the Court, before conviction could be based on circumstantial evidence, must be fully established are as under: -

“The circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned ‘must’ or ‘should’ and not ‘may be’ established;

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;

the circumstances should be of a conclusive nature and tendency;

they should exclude every possible hypothesis except the one to be proved; and

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.”

29. These aspects were also highlighted in ***State of Rajasthan v. Raja Ram***⁸ and ***State of Haryana v. Jagbir Singh and Anr.***⁹.

30. In ***Padla Veera Reddy v. State of A.P.***¹⁰, it was laid down that when a case rests upon circumstantial evidence, such evidence must satisfy the following tests:

⁸ (2003 (8) SCC 180)

⁹ (2003 (11) SCC 261)

¹⁰ AIR 1990 SC 79

“(1) the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established;

(2) Those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;

(3) The circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and

(4) The circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.”

31. Now, let us discuss the chain of circumstances brought by the prosecution before the trial court by adducing oral and documentary evidence one by one.

ASSESSMENT OF THE LAST SEEN TOGETHER: -

32. The prosecution has sought to prove this circumstance through the evidence of PWs 1, 3, 11, and 14.

33. P.W.1 is the father of the deceased/victim, deposed that on 30.10.2012 at about 4 PM, Papan Sarkar, Bablu Sarkar and Kalyan Barui came to their residence on a motorcycle, and asked the victim to accompany them. His son, Samir left the house with them taking

his motorcycle. He told him that he would return within an hour but Samir did not come back.

34. During cross-examination, he contradicted his statement by saying that he has stated in his written complaint that on 30.10.2012 Papan Sarkar, Kalyan Barui and Bablu came to his house on a motorcycle. He also stated in his complaint that Papan, Kalyan Barui and Bablu took his son on his motorcycle, although the FIR is silent about these facts. Development of such facts was found in his examination-in-chief recorded in the court dock, as pointed out by the learned counsel for the appellants, was the first time and an exaggerated one.

35. PW 3 (neighbour) deposed that on the fateful day, the appellants, along with Samir, were roaming in the locality at about 11.00 AM, and thereafter, he also found Papan Sarkar, Bablu and Samir at their "Three Star Club" at about 3.30 PM. At that time, he was at the club for 15/20 minutes. Thereafter, he left to play cricket with some other persons from his locality at a nearby playground.

36. PW 11, Anita Das, another neighbour, deposed that on 30.10.2012, while she was returning from work in the evening, she found Papan, Bablu, Kalyan and Samir busy consuming liquor, sitting in the field, which was situated behind the B.D.O. office at the

back side of hospital. Seeing her, Samir moved aside a little bit. Thereafter, she proceeded to her house.

37. During cross-examination, she narrated the geographical areas of the locality where she saw them, elaborately. Even during cross-examination, she disclosed that when she saw the victim consuming liquor with the appellants on 30.10.2012 in the evening, she did not have any conversation with him. This lends more credence to his evidence. Later, when she replied to the question asked to her on behalf of the appellants in question form, she stated the fact to the police that Samir, Bablu, Papan and Kalyan were consuming something from a bottle. The I.O. did not corroborate such facts in his deposition.

38. PW 14 another neighbour stated in his evidence on 30.10.2012 at about 5 PM, he found Kalyan Barui, Bablu Sarkar and Papan Sarkar were roaming with Samir with their motorcycles in the locality. He admitted the same during cross examination. He denied that his statement was recorded under Section 161 of the CrPC after about 65/66 days after the fateful day and that undue influence was exerted upon him to be a witness of this case.

39. Having carefully analysed the evidence of PWs. 1, 3, 11 and 14, who had seen the appellants together with victim on the date of incident, we are not fully convinced ourselves on the arguments of

the learned senior counsel that their evidence is not at all reliable due to various discrepancies and contradictions because PW 3 stated he had last seen them on the date of incident at 3.30 PM at “Three Star Club”.

40. PW 3 further voluntarily stated during cross-examination that Samir left the club along with the appellants. Even, the trial court itself asked questions directly to PW3, “when Samir left”, he replied that the victim left the club along with the accused persons while he was present in the club, at about 3.30 PM. Learned senior counsel raised a question as to how the victim left with the appellants from his residence at 4 PM on motorcycles, as stated by the PW1 in his written complaint. This serious fact creates doubt about the whole case of prosecution.

41. P.W. 1 did not disclose the vital facts that his son left his house with the appellants on motorcycles at 4 PM. He also did not state in his written complaint, that the appellants, Papan Sarkar, Bablu Sarkar and Kalyan Barui asked his son to accompany them and when the victim started to go, he told PW1 that he would return within an hour, even though these were vital facts.

42. FIR is not supposed to be an encyclopaedia but vital facts ought to be mentioned in the FIR, when it is an admitted fact that he did not return at home even late at night and found dead on the next

date i.e. 31.10.2012 in the morning. If such facts were known to him, he should have disclosed that the victim went along with appellants on previous date at 4 PM.

43. Be that as it may, when a person knows about the murder of his 23-year-old son, his mind and soul would have definitely been disturbed and would not be in a prompt state of mind. It is natural human behaviour. Due to the situation that arose, he may not have disclosed the said facts in the written complaint at that moment. Therefore, the judgment referred by the Sr. counsel with regard to omissions of fact in FIR has no manner of application in the present case since such omission does not affect the last seen theory because he was not the only person who had last seen the victim with the appellants on the date of the incident.

44. The written complaint was written by some other person i.e. P.W. 2, the scribe, on his instruction. Even for the sake of argument, if we discount or wholly disbelieve his evidence, even then the narration of the facts of having last seen the victim together with the appellants at 5 PM and in the evening on 30.10.2012 by PWs 11 and 14, have not been impeached/shaken by the defence even elaborate cross-examinations.

45. This Court found that PW 11 and PW 14 saw them together before the death of the victim. Firstly, PW 11 stated she saw them on 30.10.2012 while she was returning from work in the evening.

46. PW 14 another neighbour deposed that on 30.10.2012 at about 5 PM, found Kalyan Barui, Bablu Sarkar and Papan Sarkar were roaming with Samir with their motorcycles in the locality.

47. PW3's evidence cannot be taken into account as last seen together because he had seen them prior to 3.30 PM. which was much earlier than the time when PW.11 and PW 14 saw them with the victim. Hence, the prosecution has been able to prove the fact of last seen together without any shadow of doubt.

EXTRA-CONFESSIONAL STATEMENT MADE BEFORE THE LOCAL PEOPLE/NEIGHBOURS.

48. In this regard, the prosecution examined PWs 3, 8, 12 and 14 to prove the same. All the witnesses categorically, without any vital contradictions, narrated the facts that appellant, Papan, confessed before them and others that Bablu Sarkar and Kalyan Sarkar killed Samir Kundu, and he had no involvement. He only caught hold of Samir's legs.

49. Learned counsel vehemently argued that such confession is not inculpatory. Such confessional statement was obtained from Papan after assault and threat. Any confessional statement recorded

or told by accused on coercion, undue influence or threat or assault cannot be reliable and admissible in evidence. However, this court is not convinced with the argument advanced by the Sr. Counsel for the appellants that Papan made confessional statements under pressure, coercion, undue influence or threat or assault.

50. It is true in the written complaint; it was recorded that local people of Mukundapur apprehended the appellants, Swapan Barui and Papan Sarkar and beat them which led them to confess before the locals that they killed the victim on the previous night and kept the dead body thereat. This statement was purely hearsay.

51. P.W. 1 was actually not present at the spot where the appellants confessed their guilt. Rather, PW 3 specifically narrated in his deposition that when Papan Sarkar was asked about Samir Kundu, he gave an evasive answer and further said that he had gone to Siliguri. He does not know anything about the matter. Pradip Sarkar asked him to prove before the villagers that he had gone to Siliguri on the date of incident.

52. Pradip Sarkar brought Papan and Bablu to Municipal Park at Goalpara. PW 3 further stated he was present there with Ajay Singh, Dolan Karmakar, Subha Roy. They were also with him in the park at Goalpara. Papan Sarkar confessed before him and others that Bablu Sarkar and Kalyan Sarkar killed Samir Kundu and he was

innocent, but it was subsequently clarified by the PW 8 and PW 12 that he confessed he was also involved in the crime. PW 3 also proved his statements recorded under Section 164 of the CrPC before the Magistrate (Exhibit Nos. 2, 2/1, 2/2 and 2/3 respectively)

53. At the same time, PW 8 (Ajay Singh) deposed that they assured Papan that they would not do anything harmful to him if he would disclose the actual fact as to who had killed Samir. They would only hand him over to the police. Upon assurance that he would not be assaulted by the mob, Papan confessed to him that Bablu, Papan and Kalyan murdered Samir.

54. Papan further stated that at first Bablu had hit Samir and, thereafter, he started insisting Papan and Kalyan to hit Samir and, accordingly, all of them killed Samir. P.W. 8 deposed that the mob were about to assault the appellants, being enraged, but they somehow managed to resist them and handed over the appellants to police. During cross-examination, his evidence could not be shaken, rather he replied in positive to the questions asked to him by the defence counsel.

55. PW8 stated that he met Papan and Kalyan at the residence of Kalyan on 31.10.2012 in the morning. He further stated that they handed over the appellants to the police. Police also arrested them on

31.10.2012. These facts are corroborated by I.O. (PW16) in his deposition.

56. PW 12 corroborated the facts of the confession made by Papan and further deposed that on query, at first, Papan said that the previous night he had been at Siliguri. Partha, the elder brother of Papan, started insisting on him saying that he would have to prove that he was at Siliguri on the previous night.

57. After random queries by them, Papan ultimately narrated that Samir was murdered by Kalyan and Bablu, and he had only caught hold of Samir's legs. P.W. 12's evidence was also not shaken by the defence. P.W. 12 admits during cross-examination that they met Papan and Kalyan at Goalpara more, near Park and corroborated the evidence of PWs.

58. PW 14 also corroborated the confessional statement of the appellant, Papan and further narrated Pradip, he himself and other persons reached in a field, situated near a park at Goal para more, Papan told them he did not murder Samir, but Kalyan and Bablu had murdered Samir in a paddy field.

59. Later, they came to know that the paddy field, where Samir was murdered, was within Mukundapur. The dead body of Samir was recovered therefrom. Evidence of PWs 3, 8, 12 and 14 are almost consistent regarding confessional statements made by the appellant,

Papan, before the aforesaid witnesses, who were present at the Goal para, along with other local people.

60. They also clarified during cross examination that they neither assaulted nor threatened the appellants before they confessed to the murder. Confessional statements made before the local people by the appellant, were found without any threat or assault. The appellant, Papan, initially tried to project that he was innocent, but subsequently disclosed his role in the crime specifically. Therefore, it can be accepted as inculpatory in nature, and the same is proved by the prosecution without any reasonable doubt. We are fully satisfied that the confessional statement of Papan was true and voluntarily made before the prosecution witnesses and other local people and it was not the result of coercion, undue influence or threat or assault. Therefore, the judgements relied on behalf of the appellants are no manner of application in the present case.

RECOVERY AND IDENTIFICATION OF THE DEAD BODY: -

61. On 31.10.2012 in the morning, the dead body of Samir Kundu was found in a place in between Jingaon and Mukundapur village under Kaliyaganj P.S. PW5, the Pradhan of Malgaon Gram Panchayat received a phone call from the villagers of Mukundapur. He rushed to the spot and found the dead body but was unable to

identify the dead body because the face of the dead body was completely disfigured.

62. Thereafter police came to the spot and started holding inquest over the said dead body. At that point of time, he saw there was a Tattoo of “OM” and the name of ‘Samir’ inscribed on the right hand of the dead body. During cross examination, he mentioned the details about the condition of the dead body. The dead body was lying near a bridge, which is situated by the side of a canal (naiyanjoli). The dead body was lying in a muddy portion near naiyanjoli. There was a paddy field adjacent to the said canal.

63. Finally, the dead body was identified by a family member, particularly, brother of the victim, Samir Kundu. It is not disputed that the dead body was not that of Samir Kundu. Prosecution has proved the recovery of dead body from the place of occurrence and the same was identified by his own brother.

64. PW 16, SI, Ram Chandra Ghose attached to Kaliayaganj P.S. held inquest over the dead body being UD case no. 74/12 dated 31.10.2012 Marked as Exhibits 4/3 and 4/4. PW15,

65. Photographer, PW15 took four photographs of the dead body at the place of occurrence (Mat. Exts. I to IV). PW 16 sent the dead body for post mortem examination through the home guard being No.15 namely Sudhir Ch. Barman along with dead body challan and

original inquest report, Carbon copy of the dead body challan (Ext11).

PW5, PW6 and PW7 were the signatories to the inquest.

CAUSE OF DEATH: -

66. PW 10 (Dr Tapash Ranjan Bhuia) conducted post-mortem examination over the dead body of Samir Kundu, Son of Paritosh Kundu, Male, which had been forwarded to him by PW 16. He opined that the immediate cause of death was shock due to wounds and haemorrhage, and the injuries were homicidal in nature. The injuries and haemorrhage are sufficient to cause death in the ordinary course of nature.

67. PW10 proved the report (marked as Ext 8 and 8/1). On examination he found the following Injuries as under:

- “1. loss of left eye, massive laceration around left eye.*
- 2. Massive laceration around right eye also.*
- 3. Sharp cut injury 02-inch X ½ inch on the right side of the forehead X muscle deep.*
- 4. Sharp cut injury on left ear lobule 1 inch X ½ X muscle deep.*
- 5. Massive laceration of face and nose loss of many teeth.*
- 6. One sharp cut injury on the right side of jaw ½ X ½ X muscle deep.*
- 7. Burning of right side of face with right shoulder.*
- 8. Laceration injury 3-inch X ½ inch X bone deep on left side of forehead and scalp.*

9. Laceration injury 2 X 1½ inch X brain laceration with fracture of occipital bone on posterior aspect of the skull. I also found approximately hundred grams of bread with smell of alcohol in the stomach.”

RECOVERY OF OFFENDING WEAPONS AND MOTOR CYCLES

ETC: -

68. PW8 deposed that he himself and some persons of his locality including PW 1 went to Dhuliaband to search for Samir and they found the motorcycle belonging to Samir within a house at Dhuliaband. They came to know from the members of the said house that Papan, Bablu and Kalyan kept the motorcycle at their house. However, I.O (PW16) negated that he did not state to him all these facts.

69. PW9 (Mahidol Md) stated at about 12.00 at night two persons came to his residence and started calling while he was sleeping at his residence and told him that their motor bike was out of fuel and that being situation, they requested him to allow to keep their motor cycle at his residence till the next day. Subsequently, police came and took the custody of the said motor bike. He put his signature in the seizure list (Ext.7). However, he failed to identify them in court dock.

70. PW12 stated Motor bike was recovered from the house an inhabitant of Dhuliaband Village. He was standing near a tea stall of that locality, informed them that three persons had kept a motor bike on the previous night. Being informed about the said fact, they went to his house and found Samir's motorcycle.

71. PW16, IO of this case, seized the wearing apparel of the victim, some controlled earth, some blood-stained earth, one burnt piece of white coloured sleeveless ganjee from the place of occurrence upon preparation of seizure list (Ext 5/1 and 5/2).

72. PW 16 further stated he seized one gray coloured stone with blood stain weighing about 1/1 and ½ kg, one broken glass with blood stain, one spectacle fitted with two fibre glasses, one broken spectacle fitted with fibre glasses as shown and identified by the appellants namely, Papan Sarkar and Kalyan Barui from the paddy field of Jogesh Roy in presence of Witnesses.

73. Appellants also put their signatures on the seizure list dated 02.11.2012 (Ext 6/1 and 6/2).

74. PW 16 further disclosed he took the appellants in police custody on 01.11.2012, as per order of the Ld. CJM, Raiganj. During police custody appellant Papan stated to him *"If you would take me to the PO, I shall recover the stone and the broken glass by which Samir*

was murdered and shall be able to recover the Motor cycle of Motor cycle of Samir (Ext 12)”

75. At the same time, appellant, Kalyan Barui also stated to him that *“If you would take me to the PO, I would be able to recover the stone and the broken pieces of glass by which Samir was murdered by us and I shall be able to recover the Motor cycle of Motor cycle of Samir (Ext 13)”*

76. PW16 also seized the motorcycle of the appellant as shown and produced by Kalyan Barui and Papan Sarkar from the house of Kalyan Kr. Barui in presence of witnesses and thereafter, he prepared the seizure list in respect of the motorcycle under his own hand writing and put his signature (Ext.14). Appellants also put their signature on the said seizure lists in his presence (Ext. 14/1 and 14/2 respectively).

77. P.W.16 also seized the motorcycle of the victim, although the motorcycle was already found by PW.8 and PW 9. PW.16 sent the PM blood of the deceased contained in the tube, the stone, broken glass stained with blood, some controlled earth and blood-stained earth and one ash coloured half pants and wearing apparels of the victim to the RFSL, Jalpaiguri in connection with the present case.

78. P.W.16 further deposed that he also collected the forensic report and the report of the serologist, Institute of serology, Kolkata.

Offending weapons were recovered on the basis of leading statement to recover weapons, recorded under Section 27 of the Evidence Act.

79. Be that as it may, none of appellants either challenged their statements recorded under Section 27 of the Evidence Act at the time of marking exhibits or denied during their examinations under Section 313 of the CrPC. Even specific questions were asked to them by Learned Trial court. So, it can be presumed that they have disclosed the fact of concealment of offending weapons, subsequently, recovered the same from the place identified by them also improve the case of prosecution. Therefore, the fact of recovery of offending weapons is also proved beyond any doubt.

SEROLOGICAL REPORT:

80. Serological report marked as Exhibit 6/2 also confirms human blood stain was found on the stone and the broken glass, which were recovered following the statements leading to discovery of the appellants, Papan and Kalyan from a vast Paddy field having full of paddy plants and crops as pin pointed by the appellant is highly incriminating evidence but no explanation forthcoming from the appellants even specific question asked to them during examination under Section 313 of the CrPC.

81. Appellants never challenged their statement recorded by the investigation officer falls under Section 27 of the evidence Act during

police custody to recovery of offending weapons either during trial or examination under Section 313 of the CrPC.

82. Appellants could not give any explanation under Section 313 of the code of criminal procedure but only ignored by saying ‘I do not know’ and ‘I am innocent’ The disclosure statements have been signed by the appellants. The procedure followed by the investigation officer is absolutely in accordance with law and has not challenged by the appellant in any manner whatsoever. Not matching the blood group of the victim with the blood stain found in stone or broken glass was mere lacuna on the part of investigating agency bears no consequence when whole link of chain fulfils or established by the prosecution.

INCRIMINATING CIRCUMSTANCES:

83. Analysing the evidence on record, we hold that the prosecution has been able to prove following circumstances: -

- a) On 30.10.2012 at about 5 PM, PW14 found Kalyan Barui, Bablu Sarkar and Papan Sarkar were roaming with Samir with their motorcycles in the locality. Even during cross examination PW14 admits he saw Papan Sarkar, Kalyan Barui and Bablu Sarkar roaming with Samir with their motorcycle on the date of incident at about 5.00PM to 6.00 PM.

- b) PW 11 deposed that on 30.10.2012 while she was returning from her work in the evening, she found Papan, Bablu, Kalyan and Samir busy consuming liquor, sitting at the field, which was situated behind the B.D.O office at the back side of hospital. Seeing her, Samir moved aside a little bit. Even during cross examination, she clearly disclosed she saw the victim consuming liquor with the appellants on 30.10.2012 in the evening.
- c) The dead body was recovered on 31.10.2012 in the morning, in a place between Jingaon and Mukundapur village under Kaliyaganj confirmed by PW5, the Pradhan of Malgaon Gram Panchayat.
- d) The dead body was identified by the family member of the deceased, particularly his brother. Furthermore, a tattoo was also found on his right hand written "OM" and "Samir".
- e) PW10 (Doctor) opined death was due to injuries and haemorrhage and the injuries were homicidal in nature. The injuries and haemorrhage are sufficient to cause of death in the ordinary course of nature.

- f) PW10, Dr further confirms he found approximatively hundred grams of bread with a smell of alcohol in the stomach of the deceased which is clearly corroborated by the evidence of PW.11, who had seen the victim having consumed liquor with the appellants before the death of Samir.
- g) Recovery of offending weapon, Stone and a broken glass was confirmed by PW16 on the basis of statements leading to recovery under Section 27 of the Evidence Act. Section 27 of the Indian Evidence Act, 1872, permits the proof of information given by an accused in police custody that leads to the discovery of a fact, even if the information itself is a confession or otherwise inadmissible. Only the part of the statement distinctly related to the discovered fact is admissible, and such discovery of weapon provides a guarantee of the information's truthfulness.
- h) Serological report confirms human blood was found on the stone and the broken glass, which were recovered following leading to discovery statements of the appellants.

- i) Extra-confessional statements made before the PWs 3, 8, 12 and 14 have not been impeached by the defence. The extra-confessional statements were prove beyond any shadow of doubt.
- j) Apart from bare denial, no explanation is forthcoming from the appellants with regard to their statements leading to recovery of weapons, stone and broken glass on the basis of statements recorded under Section 27 of the Evidence Act or confessional statements made before the PWs 3,8,12, and 14.
- k) No explanation is forthcoming from the appellants with regard to the circumstances as to how the victim suffered injury and how the victim died.

**INCRIMINATING CIRCUMSTANCES FORM A COMPLETE CHAIN: -
CHARGE PROVED.**

84. The aforesaid circumstances have been proved the prosecution case beyond a shadow of doubt. It does not create doubt from any four corners about the last seen theory, when several persons saw them in the locality prior to death of the victim.

85. Last but not the least, it is not disputed that the prosecution did not highlight about the motive and it is not possible to prove when close friends involve in murder. The Court also relied a

judgment passed by the Hon'ble Supreme Court in the case of ***Kundalabala Surahmnyam & another Versus State of Andhra Pradesh***¹¹ that if circumstantial evidence proves beyond reasonable doubt that it was the accused person and nobody else who killed the deceased, failure to prove motive is of no consequence in this particular case. It has been further held by Hon'ble Supreme Court in a settled decision that motive is known only to the perpetrator of the crime, when the prosecution case rests on circumstantial evidence and prosecution is not bound to prove motive.

86. Minor discrepancies or contradictions or omission can be expected from the witnesses when the case is based on circumstantial evidence. This Court would like to refer to a well known observation of the Apex Court made in ***Appabhai vs. State of Gujarat***¹²:

“The Court while appreciating the evidence must not attach undue importance to minor discrepancies. The discrepancies which do not shake the basic version of the prosecution case may be discarded. The discrepancies which are due to normal errors of perception or observation should not be given importance. The errors due to lapse of memory may be given due allowance”.

¹¹ (1993) (2) SCC 684

¹² (1988) Supp (1) 3 SCC 241; AIR 1988 SC 696

87. It is duty of the prosecution to produce best evidence to prove the case in case of circumstantial evidence without reasonable doubt. Failure, on the part of prosecution, ultimately favours the appellant(s) but here in the present case the prosecution has been able to prove a complete chain of circumstances without any shadow of doubts.

88. Judgment referred by the counsel for the state passed in **Jagroop Singh V. State of Punjab** particularly paragraph Nos. 27 to 29, 32, 34, 36 and 37 thereof are very much applicable in the present facts and circumstances are stipulated herein under:

“27. Quite apart from the above, what is argued is that there is a long gap between the last seen and recovery of the dead body of the deceased. As per the material on record, the informant searched for his son in the village in the late evening and next day in the morning he went to the fields and the dead body was found. The post-mortem report indicates that the death had occurred within 24 hours. Thus, the duration is not so long as to defeat or frustrate the version of the prosecution. Therefore, there can be no trace of doubt that the deceased was last seen in the company of the accused persons.

28. The second circumstance pertains to extra-judicial confession. Mr Goel, learned counsel for the appellant, has vehemently criticised the extra-judicial confession on the ground that such confession was made after 18 days of the occurrence. That apart, it is submitted that the father of Natha Singh and the grandfather of the deceased are real brothers and, therefore, he is an interested witness and to overcome the same, he has deposed in court that he has strained relationship with the informant, though he had not stated so in the statement recorded under Section 161 CrPC.

29. The issue that emanates for appreciation is whether such confessional statement should be given any credence or thrown overboard. In this context, we may refer with profit to the authority in *Gura Singh v. State of Rajasthan* [(2001) 2 SCC 205 : 2001 SCC (Cri) 323] (SCC p. 212, para 6) wherein, after referring to the decisions in *Rao Shiv Bahadur Singh v. State of Vindhya Pradesh* [AIR 1954 SC 322 : 1954 Cri LJ 910] , *Maghar Singh v. State of Punjab* [(1975) 4 SCC 234 : 1975 SCC (Cri) 479 : AIR 1975 SC 1320] , *Narayan Singh v. State of M.P.* [(1985) 4 SCC 26 : 1985 SCC (Cri) 460 : AIR 1985 SC 1678] , *Kishore Chand v. State of H.P.* [(1991) 1 SCC

286 : 1991 SCC (Cri) 172] and *Baldev Raj v. State of Haryana* [1991 Supp (1) SCC 14 : 1991 SCC (Cri) 659 : AIR 1991 SC 37] , it has been opined that it is the settled position of law that extra-judicial confession, if true and voluntary, can be relied upon by the court to convict the accused for the commission of the crime alleged. Despite inherent weakness of extra-judicial confession as an item of evidence, it cannot be ignored when shown that such confession was made before a person who has no reason to state falsely and his evidence is credible. The evidence in the form of extra-judicial confession made by the accused before the witness cannot be always termed to be tainted evidence. Corroboration of such evidence is required only by way of abundant caution. If the court believes the witness before whom the confession is made and is satisfied that it was true and voluntarily made, then the conviction can be founded on such evidence alone. The aspects which have to be taken care of are the nature of the circumstances, the time when the confession is made and the credibility of the witnesses who speak for such a confession. That apart, before relying on the confession, the court has to be satisfied that it is voluntary and it is not the result of inducement, threat or promise as envisaged under

Section 24 of the Act or brought about in suspicious circumstances to circumvent Sections 25 and 26.

32. The next circumstance is leading to recovery of the weapon as is seen from the evidence. The accused led to recovery of the spade from the wheat field near the heap of sticks. The disclosure statement has been signed by Natha Singh and another witness, namely, Lal Chand. The procedure followed for discovery is absolutely in accord with law and has not been challenged. The learned counsel for the appellant has submitted that the recovery of the weapon does not aid and assist the prosecution version. It is urged that though human blood is found on the spade, yet the blood group was not matched. In support of the said stand, he has commended us to the decision in Sattatiya v. State of Maharashtra [(2008) 3 SCC 210: (2008) 1 SCC (Cri) 733].

34. In the case at hand, the accused persons were arrested after 18 days and recovery was made at that time. The bloodstain found on the weapon has been found in the serological report as human blood. In Sattatiya [(2008) 3 SCC 210: (2008) 1 SCC (Cri) 733] the recovery was doubted and additionally, non-matching of blood group was treated to be a

lacuna. It is worth noting that the clothes and the weapon were sent immediately for chemical examination. Here the weapon was sent after 18 days as the recovery was made after that period. The accused have not given explanation as to how human blood could be found on the spade used for agriculture which was recovered at their instance. In this context, we may profitably reproduce a passage from John Pandian v. State [(2010) 14 SCC 129: (2011) 3 SCC (Cri) 550] : (SCC p. 153, para 57)

“57. ... The discovery appears to be credible. It has been accepted by both the courts below and we find no reason to discard it. This is apart from the fact that this weapon was sent to the forensic science laboratory (FSL) and it has been found stained with human blood. Though the blood group could not be ascertained, as the results were inconclusive, the accused had to give some explanation as to how the human blood came on this weapon. He gave none. This discovery would very positively further the prosecution case.”

36. Another aspect is to be taken note of. Though the incriminating circumstances which point to the guilt of the

accused had been put to the accused, yet he could not give any explanation under Section 313 of the Code of Criminal Procedure except choosing the mode of denial. In State of Maharashtra v. Suresh [(2000) 1 SCC 471: 2000 SCC (Cri) 263] , it has been held that when the attention of the accused is drawn to such circumstances that inculpated him in the crime and he fails to offer appropriate explanation or gives a false answer, the same can be counted as providing a missing link for completing the chain of circumstances. We may hasten to add that we have referred to the said decision only to highlight that the accused has not given any explanation whatsoever as regards the circumstances put to him under Section 313 of the Code of Criminal Procedure.

37. From the aforesaid analysis, we are of the convinced opinion that all the three circumstances which have been established by the prosecution complete the chain. There can be no trace of doubt that the circumstances have been proven beyond reasonable doubt. It is worthy to remember that in Sucha Singh v. State of Punjab [(2003) 7 SCC 643 : 2003 SCC (Cri) 1697] it has been stated that: (SCC p. 653, para 20)

“20. ... The prosecution is not required to meet any and every hypothesis put forward by the accused. ... A reasonable doubt is not an imaginary, trivial or merely possible doubt, but a fair doubt based upon reason and common sense. It must grow out of the evidence in the case. If a case is proved perfectly, it is argued that it is artificial; if a case has some inevitable flaws because human beings are prone to err, it is argued that it is too imperfect.”

The present case is one where there is no trace of doubt that all circumstances complete the chain and singularly lead to the guilt of the accused persons.”

89. In view of aforesaid discussion and findings, this Court is of the view that the prosecution has able to bring home the charges against the appellants beyond reasonable doubts by circumstantial evidence. Accordingly, the impugned judgment and order of conviction and sentence is, thus, affirmed.

90. However, Conviction and sentence upheld subject to modification to the extent that the Period of detention suffered by the appellants during investigation, enquiry and trial shall be set off from the substantive sentence imposed upon the appellants in terms of

Section 428 of the Code of Criminal Procedure, considering the facts that the case rests on circumstantial evidence and age of the appellants at the time of commission offence.

91. Appeal being **CRA No. 8 of 2016** is, thus, **dismissed**.

Connected applications, if any, are also disposed of.

92. Trial Court Records along with copy of this judgment are to be sent down at once to the learned Trial Court for information.

93. Photostat certified copy of this judgment, if applied for, is to be given to the parties on priority basis on compliance of all formalities.

I Agree.

(Rajasekhar Mantha, J)

(Ajay Kumar Gupta, J)

(P.A.)