

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

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Prasenjit Biswas

CRA (DB) 57 of 2022

Kanai Mondal

vs.

The State of West Bengal & Ors.

For the Appellant : Mr. Arindam Jana, Advocate
Mr. Sumanta Ganguly, Advocate
Mr. Yuvraj Chatterjee, Advocate

For the State : Mr. S. S. Imam, Jr. Govt. Advocate
Mr. R. Jana, Advocate

For the Respondent
Nos: 3, 4, 5 & 7 : Mr. Sourav Chatterjee, Senior Advocate
Mr. Aniruddha Bhattacharyya, Advocate
Ms. Promita Banerjee, Advocate

Heard on : 28.07.2025

Judgment on : 01.08.2025

Prasenjit Biswas, J.:-

1. The impugned judgment and order dated 04.07.2018 passed by the learned Trial Court in connection with Sessions Trial No.02 (01)09 is assailed in this appeal.
2. By passing the impugned judgement, this accused person was found not guilty for commission of offence punishable under Sections 364/302/120B of the Indian Penal Code.
3. Being aggrieved and dissatisfied with the said impugned judgment and order of acquittal, the present appeal is preferred at the behest of the appellant/complainant.
4. The instant case was started on the basis of a complaint lodged by the defacto complainant instituted before the Court of learned Chief Judicial Magistrate, Alipore under Section 156(3) of the Cr.P.C. stating *inter alia*, that the son of the de facto complainant namely Haren Modal was married with respondent no.5. After marriage, a disturbance and dispute was cropped up in between the deceased and the respondent no.5 and she took shelter in a rented house with the deceased. Thereafter the respondent no.5 left her matrimonial house and started to reside in her mother's house. It is stated in the written complaint that, illegal relationship was started in between the respondent no.5 with the respondent no.2 (Akhil Das). It is further

stated in the written complaint that, Haran (deceased) and his father/de facto complainant lodged a written complaint before the concerned Police Station stating that the respondent no.5, had taken Rs.50,000/- in cash from the house of the de facto complainant. It is further stated by the de facto complainant in the written complaint that his son was kidnapped by the accused person on 20.06.2006 with the help of unknown miscreants and was wrongfully and forcibly beaten with iron rod and thereafter they fled away leaving him at a place. The victim was taken to the hospital and on 05.07.2006 he died. It is stated in the written complaint that the medical report would show that Haren was murdered. A complaint was lodged by the defacto complainant before the local police station. As no step was taken by the concerned police station, the defacto complainant filed a petition before the learned Magistrate which was treated as F.I.R. being Sonarpur P.S. Case No. 364 dated 26.10.2006 u/s 363/326/302/406/120 of I.P.C.

5. After completion of investigations charge sheet was submitted by the Prosecuting Agency under Sections 363/ 326/ 352/ 302/ 406/ 120B of Indian Penal Code. Charge was framed by the Trial Court

under Sections 364/302/120B of I.P.C. against all the accused persons.

6. In this case, nine witnesses were cited by the side of the prosecution and documents were marked as exhibits on its behalf. Neither any oral nor documentary evidence was adduced on behalf of the defence.
7. It is said by the learned advocate appearing for the appellant/complainant that the learned Trial Court did not consider the evidences brought on record by the side of the prosecution. P.W.1, defacto complainant has deposed supporting the contentions made in the written complaint. Other P.Ws as cited by the side of the complainant also corroborated the case of the prosecution. It is further assailed by the learned advocate that the post-mortem report of the deceased also indicates that the deceased died due to injuries sustained by him which are ante-mortem in nature. The attention of the Court is drawn to the evidence of P.W.8, who treated the deceased on 20.06.2006 and prepared injury report which is marked as Exhibit-4 in this case.
8. Learned advocate further contended that the Trial Court did not at all consider the dying declaration made by the deceased before P.W.1 (de facto complainant) and P.W.2 (Basudeb Halder) which was

actually his last communication to these witnesses after he was assaulted. It is further said that the said dying declaration indicates that the death of the victim was actually occurred as a result of the injuries as mentioned in the post-mortem report which are ante mortem in nature. So, as per submission of the learned advocate that the said dying declaration made by the deceased before P.W. 1 and P.W. 2 is very much relevant under Section 32 of the Indian Evidence Act. It is pointed out by the learned advocate that the injuries mentioned in the post mortem report corroborates the prosecution case and there is a clear evidence of proof of *mens rea* towards the commission of the offence by the accused person.

9. In support of his contention, learned Advocate relies upon the decisions rendered by the Apex Court in case of **Munnu Raja vs. State of M.P.**¹, **State of Maharashtra vs. Krishnamurti Laxmipati Naidu**² and **Patel Hiralal Joitaram Vs. State of Gujarat**³.
10. It is said that although in this case there is no ocular evidence but the names of the assailant were stated by the deceased to PW1 and PW2 by way of dying declaration. So, it is submitted that the evidences as cited by the prosecution were not correctly appreciated

¹ (1976) 3 SCC 104

² 1980 Supp. SCC 455

by the learned trial Court and, as such, the impugned judgment and order passed by the learned Trial Court is unsustainable under the provisions of law.

11. It is said by the learned Advocate by referring the decisions rendered by the Hon'ble Apex Court in case of **Munnu Raja** and **Krishnamurti Laxmipati Naidu** that in a dying declaration any reference to the transaction causing death is enough and the dying declaration can be acted upon without corroboration. We are not unmindful that dying declaration can be the sole basis of conviction and it can be done so if it is not tutored and made voluntarily and is wholly reliable but before placing reliance upon the dying declaration it has to be subjected to a very close scrutiny, keeping in view the fact that the statement has been made in the absence of the accused, who had no opportunity of testing the veracity of the statement by cross-examination. If the evidence in that regard is satisfactory, the Court would come to a conclusion that a particular statement was indeed made by the deceased. In this case dying declaration of the deceased was allegedly made as we stated above before PW1 and PW2 upon being recovered on 20.06.2006. This dying declaration had no proximity with the death of the deceased which took place on

³ (2002) 1 SCC 22

05.07.2006 in a hospital. The document filed on behalf of the prosecution does not say anything in which the deceased named any of the accused persons. Moreover, as per evidence of PW9 (investigating officer) where he stated in cross-examination that as per the bed head ticket collected by him during process of investigation shows that the deceased was conscious on 28.06.2006 at 9:30 am. In the said reports the Apex Court held that a dying declaration must be approached with caution before placing reliance upon it. So, the decision cited by the learned Advocate to that point is not applicable in this case.

12. In case of **Patel Hiralal Joitaram** the Hon'ble Apex Court held that the appellate Court at the time of dealing with appeal of acquittal it has to proceed more cautiously and unless there is absolute assurance of the guilt of the accused on the basis of the evidence on record. It is contended by the learned Advocate placing reliance upon the said judgment that in this case the post mortem report reveals that the death was due to the effects of the injuries which were ante-mortem in nature and the said post mortem report indicates that the death was occurred due to the injuries mentioned in the P.M. report. We have already said that PW5 (autopsy surgeon) opined that the

cause of death of the victim was due to the injuries which are ante-mortem in nature but he did not say in his report that the death was homicidal.

13. The learned Advocate further placed reliance on the decision of the Apex Court rendered in case of **Krishna Mochi** and said that in this case it would appear from the evidences that there is motive and/or mensrea towards commission of offence and in such circumstances if the petition of complaint has not been proved that by itself cannot be a ground to throw out a prosecution case which otherwise stand established. We have already said in the forgoing paragraphs that in this case there is no witness to the incident. The prosecution case reflects that there was an illicit relationship between the respondent no. 2 and respondent no. 5 and as per submission of the prosecution it is the motive to do away with the deceased as the victim was the husband of the respondent no. 5. After appreciation of the evidences we do concur with the findings of the learned Trial Court that the chain of circumstances was far from being completed and the evidences so brought on record could not prove the story of the prosecution beyond reasonable doubts.

14. It is said by the learned advocate for the accused persons that P.W.

5/Autopsy surgeon opined that the cause of death was due to injuries and ante-mortem in nature but he failed to say that the death was homicidal. It is further assailed by the learned advocate for the appellant that none of the medical documents recorded the names of the assailants by the deceased. As per submission of the learned advocate for the accused persons that there was no witness to the incident in connection with the present case and the entire case stands upon circumstantial evidence which the prosecution failed to prove.

15. Learned advocate further contended that there is no illegality in the impugned judgment and order passed by the learned Trial Court. It is said that there are contradictions and omissions in the evidences of the witnesses cited by the prosecution. There is nothing in the case record for which the impugned judgment and order of acquittal passed by the learned Trial Court may be interfered with. It is further said by the learned advocate for the private respondents/accused persons that most of the witnesses cited by the prosecution are the relations to the complainant and the victim. P.W. 8/doctor who treated Haran Mondal in the National Medical College and Hospital

stated that the victim revealed that he was assaulted by some unknown persons on 22.6.2006 in the morning but no specific name was mentioned in the bed head ticket.

16. The evidence cited by the prosecution does not bring home the charge leveled against the accused persons for commission of the alleged offence. So, it is said that the impugned judgment and order of acquittal passed by the learned Trial Court may not be interfered with. There is delay in lodging the compliant before the Court and no reasonable explanation has been given on the part of the complainant to that extent.

17. Reliance has been made by the learned advocate for the accused person upon the decisions rendered by the Hon'ble Supreme Court in case of **Arulvelu & Anr. Vs. State & Anr.**⁴ **Bhim Singh -vs- State of Haryana, State of Uttar Pradesh -Vs- Awdhesh**⁵, **Rathinam Alias Rathinam -Vs- State of Tamil Nadu & Anr**⁶, **Jawaswamy vs. State of Karnataka**⁷ and **Banareddy and Ors. vs. State of Karnataka and Ors.**⁸.

⁴ (2009) 10 SCC 206

⁵ (2008) 16 SCC 238

⁶ (2011) 11 SCC 140

⁷ (2018) 7 SCC 21

18. We have considered the rival contentions advanced by both the parties and have gone through all the materials in the record.

19. It is said in the written complaint that on 20.06.2006 the deceased (son of the de facto complainant) was abducted and assaulted. Thereafter, the victim was brought back to the residence of P.W. 1 by the local people but none of the said local people were examined by the side of the prosecution. It further appears that the victim disclosed the names of the persons who allegedly assaulted him before P.W. 1. So, P.W. 1 (de facto complainant) was aware about the names of the alleged assailants but immediate to the incident he did not lodge any complaint before the police station. The story of abduction was not clearly stated by any of the witnesses. PW1 and PW2 did not state the place of abduction. PW1 and PW2 stated that the deceased told them that he was abducted and local people brought him to his house at about 10.00/ 10.30 p.m..It is said by PW1 that his son (victim) disclosed the names of the assailants but PW1 did not take any immediate step to lodge any complaint before police station. On 22.06.06 the victim became ill and he was taken to

hospital and there from he was referred to M.R. Bangur Hospital wherein he expired on 05.07.06.

20. The victim Haran Mondal died in the hospital on 05.07.2006 and the instant complaint was lodged before the Court on 12.09.2006, i.e., about four months after the date of the incident. We have already said that the victim was allegedly assaulted on 20.06.2006 but immediate to the incident no complaint was lodged by the de facto complainant naming the assailants before the police station. So, admittedly, there was a delay in lodging the alleged complaint which creates doubt about the story of the prosecution.

21. The post-mortem of the victim was marked as exhibit in this case. The Autopsy Surgeon (P.W. 5) has stated in his evidence that as per the post-mortem report, the death was due to the effects of injuries as noted in the post-mortem report and ante-mortem in nature. It is not opined by the Autopsy Surgeon that death was homicidal. This evidence of the Autopsy Surgeon gets corroboration from the evidences of P.W. 8 who treated the victim wherein the said victim stated before the doctor that he was assaulted by some unknown assailants. The victim did not disclose the names of the assailants who allegedly assaulted him. The declaration made by the victim

before P.W. 1 and P.W. 2 being recovered on 20.06.2006 and immediate to his declaration before those witnesses, no complaint was lodged. Moreover, the victim expired on 05.07.2006 in the hospital. So, there is difficulty to rely upon the dying declaration as allegedly made by the victim before P.W. 1 and P.W. 2.

22. It is admitted position that there is no witness to the alleged incident. The prosecution case is solely based upon the circumstantial evidence. There is no evidence that how the victim was assaulted. It is stated by the P.W.1 that there was illicit relationship with the respondent No.5 (Rita Mondal) and respondent No. 2 (Akhil Das). PW1 has stated that the deceased Haren Mondal told him about the assault by the accused persons in his home and PW2 has stated that the victim told him about the names of the accused persons when he met at the Hospital. There is no evidence in the record for which it can be said that these accused persons had involvement with the incident dated 20.06.2006. The circumstances and evidences brought on record by the side of the prosecution do not indicate that the victim was murdered by the accused persons. There is no concrete evidence in the record for which it can be said that the accused persons were involved in the commission of the alleged offence. The chain of

circumstances has not proved by the witnesses of the prosecution beyond doubt. Moreover the motive of the accused was not established in this case.

23. The Hon'ble Apex Court in case of **Arulvelu** (supra) held that the expression perverse has been dealt with in a number of cases and the word perverse means that the findings of the subordinate authority are not supported by the evidences brought on record or there against the law or suffer from the vice of procedural irregularity. The appellate Court should be very slow in setting aside a judgment of acquittal particularly in a case where two views are possible. The Trial Court judgment cannot be set aside because Appellate Court's view is more probable. The Appellate Court would not be justified in setting aside the Trial Court's judgment unless it arrives a clear on marshalling entire evidence on record that the judgment of the Trial Court is either perverse or wholly unsustainable in law. The same view has been taken by the Apex Court in case of **Bhim Singh vs State of Haryana, State of Uttar Pradesh vs. Awdhesh, Rathinam Alias Rathinam vs State of Tamil Nadu** and **Anr and Jawaswamy vs. State of Karnataka**. Relying upon those judgments it is stated by the side of the respondents no(s) 3, 4 and 7 that the Appellate Court hearing the

appeal against the judgment and order of acquittal will not overrule or otherwise disturb the Trial Court's acquittal if the Appellate Court does not find substantial and compelling reason for doing so. In the case at hand we do not find any such illegality and material irregularity in the impugned judgment and order of acquittal passed by the learned Trial Court which warrants any interference by the Appellate Court.

24. Keeping in view the facts and circumstances of the case, we hold that the prosecution was not able to establish the guilt of the accused persons beyond reasonable doubt. Further, the High Court should not re-appreciate the evidences in its entirety, especially when there is no grave infirmity in the findings of the trial court. There exists no justification behind setting aside the order of acquittal passed by the trial court, especially when the prosecution case suffers from several contradictions and infirmities. No specific assertion could be proved regarding the role and involvement of the accused persons.

25. The decisions referred by the learned Advocate of the appellant do not lend support to his submissions made at the time of hearing in respect of the facts and circumstance of the present case.

26. The learned Trial Court appreciated the entire evidences brought on record by the side of the prosecution and found that the evidences in the record do not indicate about the involvement of the accused persons with the alleged incident.
27. Having considered the above circumstances, we are not inclined to interfere with the impugned judgment and order passed by the learned Trial Court.
28. Accordingly, the appeal does not succeed.
29. Consequently the impugned judgment and order passed by the learned Trial Court is hereby affirmed.
30. CRA (DB) 57 of 2022 is, accordingly, **dismissed**.
31. Let a copy of the judgment along with the Trial Court records be sent down to the Court below at once.
32. Urgent photostat certified copy of this order, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

(PRASENJIT BISWAS, J.)

26. I agree

(DEBANGSU BASAK, J.)

