

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

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

CRA (DB)/44/2022

**TAPAS BISWAS
VS
STATE OF WEST BENGAL**

For the Appellant : Mr. Fazlur Rahaman, Advocate
Mr. Krishna Yadav, Advocate
Mr. Mihinur Hossain, Advocate
Mr. Babul Hussain, Advocate

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

Heard and Judgment on : April 8, 2025

DEBANGSU BASAK, J.

1. Appeal is directed against the judgment of conviction dated July 11, 2023 and order of sentence dated July 12, 2023 passed by the learned Additional District and Sessions Judge, Fast Track Court-II, Basirhat in Sessions Trial No.4(1) of 05 arising out of Sessions Case No. 69 (9) of 2004 convicting the appellant under Sections 302, 376 of the Indian Penal Code, 1860.

2. By the impugned judgment of conviction, learned Trial Judge convicted the appellant under Sections 302 and 376 of the Indian Penal Code, 1860. By the impugned order of sentence dated July 12, 2013, learned Trial Judge sentenced the appellant to suffer rigorous imprisonment for life and to pay fine of Rs.5,000/- and in default to suffer further rigorous imprisonment for one month for offences under Section 302 of the Indian Penal Code, 1860 and to suffer rigorous imprisonment for ten years and to pay a fine of Rs.5,000/- and in default to suffer further rigorous imprisonment for one month for the offence committed under Section 376 of the Indian Penal Code, 1860. Learned trial Judge directed the period of detention already undergone to be set off against the sentence imposed and sentences to run concurrently.
3. Two persons faced trial in the present appeal. The appellant was convicted while the other accused Parameshwar Chakraborty was acquitted by the trial Court. Court is informed that the State did not prefer any appeal against the order of acquittal of Parameshwar Chakraborty.
4. Learned advocate appearing for the appellant submits that, the conviction is based on the theory of last seen together. He contends

that, such theory is a weak piece of evidence and that the prosecution failed to bring home the charges conclusively.

5. Learned advocate appearing for the appellant draws the attention of the Court to the deposition of the prosecution witnesses. He submits that, prosecution witness No. 1 stated at the trial that, he was forced to lodge the police complaint by the police. In the police complaint, P.W. 1 named another accused who was not investigated. The Investigating Officer was not examined at the trial since the Investigating Officer expired.
6. Learned advocate appearing for the appellant draws the attention of the Court to the snippet of depositions of other prosecution witnesses and contends that, last seen together theory was not conclusively established by the prosecution. He submits that, the victim was discovered in a naked position at a field. Appellant was not present at the time of recovery of the dead body.
7. Learned advocate appearing for the appellant submits that, since the police did not investigate Parameshwar Chakraborty who is named as an accused by the P.W. 1 at the trial, and since the Parameshwar Chakraborty held out a threat of murder as against the victim, and since

there was a criminal background of Parameshwar Chakraborty, such aspect was not looked into by the police.

8. Learned advocate appearing for the appellant relies upon **2019 SCC Online Cal 1815 [Subrato Biswas & Anr. Vs. State of West Bengal]** for the proposition that, howsoever heinous the crime is, it is the duty of the Court not to be swayed by its gravity but to dispassionately assess the veracity of the prosecution case with utmost objectivity.
9. Learned advocate appearing for the appellant relies upon **(1984)4 SCC 116 [Sharad Birdhichand Sarda vs. State of Maharashtra]** for the contention that where, two possibilities are available, then, one which benefits the accused should be accepted.
10. Learned advocate appearing for the appellant relies upon **(2003) 12 SCC 377 [Mausam Singha Rai & Ors. vs. State of West Bengal]** for the contention that, more serious the offence, stricter degree of assurance is required.
11. Learned advocate for the appellant relies upon **(2001) 2 SCC 451 [Kanhaya Mishra vs. State of Bihar]** for the proposition that, however the grave the suspicion may be, it cannot take place of legal evidence.

12. Learned advocate for the appellant relies upon **AIR 1982 SC 1399 [Srinivas vs. Delhi Administration]** for the contention that, where, the accused is below 20 years of age at the time of commission of offence, he should be recommended for release. In the facts of the present case, he submits that, the appellant is in custody in excess of 20 years.
13. Learned advocate appearing for the State submits that the State was able to bring home the charges conclusively at the trial. She submits that, wife of the appellant last saw the appellant with the victim. Father-in-law of the appellant corroborated the statement of the wife of the appellant. Further corroboration of both the father-in-law of the appellant as well as the wife of the appellant was made by a rickshaw puller who was examined as P.W.6 at the trial.
14. Learned advocate appearing for the State refers to the deposition of the doctor at the trial and submits that, the doctor conducting the postmortem on the death of the victim opined that, the victim was raped and, thereafter, brutally murdered. She submits that, such opinion of the postmortem doctor was not dislodged at the trial.
15. Consequently, learned advocate for the State submits that, no interference with the judgment and order under appeal is called for.

16. Maternal uncle of the victim lodged a police complaint with the police which was registered on June 23, 2004. On conclusion of the investigation, police submitted charge sheet with the jurisdiction Court. Jurisdictional Court framed charges as against the appellant on January 11, 2005. The charges were for rape, murder and destruction of evidence.
17. At the trial prosecution examined 12 witnesses. Various documents were tendered and marked as exhibits at the trial, on behalf of the prosecution. On conclusion of the evidence of the prosecution, the appellant was examined under Section 313 of the Criminal Procedure Code. Appellant did not produce any defence witness.
18. On discovery of the dead body of the victim an inquest was held. Dead body was sent for postmortem examination. Postmortem doctor was examined at the trial as P.W. 8. Postmortem report was tendered in evidence and marked as Exhibit 4.
19. Doctor conducting the postmortem on the victim being P.W.8 stated in his deposition that in his opinion, the death was due to violent asphyxia due to throttling, preceded by sexual assault. This opinion of the doctor conducting the postmortem was not dislodged at the trial on behalf of the appellant. Only one question in cross-examination was put to the

doctor conducting the postmortem on behalf of the co-accused and the appellant before us declined to cross-examine the doctor conducting the postmortem.

20. Rape and murder of the victim was, therefore, established at the trial.

Prosecution did not examine any person at the trial claiming it to be an eye-witness to the incident of either of rape or murder.

21. P.W. 1 is the uncle of the victim. He stated that, the victim was about 14/15 years of old when she went to the matrimonial home of the appellant. He also stated that, the co-accused and the appellant threatened the family of the victim that, the co-accused will not allow the victim to be married to anybody else. P.W. 1 stated that the appellant went to his matrimonial home where, the victim was staying with the wife of the appellant being P.W.5.

22. P.W. 1 in his cross-examination, stated that, he was forced to sign the police complaint by the police. He also stated in his cross-examination that the co-accused with the appellant threatened him that such co-accused would see how the victim could be given in marriage and that such co-accused would put an end to the life of the victim in such an eventuality.

23. P.W. 2 is the mother of the victim. She stated that at the time of death, the victim was 15 years old and she was residing with P.W. 2. She identified the appellant as well as the co-accused both by their name and nickname. The nickname of the appellant is Babu. In cross-examination, P.W. 2 stated that, she heard that the co-accused and two other mercilessly raped the victim and murdered her. In further cross-examination, she stated that she cannot say whether the victim was raped or murdered. On the very night when she went to the house of the victim for searching the victim but could not find her. She saw the dead body of the victim the next morning at 8 a.m.

24.P.W. 3 is the maternal uncle of the victim. He deposed that on the day the dead body of the victim was discovered, the villagers found the appellant and the co-accused to be absent and to flee away from the village. He also stated that they searched for both the appellant and the co-accused but could not find them. In cross-examination, he stated that, when he asked the appellant why the victim did not return, the appellant replied that the victim would come on the next date. In further cross-examination, he stated that, both the accused were named in the first information report.

25.P.W. 4 is a co-villager of the victim. He identified his signature in the inquest report. In cross-examination, he stated that, he heard that the two co-accused raped and murdered the victim.

26.P.W. 5 is the wife of the appellant. She stated that, the victim was at her paternal home where she was residing at that material point of time. She stated that, the victim was brought by the appellant for the cause of negotiation of the marriage of the victim. She stated that it was about 4/5 p.m. when the appellant and the victim started from the paternal house of P.W.5. On the next date, appellant returned to her paternal house at about 8 a.m. Appellant asked for food from P.W. 5 and when P.W. 5 asked the appellant to sit, appellant went away. Thereafter, the police came to the paternal house of P.W. 5, arrested her and her father and took them to concerned police station only to release them from custody on the arrest of the appellant. In cross-examination, she denied the suggestion that, she stated to the police that the appellant committed rape on the victim and murder and laid the dead body at the place from where it was recovered.

27.Father-in-law of the appellant deposed as P.W.6. He corroborated the statement of P.W. 5 that P.W. 5 was residing with him at the material point of time. He also corroborated the fact that the appellant visited

the home on the fateful day. In cross-examination, he stated that he selected a van rickshaw for the appellant and the victim to travel from his house. He identified the van rickshaw puller, to be P.W. 7. In further cross-examination, he stated that, he did not possess any personal knowledge of the death of the victim.

28.P.W. 7 is a van rickshaw puller who corroborated the statement of P.W. 6. He stated that P.W. 6 called him with the rickshaw van to the house of P.W. 6 for the purpose of carrying passenger from the house to the bus stand. He stated that, he took two passengers on his rickshaw and reached them to the bus stand. In cross-examination, he stated that, the two passengers were one male and another female.

29.P.W. 9. is the police personnel who was posted as the Assistant Sub-Inspector of Police at the material point of time. He narrated how he received the police complaint and treated it as a first information report. He tendered various documents which were marked as exhibits. He stated that, he did not go to the spot and did not conduct the investigation.

30.P.W.10 is the person who stated that Madhabi Sarkar wrote a letter dated July 10, 2024 which was marked as exhibit 5.

31.P.W. 11 is the then Officer-in-Charge of the police station who stated that, he was entrusted as Investigating Officer for the investigation.

32.P.W. 12 is the scribe of the police complaint.

33.In his examination under Section 313 of the Criminal Procedure Code, appellant denied the allegations levelled against him. He refused to adduce any further evidence at the trial.

34.As noted above, rape and death of the victim stood established at the trial by virtue of the postmortem report being exhibit 4 and the deposition of the postmortem doctor, being P.W. 8.

35.Prosecution was able to establish that, the appellant was last seen with the victim by virtue of the evidence of the P.W. 5 as corroborated by P.W. 6 and P.W. 7. P.W. 5 is the wife of the appellant who last saw the appellant to leave with the victim. P.W. 6 is the father-in-law of the appellant who corroborated P.W. 5 as to the appellant reaching his house on the fatal day. He also stated that he called P.W. 7 who is the rickshaw van puller to take the appellant and the victim to the bus stand. P.W. 7 corroborated PW 6 by stating that, P.W. 6 called him to the house of the P.W. 6 to take two persons, namely, one male and female to the bus stand on that fatal day.

36. As noted above, appellant did not adduce any evidence to dislodge the theory of last seen together with the victim.

37. In **Subrato Biswas (supra)**, the High Court is of the view that, howsoever heinous the crime is, it is the duty of the Court not to be swayed by its gravity but to dispassionately assess the veracity of the prosecution case with utmost objectivity. In our view, in the facts of the present case, prosecution was able to bring home the charge of rape and murder as against the appellant.

38. **Sharad Birdhichand Sarda (supra)** is of the view that where, two possibilities are available, then, one which benefit the accused should be accepted. In the facts of the present case, two possibilities are not thrown up. As against the other co-accused there is no material evidence excepting the expression of apprehension by two of the prosecution witnesses as to his involvement. A person cannot be convicted on the basis of apprehension expressed.

39. **Mausam Singha Rai (supra)** is of the view that Court should not punish an accused on the basis of merely on suspicion alone. In the fact of the present case, the learned Judge did not proceed on the basis of suspicion but on assessment of the materials placed on record to arrive at the finding of guilt.

40. In **Kanhaya Mishra** (supra), the Hon'ble Supreme Court acquitted the accused by giving him the benefit of doubt. In the facts and circumstances of the present case, given the nature of the materials placed on record, the charges as against the appellant of rape and murder stand proved conclusively. Question thereof of giving benefit of doubt to the appellant does not arise.

41. In **Srinivas** (supra), the Hon'ble Supreme Court considered the case of period of custody during trial as also after conviction. In the facts of the present case, the appellant stands convicted for life for murder and for 10 years for rape. Both the sentences were directed to run concurrently. We are not to exercise powers of remission which is the domain of the State.

42. In such circumstances, we find no ground to interfere with the judgment of conviction or the order of sentence.

43. **CRA (DB) 44 of 2022** is, therefore, **dismissed**.

(Debangsu Basak, J.)

44. I agree.

(Md. Shabbar Rashidi, J.)