

20.03.2025

Court No.13

Item No. 15

sp/pk/ap

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

Present:

**The Hon'ble Justice Rajasekhar Mantha
&
The Hon'ble Justice Ajay Kumar Gupta**

**CRA 59 of 2015
Bishu Soren
Vs.
The State of West Bengal**

Mr. Avishek Sinha,

Ms. Anwasha Ray

.....for the appellant

Mr. Ranabir Roy Chowdhury,

Mr. Siladitya Banerjee

..for the NCB

Rajasekhar Mantha, J.

1. The instant appeal arises out of a judgment and order of conviction dated 27th November, 2014 and 28th November, 2014 passed by the learned Additional Sessions Judge-cum-Judge, Special Court (E.C. Act), Hooghly in Sessions Trial No. 2216 of 2004 arising out of Sessions Case No. 124 of 2004. The appellant was convicted for life under Section 302 of the Indian Penal Code.

2. The prosecution case and the facts that have emerged from the evidence on record are as follows:-

3. The complainant, Kalomoni Soren (PW-1) was originally married to one Gopal Besra @ Sisir Besra. Out of their wedlock, a girl child was born called 'Sefali Besra'. Gopal Besra died a few years after the birth of Sefali. The complainant, Kalomoni Soren thereafter claims to have married the appellant, Bisu Soren. There is no proof or record of such marriage. That is, however, clear from the evidence of nine (9) of the prosecution witnesses that the appellant lived as a house husband with the complainant. Out of their relationship, as deposed by several witnesses, another girl child was born who was 5 months old as on the the date of occurrence.

4. The appellant himself was already married to one Kapurmani Soren and had two sons with her. From the inception of their relationship, the appellant insisted that the daughter of Kalomoni Soren, PW-1, from the first marriage, should not exist. This fact is corroborated by the evidence of PW-1, PW-2 Bapi Murmu, PW-3 Durga Murmu, PW-4 Abdul Latif, PW-5 Ganesh Kisku, PW-6 Baidya Nath Soren, PW-11 Mongal Murmu, PW-13 Sk. Nizamuddin and PW-16 Dr. T.K. Sett.

5. The complainant Kalomoni Soren (PW-1) was a farm labourer. On the date and time of occurrence, the complainant was working in her fields away from home. The appellant was present at home as confirmed by PW-2 Bapi Murmu and PW-11 Mongal Murmu and the other witnesses.

6. PW-2, Bapi Murmu, the brother of Kalomoni Soren, the complainant, was also present in the house with the 8-year-old victim girl Sefali. Sefali was already suffering from an advanced stage of tuberculosis.
7. The appellant is stated to have laced a sweet-meat with rat poison containing a toxin called 'Carbo furan' and offered it to Sefali, who consumed it. PW-2 came into the house at around 10.00 a.m. He was also offered the same sweet-meat, half of which was consumed by the appellant.
8. PW 2 found that his niece Sefali was feeling unwell. He also started to feel unwell after some time. Kalomoni PW1 returned home at about 12 and found her daughter unwell. She was informed by Sefali that she started to feel unwell after consuming the sweet meat offered by the appellant. She rushed her daughter to a local doctor, who after examining Sefali and having found that she was poisoned, advised Kalomoni to take Sefali to a larger hospital. On the way to such hospital, Shefali, died. She brought her back home. In the house, her brother was already feeling unwell and was rushed to another hospital by PW 3 and PW 5. He recovered after medical procedures the next day.
9. PW 11 stated that he found the appellant at home and had confessed to them that he had poisoned Sefali.
10. PW 1, PW-2, PW-3, PW-4, PW5, PW 6 as also PW 11, PW 13 and 16 stated that from the inception of the marriage between

the appellant and Kalomoni, the former insisted that Kalomoni should kill Sefali or he would do it himself.

11. Upon hearing the cries of Kalomoni, several neighbours and villagers gathered at her house. Kalomoni first tried to attack her husband with the intention of beating him up but was restrained by local villagers as deposed by PW 2. The then appellant panicked and started to flee from the place of occurrence . The local villagers including PW 3 to PW 7 caught the appellant and tied him to a tamarind tree. He was severely beaten up. The police arrived after sometime, around 5 p.m. A complaint was written by PW 12 and handed over to the police signed by PW 1. The complaint is stated to have been written at the instance of PW 1.

12. The police rescued the appellant and took him into custody. The I. O. (PW 17) removed the body of the victim and conducted inquest. No injuries whatsoever were found on the body. The body of the victim was sent for post-mortem. The post-mortem doctor (PW 10) Amalendu Mukherjee reserved his final opinion awaiting the FSL report of viscera of the deceased. The FSL report confirmed that the rat poison seized by the police contained the toxin carbo furan, and also found the same in the viscera of the deceased. PW-10 confirmed that the death of the victim occurred by poisoning, and also that the victim was suffering from an advanced stage of tuberculosis.

13. Five days after the appellant was arrested, the police took the him to be examined by a doctor, PW 16, Dr. T. K. Seth. The appellant informed PW-16 that he was beaten up by the locals a few days ago and was in pain. No serious injuries were found on the body of the appellant. The appellant further confessed to Dr. T. K. Seth (PW 16) that he had administered poison on Sefali out of fear that his own five-month-old child would not be cared for by Kalomoni if Sefali was alive.
14. FIR was registered at 7.05 p.m. on the date of incident i.e. 06.03.2002 under Sections 302/307/328 of the IPC. Investigation commenced. Several witnesses were examined by the police. PW 11 and PW 13 were, however, examined a month after the incident. After investigation was completed, charge sheet was filed and the trial commenced. Charges were framed against the appellant under Sections 302/307/328 of the IPC for causing the death of Sefali and for causing injury to PW 2 for administering poisonous substances.
15. PW 1 was the complainant, Kalomoni. She narrated the entire incident as indicated above. She stated that the appellant, from the inception of marriage, insisted that Sefali should be eliminated by Kalomoni or he would kill her himself. The other parts of the evidence of Kalomoni are on the lines of the facts as indicated above.
16. PW 2 was the brother-in-law of the appellant, Bapi Murmu. He deposed to the extent as narrated herein above. He however

stated in cross-examination that he was tutored by his sister to depose as he did in the trial. He was 16 years old at the relevant point of time.

17. PW 3 was Durga Mandi, a co-villager. PW 4 was Abdul Latif, another co-villager and a witness to the inquest report. PW 5 and PW 6 were witnesses to the seizure of the rat poison by the police. PW 7 was also a neighbour and witness to the inquest. PW 10 was the post-mortem doctor, who had reserved his opinion as regards the death of the victim and confirmed based on the FSL report of the viscera of the victim that she died by poisoning of the toxin indicated herein above. Each of the above witnesses confirmed what was deposed by PW-1.

18. PW 11 was another neighbor, Mangal Murmu. He stated that the appellant confessed before him when he came to the house that he had administered poison on Sefali concealing it in a sweet meat. PW 13 was an inquest and seizure witness. He was also a neighbor. PW 14 was Jalan Soren, another neighbor. PW 15 was the O.C. of the Padua Police Station, who signed on the FIR and entrusted the investigation to PW 17. PW 16 as already stated herein above, was the doctor, who examined the appellant.

19. Learned counsel for the appellant Avishek Sinha would argue before this Court that most of the witnesses heard from Kalomoni of the acts and omissions alleged against the appellant. Their evidence is at best hearsay. Some of the

witnesses were not even examined by the I. O. and deposed for the first time in Court. Two of the witnesses were examined a month after the date of the incident. Their evidence must be discarded by this Court. The admission by the appellant before the local villagers while he was being beaten up after being tied to a tamarind tree is not admissible as it was under threat and coercion. The confession before PW 16 was also not admissible since the same was made while the appellant was the custody of police.

20. In view of the above, the learned counsel for the appellant argued that there was no clear evidence to support the prosecution case that the appellant had poisoned Sefali. The prosecution could not prove its case. Hence the appellant must be acquitted. He also argues that even if the circumstantial evidence is taken as the basis for the appellant's conviction, the chain is not complete.

21. Murder by poisoning is a subtle crime. A victim served with the poisoned sweet is unlikely to raise hue and cry. Nor is his assailant required to resort to any physical exertion to administer poison. The other persons present around the victim would not immediately know the reason for the deteriorating condition of the victim. It is a crime committed under secrecy and silence. Murder by poisoning therefore will not invite and attract the attention of even those people, under whose noses the crime is committed. Therefore it is unlikely that there would

any eye-witness, as found in crimes committed by the explicit acts of the assailants.

22. The Supreme Court in ***Sandeep Kumar v. State of Uttarakhand***, reported in **(2022) 14 SCC 544**, has specified the tests which are to be followed for examining whether the murder is committed by poisoning. Paragraph 63 thereof is set out below:-

63. The High Court refers to the oft quoted decision of this Court in *Anant Chintaman Lagu v. State of Bombay* [*Anant Chintaman Lagu v. State of Bombay*, 1959 SCC OnLine SC 21 : AIR 1960 SC 500] . In the said case, three tests came to be reiterated, as necessary to establish in a case of poisoning.

1. Death took place on account of poisoning

2. The accused had the poison in his possession

3. The accused had an opportunity to administer the poison.

Emphasis Applied

23. In ***Sandeep (supra)***, the Court further referred to its earlier decision whereby one more test was added to the three-prong test, as formulated in ***Anant (supra)***. Paragraph 65 thereof is set out below:-

65..... we may notice the judgment of this Court...in *Sharad Birdhichand Sarda v. State of Maharashtra* [*Sharad Birdhichand Sarda v. State of Maharashtra*, (1984) 4 SCC 116 : 1984 SCC (Cri) 487] . We notice only para 165. The same reads as follows : (SCC pp. 188-89)

“165. So far as this matter is concerned, in such cases the court must carefully scan the evidence and determine the four important circumstances which alone can justify a conviction:

(1) there is a clear motive for an accused to administer poison to the deceased,

(2) that the deceased died of poison said to have been administered,

(3) that the accused had the poison in his possession,

(4) that he had an opportunity to administer the poison to the deceased.”

24. The Court in **Sandeep (supra)** thereafter referred to its earlier decision wherein the aforesaid tests have been held to be illustrative, and it was further held that whether poison has been administered on a person shall be determined based on the facts of each case. Para no. 66 thereof is set out below:-

66.....As regards the appellants not being found with any poison, we no doubt notice the view taken by a Bench of two learned Judges and reported in Bhupinder Singh v. State of Punjab [Bhupinder Singh v. State of Punjab, (1988) 3 SCC 513 : 1988 SCC (Cri) 694] . The same reads as under : (SCC p. 524, paras 24-26)

“24..... We do not also find any case where the accused was acquitted solely on the ground that the prosecution has failed to prove that the accused had the poison in his possession. The accused in all the said cases came to be acquitted by taking into consideration the totality of the circumstances including **insufficient motive, weakness in the chain of circumstantial evidence and likelihood of the deceased committing suicide.**

25. We do not consider that there should be acquittal or the failure of the prosecution to prove the possession of poison with the accused. Murder by poison is invariably committed under the cover and cloak of secrecy. **Nobody will administer poison to another in the presence of others. The person who administers poison to another in secrecy will not keep a portion of it for the investigating officer to come and collect it.** The person who commits such murder would naturally take care to eliminate and destroy the evidence against him. In such cases, it would be impossible for the prosecution to prove possession of poison with the accused. The prosecution may, however, establish other circumstances consistent only with the hypothesis of the guilt of the accused. The court then would not be justified in acquitting the accused on the ground that the prosecution has failed to prove possession of the poison with the accused.

26. The poison murder cases are not to be put outside the rule of circumstantial evidence. There may be obvious very many facts and circumstances out of which the court may be justified in drawing permissible inference that the accused was in possession of the poison in question. There may be very many facts and circumstances proved against the accused which may call for **tacit assumption** of the factum of possession of poison with the accused. The insistence on proof of possession of poison with the accused invariably in every case is neither desirable nor practicable. It would mean to introduce an extraneous ingredient to the offence of murder by poisoning. We cannot, therefore, accept the contention urged by the learned counsel for the appellant. The accused in a case of murder by poisoning cannot have a better chance of being exempted from sanctions than in other kinds of murders. Murder by poisoning

is run like any other murder. In cases where dependence is wholly on circumstantial evidence, and direct evidence not being available, the court can legitimately draw from the circumstances an inference on any matter one way or the other.”

emphasis applied

25. Further reference was made in the **Sandeep decision** (*supra*) again referring to its decision in **Anant** (*supra*) wherein it was held that conviction in cases of murder by poison can be upheld based on circumstantial evidence. It was held that though medical evidence in such cases assumes immense significance, the same, however, will not be decisive when other evidence on record runs contrary to the medical evidence.

Paragraph 64 is set out below:-

64. In this context we notice the following statement of the law contained in paras 59 and 68 : (Anant Chintaman case [Anant Chintaman Lagu v. State of Bombay, 1959 SCC OnLine SC 21 : AIR 1960 SC 500] , AIR pp. 520 & 523)

“59. The cases of this Court which were decided, proceeded upon their own facts, and though the three propositions must be kept in mind always, the sufficiency of the evidence, direct or circumstantial, to establish murder by poisoning **will depend on the facts of each case.** If the evidence in a particular case does not justify the inference that death is the result of poisoning because of the failure of the prosecution to prove the fact satisfactorily, either directly or by circumstantial evidence, then the benefit of doubt will have to be given to the accused person. But if circumstantial evidence, in the absence of direct proof of the three elements, is so decisive that the court can unhesitatingly hold that death was a result of administration of poison (though not detected) and that the poison must have been administered by the accused person, then the conviction can be rested on it.

68. Circumstantial evidence in this context means a combination of facts creating a **network** through which there is no escape for the accused, because the facts taken as a whole do not admit of any inference but of his guilt. To rely upon the findings of the medical man who conducted the post-mortem and of the chemical analyser as decisive of the matter is to render the other evidence entirely fruitless. While the circumstances often speak with unerring certainty, the autopsy and the chemical analysis taken by themselves **may be most misleading.** No doubt, due weight must be given to the negative findings at such examinations. But, bearing in mind the difficult task which the man of medicine performs and the limitations under which he works, his failure

should not be taken as the end of the case, for on good and probative circumstances, an irresistible inference of guilt can be drawn.”

Emphasis Applied

26. Applying the aforesaid decision to the facts of the case it transpires as follows from the evidence on record:-

- i. Murder by poisoning can be proved based on circumstantial evidence.
- ii. Eyewitness to the actual act of administering poison in the food to be consumed by the victim may not be there.
- iii. The appellant was present in the house along with victim. The victim confessed to her mother that she fell ill after consuming the sweet offered by the appellant.
- iv. The police seized the poison from the PO.
- v. The motive for the crime has been specifically admitted by the appellant to PW-11 and PW16 for the crime will be of great significance. PWs1-6 clearly deposed that the appellant did not want Shefali to survive and told Kulomoni to eliminate her, or else he would kill Shefali.
- vi. The PM Doctor has opined that the death of the victim occurred due the poison.
- vii. The appellant also tried to eliminate PW-2 his brother-in law, whom found out the acts of the appellant.
- viii. The opinion of the PM

27. The first, elementary, and most vital link in any chain of circumstances under Section 302 of the Indian Penal Code is the motive. As many as eight witnesses have deposed in course

of trial, particularly, PW-1, PW-2, PW-3, PW-4, PW-5, PW-11 and PW-13 that from the very inception of the relationship between the appellant and the PW-1, he insisted that Sefali should not be living. Several witnesses have corroborated that the appellant is stated to have told Kalomoni that she eliminated Sefali or he would kill Sefali himself. The appellant, therefore, clearly had a motive to eliminate the step-daughter, Sefali. The reason therefore is also evident from the deposition of PW-16, who recorded that the appellant was afraid that his own child would not be cared for by Kalomoni if Sefali was alive.

28. Ld. Counsel for the the appellant argued that such statements are hearsay evidence. The evidence of PW 1, who is the mother of the victim, and also the second wife of the appellant, is not at all hearsay since the appellant has directly said to PW 1 that the victim has to be eliminated from their life.
29. The statement of the other PW(s) is hearsay evidence since they may have been told by PW 1 about the said intention of the appellant. However, even such hearsay evidence will be relevant in terms of the decision of the Privy Council in ***Subramaniam v. Public Prosecutor*** reported in **(1956) 1 WLR 965 (PC)** which has been referred to and followed in ***Sandeep (Supra)*** as evident para no.75 thereof. The Privy Council in ***Subramaniam (supra)*** held as follows:-

In ruling out peremptorily the evidence of conversation between the terrorists and the appellant the trial Judge was in error. Evidence of a

statement made to a witness by a person who is not himself called as a witness may or may not be hearsay. It is hearsay and inadmissible when the object of the evidence is to establish the truth of what is contained in the statement. It is not hearsay and is admissible when it is proposed to establish by the evidence, not the truth of the statement, but the fact that it was made. The fact that the statement was made, quite apart from its truth, is frequently relevant in considering the mental state and conduct thereafter of the witness or of some other person in whose presence the statement was made. In the case before their Lordships statements could have been made to the appellant by the terrorists, which, whether true or not, if they had been believed by the appellant, might reasonably have induced in him an apprehension of instant death if he failed to conform to their wishes.”

emphasis applied

30. The rule of inadmissibility of hearsay evidence prohibits the court from accepting the truth of its contents, made by a person to the other person. However, the fact that such a statement was indeed made to the other person, and the other person coming to the court and deposing that such a statement has been made by the accused will be relevant. It reveals the mental state of the accused. None of the prosecution witnesses have been cross-examined on the motive of the appellant behind poisoning the victim to kill here.
31. The prohibitory effect of hearsay evidence stands watered down when the maker of the statement is examined before the court and so also the person to whom the statement was confided. The reason is that the accused gets an opportunity to cross examine the person to whom he made the statement.
32. Section 6 of the Evidence Act provides that statements, made by an assailant during and/or just after the commission of the crime. Section 6 will therefore render the confession of the appellant to the PW 11 - MangalMurmu a relevant fact since,

on his arrival on the revelation that the victim died, he was told by the appellant that the latter had poisoned the victim to death. Section 6 of the Evidence Act in this regard may be referred to with an illustration attached thereto:-

6. Relevancy of facts forming part of same transaction.

Facts which, though not in issue, are so connected with a fact in issue as to form part of the same transaction, are relevant whether they occurred at the same time and place or at different times and places.

Illustrations

(a) A is accused of the murder of B by beating him. **Whatever was said or done by A or B or the by-standers at the beating, or so shortly before or after it as to form part of the transaction, is a relevant fact.**

33. Insofar as the admission of the appellant to the villagers while being beaten up and to PW 16 while he was in police custody, cannot constitute a confession in the eye of law the corroboratory value of such statement cannot be ruled out. In fact what has been ignored is that the victim herself told her mother that she fell unwell after consuming the sweets offered by the appellant. Even if it is found that there is no corroboration of such statement, the other evidence on record indicated in the chain of circumstances narrated above lend credence to such statement.

34. Section 24 of the Evidence Act is referred to in this regard which provides for the relevance (not admissibility) of a confession made to a person, holding an authoritative position, by an accused person, provided that the statement has been made not under coercion. Section 24 is set out below:-

24. Confession caused by inducement, threat or promise, when irrelevant in criminal proceeding.-A confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the Court to have been caused by any inducement, threat or promise having reference to the charge against the accused person, proceeding from a person in authority and sufficient, in the opinion of the Court, to give the accused person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him.

35. The statement made to Dr T.K Seth (PW-16) is not argued to have been made under coercion. The question therefore is not whether based on such confessions, the accused is to be convicted. Rather, section 24 of the Evidence Act would make such confessions to be relevant facts. These circumstances reveal the mental state of the appellant after the commission of the crime. While the confessions made to PW-11 are admittedly not under coercion. Even assuming for the sake of argument that the statement made before Dr T.K. Seth does not constitute an admission in the eye of law the corroborative value of such statement cannot be ruled out. In fact such fact is supported by the evidence of PWs 1 to 7.

36. The statement made by the victim Sefali, who told her mother before dying that the appellant had given her a sweetmeat also qualifies as a dying declaration in terms of Section 32(1) of the Evidence Act:-

32. Cases in which statement of relevant fact by person who is dead or cannot be found, etc., is relevant.- Statements, written or verbal, or relevant facts, **made by a person who is dead**, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured, without an amount of delay or expense which under the circumstances of the case appears to the Court unreasonable, **are themselves relevant facts in the following cases :**

(1)When it relates to cause of death. - **When the statement is made by a person as to the cause of his death**, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question.

Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.

emphasis applied

37. Admittedly on the date and time of occurrence, the appellant and Sefali, the victim were the only people present initially at the home. The brother of Kalomoni, PW-2 came in later at 10 O'clock. Kalomoni herself was undoubtedly not at home as she had gone to work as a farm labourer. Therefore, it was only the appellant and victim who were under the same roof. This is the next vital link in the chain of circumstance against the appellant. The last seen theory can also be applied in the facts of the case against he appellant, thereby adding another vital link in the chain of circumstances.

38. The next link in the chain of circumstance is the confession before the 2-3 prosecution witnesses, which was corroborated by the statements recorded by PW-16, Dr. T. K. Sett as well as the answers of the accused recorded under Section 313 of the Code of Criminal Procedure.

39. The medical evidence has confirmed that the rat poison traced in the person of the victim is the one which the police have seized from the house of PW 1 where the appellant and the victim along with PW 1 used to reside. This is the next vital link in the chain of circumstances which implicates the appellant in the crime.
40. Upon return of Kalomoni to her house around 12 Noon and finding her daughter unwell and hearing from her daughter that she was unwell since after consuming the sweet-meat given by the appellant, thereafter rushing her to a local Doctor and the immediate death of the victim thereafter, is the next vital link in the chain of circumstance.
41. Kalomoni was aware that it is only the appellant who could kill her daughter. It was evident from her conduct after returning from her way to the larger hospital where she was advised to take the victim for further treatment. She however, could not reach there as the victim died on her way. On her return, she rushed to attack the appellant. This circumstance confirms that Kalommi was previously told by the appellant that he did not want the victim in their life, and has thus killed the victim in furtherance of his desire and motive.
42. This Court is of the view that the chain of circumstance is complete from the aforesaid evidence that has come on record clearly and has undisputedly pointed out the guilt of the

appellant in poisoning Sefali with the intent to commit murder. There is no other alternative view possible.

43. Learned Counsel appearing on behalf of the appellant has argued that Sefali might have fallen unwell when she was already suffering from an advanced stage of Tuberculosis. It does not mean that she died only by reason of the sweetmeat mixed with rat poison.
44. While it is true that an eight-year-old child is extremely weak and uncomfortable in an advanced stage of Tuberculosis, the induced rat poison administered by the appellant has clearly hastened her death. This would be an aggravating circumstance but not a mitigating one.
45. The next argument of the learned Counsel for the appellant was that admittedly when there was foul smell found by the police, emanating from mouth and nose of the victim, the rat poison-laced sweet-meat would not have been consumed or accepted by the victim or her uncle PW-2. It is, therefore, incorrect to suggest that the victim and her uncle were administered rat poison by the sweetmeat in question.
46. It is now common knowledge that rat poisons containing lethal toxins are often covered with attractive substance to induce consumption by a pest. The actual toxin mixed after it entered the body and emanated a foul smell which was detected both by the police and the Post Mortem Doctor PW-10.

47. The next argument of the learned Counsel for the appellant, that the appellant had consumed half sweetmeat and had given the other half to PW-2. The appellant, therefore, himself could have been poisoned by the toxin in question. The explanation given by the learned Trial Judge in this regard is appropriate and acceptable to this Court. The learned Trial Judge has held that it is most likely that the appellant had given PW-2 the laced portion of the sweetmeat with rat poison and had consumed the unadulterated portion himself. This was to induce faith in PW-2 about the bona fides of his bringing sweetmeat for the crime in question. PW 2 subsequently recovered from illness given that rat poison would not have the same effect on an 8-year-old child suffering from an advanced stage of tuberculosis as opposed to PW 2 who was 16 years of age on the date of the commission of the crime. The said argument of the learned Counsel for the appellant, therefore, also cannot be accepted.

48. Learned Counsel for the appellant has lastly argued that given the fact that the appellant has no history of any crime or misdemeanour in the past and his desire to eliminate Sefali not having been brought to the notice of police prior to being told by Kalomoni and the fact that the victim was already at an advanced stage of Tuberculosis, the appellant can at best be

convicted and sentenced under Part-II of Section 304 of the Indian Penal Code.

49. In **Sandeep (Supra)** the Court had occasion to deal with the nature of the disease of Tuberculosis. The relevant paragraphs dealing with tuberculosis are set out below, which would throw light on whether the administration of poison in the food consumed by the victim was a strategy on the part of the appellant to expedite the inevitable death of the victim:-

29. We may also notice that in Van Nostrand's Scientific Encyclopaedia (3rd Edn.). It is stated, inter alia, as follows:

Tuberculosis :

A chronic or acute infectious disease caused by an invasion of the body by the Bacillus tuberculosis. It may exist without causing symptoms (inactive tuberculosis) or with symptoms (active tuberculosis). The symptoms of tuberculosis depend on the organ involved, the virulence of the strain of tubercle bacilli and the resistance of the individual infected. **Almost any organ or tissue of the body may be attacked by the tuberculosis process, although the commonest site is the lungs**

70.....It further refers to the evidence of PW 5 medical doctor that he admitted that on opening the body, **the internal organs were congested, which could be due to poisoning.** In this regard it may be noticed that PW 5 has stated that he was not definite about the cause of death. He has further stated that on account of food poisoning the organs may be congested. Even more importantly, the doctor has opined that the death could have taken place due to tuberculosis as in the case of tuberculosis, the internal organs can be congested. The High Court has not referred to this part of the evidence, namely, that the congestion of internal organs could be due to tuberculosis. Still further, there is a case for the appellants that food poisoning is to be distinguished from administering of poison and what the doctor has referred to is food poisoning. The High Court finds that merely because poison is not found, it cannot be said that the deceased was not administered poison.

Emphasis Applied

50. Therefore both tuberculosis and poison impact the organs. The organs gradually become weaker in case of tuberculosis. Poison also exacerbates the function of the organs. Admittedly, the appellant was aware of the medical status of the victim. He

therefore was also aware that the organs of the victim were gradually becoming weaker. Undoubtedly therefore, he would be aware that the administration of poison on the already weaker organs of the victim would lead to the immediate death of the victim. This is therefore a clear case of premeditated and a carefully thought out and planned murder.

51. In the social milieu of the that PW 1 one can understand her not readily approaching the police with a complaint articulating the threats and insistence of the appellant to end the life of the victim. Rather, it is quite possible that she endured the same, and has never expected that the appellant would take the extreme step, more so against an ill child, who would probably be leaving them any time soon. Human tolerance has been the victim and casualty at the hands of appellant.

52. Given the conduct of the appellant in the chain of circumstance as found hereinabove i.e. to link an eight-year-old innocent child, who possibly might have died anyway after some time due to her advanced stage of Tuberculosis, is heinous and does not call for a lighter punishment than what has been awarded by the learned Trial Judge. Reference in this regard may be made to the decision of the Supreme Court in ***Kunhimammed @ Kunheethu v. The State Of Kerala*** reported in **2024 INSC 937**:-

25.18 In light of the evidence and the legal principles involved, the appellant's plea for leniency on the grounds of spontaneity and lack of premeditation cannot be sustained. **The nature and location of the injuries inflicted, the choice of weapon, and the circumstances of the attack unequivocally establish the liability of the appellant**

for causing the death of Subrahmannian. The argument that the act was committed in the spur of the moment does not diminish the gravity of the offence or the appellant's culpability

28.4..... **A murder committed with the intent to target vital organs,** particularly in a group setting, reflects a level of intent and cruelty that demands an appropriate punitive response. **To reduce the sentence in such a case would risk undermining the seriousness of the crime and the sanctity of life itself, principles that the judicial system is duty-bound to uphold**

Emphasis applied

53. For the reasons stated hereinabove, C.R.A. No. 59 of 2015 fails and is hereby dismissed.

54. Before parting with this case, this Court would like to record its appreciation for very sincere and dedicated efforts put in by the learned counsel for the appellant, Mr. Abhishek Sinha in canvassing the case of his client.

55. Let a copy of this judgment be sent down to the Court below for information.

56. Urgent photostat certified copy of this order, if applied for, be supplied to the parties as early as possible.

(Rajasekhar Mantha, J.)

I agree.

(Ajay Kumar Gupta, J.)