

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

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

DEATH REFERENCE NO 04 OF 2019

STATE OF WEST BENGAL

... APPELLANT

Vs.

SURAJIT DEB AND OTHERS

... RESPONDENTS

With

CRA 477 OF 2019

SURAJIT DEB

... APPELLANT

Vs.

STATE OF WEST BENGAL

... RESPONDENT

With

CRA 482 of 2019

LIPIKA PODDAR

... APPELLANT

Vs.

STATE OF WEST BENGAL

... RESPONDENT

With

CRA 587 of 2019

SANJAY BISWAS

... APPELLANT

VS.

STATE OF WEST BENGAL

... RESPONDENT

For the Appellants : Mr. Jayanta Narayan Chatterjee, Sr. Adv.
[In D.R. 4 of 2019 & C.R.A. 477 of 2019] Ms. Moumita Pandit, Adv.
 Mr. Supreem Naskar, Adv.
 Ms. Jayashree Patra, Adv.
 Ms. Pritha Sinha, Adv.

[In C.R.A. 482 of 2019]: Mr. Kallol Mondal, Sr. Adv.
 Mr. Krishan Ray, Adv.
 Mr. Anamitra Banerjee, Adv.
 Mr. Akbar Laskar, Adv.
 Ms. Isita Kundu, Adv.

[In C.R.A. 587 of 2019]: Mr. Malay Bhattacharya, Adv.
 Mr. Subhrajyoti Ghosh, Adv.

For the State & : Mr. Debasish Roy, Ld. P.P.
In C.R.A. 587 of 2019 Mr. Partha Pratim Das, Adv.
 Ms. Manasi Roy, Adv.

Heard on : 16.06.2025

Judgment on : 17.07.2025

MD. SHABBAR RASHIDI, J.:-

1. This is a death reference case arising out of the judgment of conviction dated July 20, 2019 and corresponding order of sentence dated July 22, 2019 passed by learned 1st Additional Sessions Judge, Sealdah, in Sessions Trial No. 3 (4) of 2015. The three connected appeals are in assailment of the common judgment of conviction and order of sentence involved in the death reference.

2. By the impugned judgment, the appellants were convicted for the offence punishable under Sections 302/201/120B of the Indian Penal Code, 1860. Consequently, by the impugned order of sentence, all the three appellants were awarded with death penalty for the offence punishable under Section 302/120B of the Indian Penal Code, 1860. The three appellants were also sentenced to undergo rigorous imprisonment of seven years each with a fine of ₹50,000/- each and in default of payment of such fine the appellants were directed to undergo rigorous imprisonment for a further period of one year, for the offence punishable under Section 201/120B of the Indian Penal Code, 1860.

3. The case of the prosecution is that on May 20, 2014 the de facto complainant along with other police personnel were on raid duty on the main gate of Sealdah Railway Station. At about 18.30 hrs, while performing duty, the police party noticed a bedding rolled in a red quilt, a red colour trolley bag and a school bag lying for a long time in the car parking at the main gate of the Sealdah Railway Station. The de facto complainant suspected the article wrapped in the bedding to be part of human body. The de facto complainant informed the matter to the police station requesting the officers and police force for further action. Pursuant to such request, Sub-inspectors T.D. Laha and M.H. Ali accompanied by police force and two doms Shibu Das and Gopal Gupta came to the spot and opened the bedding and the bag. Upon opening, the de facto complainant discovered that one female dead body aged about

28/30 years having beheaded head and amputated both legs and both hands was wrapped in the red color quilt. The head, both legs and both hands were kept in the red color trolley bag. According to the de facto complainant, there was reason to suspect that the lady was murdered somewhere else and her dead body was brought with a view to destroy the evidence of murder.

4. The de facto complainant lodged a *suo motu* written complaint of the incident with the officer-in-charge of GRPS. On the basis of such written complaint, Sealdah GRPS Case No. 84/2014 dated May 20, 2014 under Sections 302/201 of the Indian Penal Code, 1860 was started against unknown miscreants.

5. The police took up investigation and on completion of such investigation, submitted charge sheet against the three appellants under Sections 302/201/120B of the Indian Penal Code, 1860. The offences being exclusively triable by Court of Sessions, the case was committed to the Court of Sessions. Accordingly, on the basis of materials in the case diary, charges under Sections 302/201/120B of the Indian Penal Code, 1860 were framed against the three appellants on April 21, 2015. The appellants pleaded not guilty to the charges and claimed to be tried.

6. Since all the appeals and the death reference were heard analogously, to avoid prolixity and repetition the contentions of all the appellants and the State are recorded as contentions of the appellants and the State.

7. Learned advocates for the appellants submitted that there is nothing in the evidence to connect the appellants with the crime. The dead body of the victim was recovered wrapped in quilt and trolley bags from the parking area of Sealdah Railway Station. None of the appellants was present there. The ownership of the trolley bag, bedding etc. was not established. In fact, there is no evidence on record as to who left the luggage in the parking area. In such circumstances, there appears no evidence that the offence of murder was actually perpetrated by the appellants.

8. Learned advocates for the appellants further submitted that there is evidence that the victim used to reside alone in her flat. There is absolutely no evidence to the effect that the appellants visited the said flat during the time when the offence was committed. The appellants used to reside somewhere else with another lady accused for a considerable period. The appellants never visited the house of the victim during such time.

9. Learned advocate for the appellant in CRA 477 of 2019 has also submitted that the appellant has been implicated in the case only because of him being the erstwhile husband of the victim. The fact that he has been residing somewhere else was completely ignored by learned Trial Court. For such reason, the appellant cannot be roped in on the basis of the theory of 'last seen together'.

10. Learned advocates for the appellants further submitted that the investigating officer did not try to establish the veracity of the cash memo recovered from the bag, in the name of the victim. There was no endeavor to establish the very of existence of the shop which issued such cash memo.

11. It was further stated by learned advocates for the appellants that there are material contradictions in the evidence of the prosecution. Referring to the evidence of PW7, it was stated that the residence of the appellants was opened by breaking open the padlock whereas other witnesses have categorically stated that the key of the flat was provided by PW7.

12. Leaned advocates for the appellants also submitted that the prosecution has falsely implicated the appellants in this case. The prosecution, cautiously withheld vital witnesses like parents-in-law of the deceased, the taxi driver through which the bedding and bags containing the dead body was carried to Sealdah station and many other witnesses, which raises a reasonable doubt with regard to the legitimacy of the prosecution case. It was also submitted that when the police visited the house of appellant Surajit Deb accompanied by such appellant and after making necessary request to provide security by the local police station, the flat was found already open. Such situation does not rule out that the articles recovered on such visit might have been planted. For such reason, it is submitted that benefit of doubt should be given to the appellants.

13. Learned advocates for the appellants further submitted that the appellant Sanjoy Biswas recorded a statement under Section 164 of the Code of Criminal Procedure, implicating himself as well as other appellants. Such appellant neither turned an approver nor was he examined by the prosecution as a prosecution witness. Moreover, statement recorded by him was quite contradictory to the statement of witnesses led at the trial, not to speak of any corroboration. In such circumstances, such statement of Sanjoy Biswas cannot be relied upon to convict the other appellants. To such proposition, learned advocate for the appellants relied upon **(2004) 7 Supreme Court Cases 779 (Parmananda Pegu Vs. State of Assam)**.

14. Learned advocates for the appellants further submitted that the learned Trial Court misapplied the provisions of Section 120B of the Indian Penal Code. There is no proof of any conspiracy or prior meeting of mind towards the commission of offence. Moreover, recovery of the articles does not conform to the standards enunciated under Section 27 of the Indian Evidence Act, 1872. That apart, the prosecution has not been able to establish the motive behind the commission of the alleged offence by the appellants. Learned advocates submitted that the chain of circumstances have not been proved leading to the hypothesis of guilt of the appellants only to the exclusion of all others.

15. It was also submitted by learned advocates for the appellants that imposing death penalty was not at all warranted in the facts and

circumstances of the case. The case cannot be put within the category of 'rarest of rare case'.

16. On the contrary, learned advocate for the State submitted that the prosecution has been successfully able to bring home the charges levelled against the appellants with the help of convincing evidence. He submitted that the impugned judgment of conviction and order of sentence needs to be upheld.

17. In order to prove its case, prosecution examined as many as 25 witnesses in all. In addition to the ocular evidence, prosecution also relied upon certain documentary as well as material evidence.

18. The de facto complainant himself deposed as PW1. He stated that on May 20, 2014, he was on duty at the main gate of Sealdah Railway Station between 2.00 p.m. and 10.00 p.m. being accompanied by Constable Rajesh Prasad and lady Constable Sila Das. At about 6.30 p.m. he noticed a red color trolley bag, one rolled bedding with a red color quilt and a school bag lying at the car park in front of the main gate. By shaking the articles, PW1 could perceive that it contained a human body in it. He informed the matter to the officer-in-charge as well as duty officer of Government Railway Police Station.

19. Upon such information, police force along with two doms arrived there and the bedding was opened. A headless and limbless human body was found. Thereafter, upon opening the trolley bag, two hands, two legs and the head of a human body was discovered. A cash memo in name of

one Jayanti Deb was also recovered from the trolley. Suspecting a murder, PW1 sent a written complaint to GRPS through a constable, on the basis of which a specific case was started by Sealdah GRPS. PW1 also stated that the police officer who was endorsed with the investigation of the case arrived and conducted inquest over the recovered dead body. PW1 signed on the inquest report which he proved at the trial. The investigating officer also seized the bedding and the trolley bag with other articles under a seizure list. PW 1 signed on such seizure list. The seized articles were sealed and labelled. PW 1 also signed on the labels attached to the seized articles. He proved his signature on the seizure list as well as the labels. PW 1 also identified the seized articles produced in court which were admitted in evidence as material Exhibits.

20. A sub- inspector of police deposed as PW 2. He stated that on May 20, 2014 at about 6.34 or 7.30 p.m. while he was on duty at Sealdah GRPS, PW 1 who was performing duty in the parking area outside Sealdah Railway Station gave a telephonic information to the PS that one trolley bag, one bedding and a school bag were lying at Sealdah car parking area suspecting to contain human body. PW 2 also stated that the inspector in charge Chandan Ghosh and sub- inspector Tulsi Das Laha went to the spot. In presence of the inspector in charge the bedding was unrolled and headless and limbless dead body of a woman was found. He further stated that upon opening the trolley bag, two hands, 2 legs and one beheaded human head were found kept in the trolley in

separate polythene bags. The school bag was found to contain one jeans pant and one T-shirt. Besides that, certain other articles like cash memo, gold and silver ornaments lying with the dead body were also recovered. The aforesaid articles were seized by police under a seizure list to which he signed. PW 2 identified the seized articles produced in court.

21. The lady Constable was examined as PW 3. She stated that on May 2, 2014 she was deputed to perform duty in the parking area in front of Sealdah Railway Station with Sub-inspector Abhijit Saha and Constable Rajesh Prasad. In course of performing such duty SI Abhijit Saha was informed of the presence of unattended luggage in the car parking area. He, in turn, reported the matter to the police station. Police force accompanied by doms arrived at the spot and the bedding was untied whereupon beheaded dead body of a female was discovered with amputated limbs. A trolley bag contained the limbs and the head. The trolley also contained a cash memo and one full pant, T-shirt and a rope was found from the school bag. Besides that some gold and silver ornaments were also recovered which were seized under a seizure list to which PW3 signed. She proved her signatures on the seizure lists and the labels attached to the seized articles. She also identified the seized articles produced in court.

22. Another witness to seizure list deposed as PW4. In fact, PW4 was the person who informed the police of the unattended luggage lying in the car parking. He stated that he was a taxi driver and on May 20, 2014 at

about 6.00 p.m. he dropped passenger at Sealdah station and thereafter parked his taxi in the parking area in front of Sealdah Railway Station. At that time, he found a crowd surrounded a red color trolley bag, a bed roll and one small bag. PW4 went to GRPS booth and informed the police. On such information, police personnel came there and later called other police personnel. PW4 thereafter corroborated the statements of PW1, PW2 and PW3 with regard to recovery of the dead body, its amputated limbs and other articles. The articles were seized and sealed and labelled. He proved his signature on the seizure list as well as labels attached to such articles. PW4 also identified the seized articles produced at the trial.

23. The secretary of the residential apartment where the victim used to reside deposed as PW5. He stated that he was occupying flat no. 3A in the apartment. Flat no. 2B belonged to one of the appellants i.e. Surojit Deb where he used to reside with his wife i.e. the victim and daughter since 2004. Later on Surojit went to reside somewhere else with his daughter due to some family disputes. Thereafter victim used to live in the flat alone. His association tried for reconciliation between Surojit and his wife but attempt went futile. He further stated that a few days prior to the incident Surojit came back with his daughter and started residing with the victim. He used to hear quarrels in the flat sometimes.

24. PW5 also stated that on May 20, 2014 when police came to the apartment and then he came to know that the victim was murdered. PW5 claimed to have informed the police as to where the appellant used to

work. He also informed the police about the name and residence of the sister of victim which he could not recollect at the time of his deposition. He further stated that on May 26, 2014, police again came to the apartment accompanied by Surojit and two others and seized certain articles in his presence. He signed on such seizure list as well as the labels attached to such articles, which he proved at the trial. PW5 also identified the articles like lamp stand, bed covers, nighty, gamcha etc. produced in court which were admitted in evidence and marked as material Exhibits.

25. The photographer attached to GR PS was examined as PW 6. He stated that on May 20, 2014, as requested by the officer, he took photographs of a mutilated body which was found at the car parking area. The head and limbs were packed in a red colour bag and the trunk was rolled in a quilt. The photographs taken by him were seized by the investigating officer under a seizure list. He proved his signature on the seizure list. He also proved the photographs with negative taken and developed by him.

26. A police personal deposed as PW 7. He stated that on May 26, 2014 being posted at Sealdah GRPS, he accompanied the police party as well as FSL team to 827A, Lake Town flat no. 2B. The accused persons were also taken to the flat. The police came seized certain articles like Gamcha, nighty etc. From the flat as shown by the accused persons. PW 7 also stated that the walls and floor of the room were found bloodstained.

The aforesaid articles were seized by the investigating officer under a seizure list to which he signed. PW 7 proved his signature on the seizure list as well as the labels attached to such articles. He also identified the seized articles produced in court.

27. The station master of Sealdah Railway Station was examined as PW 8. She stated that on May 20, 2014, he was informed by GRP staff that one suspicious trolley bag was lying at the car parking of the railway station. He came to the car parking. The trolley was opened by GRP personal and one beheaded head and amputated limbs of human body were found in the trolley bag. The headless trunk of the human body was found rolled in a quilt. PW 8 issued a memo to senior DMO of B. R. Singh hospital for attending the place and to issue a death certificate. Accordingly the Doctor came and a death certificate was issued. Thereafter, PW 8 issued another memo directing Sealdah GRPS to remove the body. He proved the memo which was marked as Exhibit 10.

28. The landlady of the house where the appellants used to reside deposed as PW 9. She stated that she was a co-owner of premises No. 63/1, Anjanga, Birati where she stayed since her childhood. She further stated that the appellant Surojit Deb and Lipika Poddar used to live in her house as tenants. They had taken one room on tenancy from her mother two years prior to the incident. She further stated that on May 26, 2014 at about 5/5. 30 p.m. police visited her house with Surojit Deb and Lipika Poddar and one another person. A key of the room of the appellant used

to be with her. On the request of police, the key was handed over to the police. PW 9 also stated that on search, one bloodstained bed sheet and joint photograph of Surojit and Lipika were recovered by police from the said room. Police seized such articles under a seizure list to which she signed. She proved her signature on the seizure list; however, she could not identify the seized bed cover.

29. A lady constable deposed as PW 10. She stated that on May 26, 2014 she was posted at Sealdah GRPS. She accompanied SI TD Laha and police team to flat no. 827A at Lake Town belonging to the appellant Surojit. One lamp stand and other articles were seized by police from such flat. She further stated that thereafter, the police team with the accused persons went to Anjarang, Birati. The tenanted room of the appellants was opened by police after taking key from the landlady. A joint photograph of the appellants and a bloodstained bedsheet were seized by police as shown by the appellants. PW 10 proved her signature on the seizure list as well as the labels attached to the seized articles. She also identified the seized articles produced in court.

30. The sister of the victim deposed as PW 11. She stated that the victim was married to appellant Surojit Deb in 1994 and they had a 21 years old daughter out of the aforesaid wedlock. She came to know about the death of her sister when police visited her. She also stated that she did not visit the house of the victim frequently. The relationship between Surojit and the victim was not good. She was called upon to identify the

dead body but seeing its condition through the photographs; she could not dare to see the dead body. She identified Surojit in court.

31. A civic police was examined as PW12. He stated that on May 30, 2014 he was attached to Gungnapur police station. On that day at about 7/8 p.m. police visited his village Pursonathpur with accused Sanjay and a knife was recovered from beneath the cot in the house of Sanjoy. He stated that though the seizure was not made in his presence, nevertheless, at the request of police, he signed on the seizure list on the village road. He proved such signature. He further stated that the knife was recovered from in-laws house of Sanjoy which was at a distance of 3 minutes' walk from his house and that he did not see the seized knife. He identified appellant Sanjoy in court. He was interrogated by police.

32. PW13 is a photographer. He took photographs of different parts of a flat situated somewhere near Lake Town. He proved such photographs which were marked as Exhibit 12 series as well as his signature on the seizure list through which it were seized.

33. A police constable deposed as PW 14. He stated that on May 30, 2014, he was a member of the police team which visited Pursonathpur within the district of Nadia accompanied by accused Sanjoy Biswas. He further stated that the accused Sanjoy Biswas brought out a Bhojali from under the cot and handed over the same to the police officer which was seized under a seizure list to which he signed. PW 14 proved his signature

on such seizure list as well as on the label attached to such article. He identified the seized Bhojali produced in court.

34. Another lady constable was examined as PW 15. She stated that on May 30, 2014, she along with police force went to Pursonathpur at the house of accused Sanjoy Biswas. At the instance of such accused, a sharp cutting weapon was found from beneath the cot which was seized. PW 15 signed on the seizure list as well as on the label attached to the seized article. She identified accused Sanjoy Biswas in court.

35. Another seizure list witness deposed as PW 16. He stated that May 30, 2014 police came to the house of accused Sanjoy Biswas. He was arrested and one sharp cutting weapon was recovered from his house. The recovered articles were seized by police under a seizure list to which he signed. He proved his signature on the seizure list as well as on the label attached to the seized articles. He also identified the seized sharp cutting weapon. He identified accused Sanjoy Biswas in court.

36. The daughter of the victim deposed as PW 17. She stated that on May 20, 2014 she used to study in class XII. Flat no. 2B situated at 827/A Lake Town road belonged to her. She further stated that her mother was not alive and her father drove her away from the house. Since then she has been residing with her grandmother and used to attend school from the house of her grandmother. PW 17 also stated that after the death of her mother, she was informed by police. She, however, did

not see the dead body of her mother. She was also not interrogated by police in connection with the case.

37. PW 17 was declared hostile by the prosecution. However, nothing favourable could be elicited in the cross-examination of such witness by the prosecution. In her cross-examination on behalf of the defense, PW 17 stated that she along with her father used to reside at the house of her grandmother since six years prior to the incident and she or her father never visited the flat at Lake Town during such period. She further stated that her mother also did never visit her grandmother's house. She admitted that there was no contact between her parents. She never heard that her father had been to the flat at Lake Town. She also stated that on the date of incident her father was in the residence where she resided.

38. Nodal officer of a mobile company deposed as PW18. He prepared SDRs with CAFs and CDRs in respect of Mobile No. 8513916615 in connection with the case being No. 84 of 2014. He proved such reports as Exhibits 15, 16 and 17. The customer application form was in the name of Amod Mostafa.

39. Nodal officer of Airtel was examined as PW19. In response to a requisition from the Inspector-in-charge, he provided SDRs with CAFs and CDRs in respect of Mobile Nos. 8420646350 and 9903321388 for the period between May 18, 2014 and May 24, 2014. Both the phone numbers stood in the name of appellant Surajit Deb. He proved the

requisition against which he issued the reports as well as the reports as Exhibits 18, 19 and 20.

40. The autopsy surgeon deposed as PW20. He conducted post mortem over the dead body of the victim on May 21, 2014. On such examination, he found the dead body dismembered and disarticulated into six pieces and there was evidence of early decomposition. He also stated that head was severed from torso and neck at the level C34 vertibone. Right upper limb and left upper limbs were amputated from shoulder joints. Right leg and foot and left leg and foot were amputated from knee joints. The torso with thighs, were attached. PW20 also stated that he found several ante mortem and post mortem injuries over the dead body. According to him, the death of the victim was caused due to smothering which was ante mortem and homicidal in nature with associated ante mortem head injuries. He proved the post mortem report prepared in his pen and signature which was marked as Exhibit 21 at the trial.

41. The recording officer deposed as PW21. He stated that on May 20, 2014 he received a written complaint from Sub-inspector Abhijit Saha at Sealdah GRPS. He proved the endorsement of receipt of such written complaint in his pen and signature (Exhibit 1/1). He further stated that on the basis of such written complaint, he started Sealdah GRPS Case No. 84 of 2014 under Sections 302/201 of the Indian Penal Code, 1860 at the dictation of Inspector-in-Charge of Sealdah GRPS. He also proved the

formal First Information Report filled up by him which was marked as Exhibit 22.

42. PW21 also stated that on May 26, 2014 he accompanied the Deputy Superintendent of Police, Inspector-in-charge of Sealdah GRPS and other police force to flat 827A- 2B. The FSL teams as well as the three appellants were also with them. Police seized certain articles like lamp stand, pillow, quilt, bed sheet etc. from the said flat. He proved his signature on the seizure list. He also identified the seized articles and the appellants in court.

43. An Assistant Director of Forensic Science Laboratory, Biology Division was examined as PW22. She stated that on June 5, 2014, her department received a requisition with 21 sealed parcels for examination. She examined such articles and prepared her report on August 8, 2014. Upon such examination, no blood could be detected on the 'Gamcha'. Bloodstains were detected on other articles like lamp stand, pillow, trolley bag, quilt, polythene packets, bed cover, nighty and other articles. Bloodstains were collected from each of the articles and were sent to the serologist, Government of India for determination of origin and blood group. Blood was found insufficient for serological test. PW22 proved the report prepared by her which was marked as Exhibit 23. She also identified the articles she examined. The examination seal was proved by her (Exhibit 24).

44. The serologist of Government of India deposed as PW23. He stated that on August 8, 2014 his department received requisition along with sealed samples from Forensic Science Laboratory. PW23 started examination of such articles on August 8, 2014 which was concluded on August 13, 2014. On such examination, he found blood group on one of the samples as 'O' group. Some of the samples were found stained with human blood and on rest of the articles blood could not be detected due to disintegration and insufficient for test. PW23 prepared a report in this regard which he proved (Exhibit 25).

45. The Judicial Magistrate who recorded the statement of Sanjoy Biswas in connection with Sealdah GRPS Case No. 84 of 2014 as per the direction of learned Additional Chief Judicial Magistrate was examined as PW24. She proved such statement (Exhibit 26).

46. The investigating officer deposed as PW25. An information was received on May 20, 2014 at about 6.30 p.m. at Sealdah GRPS that one trolley bag, quilt and a school bag was lying unattended in the car parking area of the railway station. PW25 was directed to attend. He went to the spot. The trolley bag and the roll were opened. A headless female dead body was found bundled in the quilt tied with rope and wire. Two hands, two legs and head were recovered from polythene packets kept in the trolley bag. A cash memo issued by M. Balaji in the name of Jayanti Deb with her address was also recovered from the trolley bag. A jeans pant and a T-shirt was recovered from the school bag. Thereafter, SI

Abhijit Saha wrote a written complaint which was sent to GRPS through a constable. The case was endorsed to PW 25 for investigation.

47. PW 25 conducted inquest over the dead body and prepared a report which was proved. He also seized the quilt, trolley bag, schoolbag, rope, wire and certain gold and silver ornaments under a seizure list. He proved the seizure list as well as the labels attached to such articles. PW 25 identified the seized articles produced in court. He further stated that in course of investigation, he visited the place of occurrence and prepared rough sketch map with index thereof (Exhibit 27). He also examined the complainant as well as other witnesses and recorded their statements. He also visited the flat No. 2B/827A, Lake Town which was under lock and key. He talked to the secretary Binayak Dutta who informed him that the flat belong to the appellant Surojit Deb. PW 25 also interrogated the general manager of the establishment where Surojit Deb used to work and recorded his statement. He also required the accused to appear for the identification of dead body.

48. PW 25 thereafter visited NRS morgue with the accused who identified the dead body to be that of his wife. He further stated that the accused Surojit Deb was interrogated by him and he confessed about killing his wife with the help of weapon. The statement of accused Surojit Deb was recorded. In his statement, appellant Surojit Deb disclosed the names of two other persons involved in the crime as Sanjoy Biswas and Lipika Poddar. The aforesaid persons were arrested on May 24, 2014. A

dagger was recovered on the leading statement of accused Sanjoy Biswas from his house which was also seized. He proved the seizure list and identified the seized dagger in court. PW 25 also stated that on May 26, 2014, he visited the flat at Lake Town accompanied by FSL team. As shown by accused Surojit Deb, certain blood stained articles were seized. He proved the seizure list. PW 25 also visited the rented house of Lipika Poddar and recovered certain articles from there. He has described the steps taken by him in the investigation. On completion of investigation, he submitted charge sheet in the case. He identified the appellants in court.

49. In his cross examination, PW25 stated that he was informed by the Secretary of the apartment that from May 19, 2014 till the morning of May 20, 2014, appellant Surojit Deb was seen in the flat, however, such fact was not reflected in the statement of such Secretary recorded under Section 161 of the Code of Criminal Procedure. Contrary to that, the statement of Binoy Dutta revealed that appellant Surojit Deb left the flat with his daughter and the victim used to reside there alone. He also admitted that the daughter of the victim was not called upon to identify the seized articles. PW25 admitted that he did not examine the adjacent flat owner or neighbours in the locality. He further admitted that none of such adjacent flat owners or neighbours stated that appellant Surojit Deb was present there within 24 hours prior to the incident. He also stated that in course of investigation, witness Binoy Dutta stated that appellant Surojit Deb and his daughter came back to the flat one month prior to the

incident and started residing there. Admittedly, no information was received during investigation about the presence of any of the appellants in the night of May 19, 2014 in the flat at Lake Town.

50. On conclusion of the evidence of the prosecution, the appellants were examined under Section 313 of the Code of Criminal Procedure where they pleaded innocence having been falsely implicated by police. They however, declined to adduce any defense witness.

51. A dead body of a female, cut into several pieces was recovered rolled in a quilt and its chopped limbs and head was found in a trolley bag lying unattended from the parking area of Sealdah Railway Station. The matter was reported to police and thereafter a specific case over the incident was started. Conceivably, on the basis of a cash memo recovered from the trolley bag, the victim was identified as Jayanti Deb wife of appellant Surojit Deb. An unnatural death case was also started and inquest was also conducted over the dead body.

52. After the case was started, the dead body was sent for post mortem examination. On such examination, the autopsy surgeon found several ante mortem as well as post mortem injuries on the dead body. The doctor who conducted the post mortem was examined as PW20. In his examination, he testified his opinion about the probable cause of death of the victim based on the post mortem report prepared by him, Exhibit 21 as, 'death of the victim was caused due to smothering which was ante mortem and homicidal in nature with associated ante mortem

head injuries'. Therefore, the testimony of PW20 coupled with that of Exhibit 21 sufficiently establishes that the death of the victim was an unnatural death which was homicidal in nature. As such, it stands proved that the victim was murdered.

53. Fact remains as to who caused the death of victim in an unnatural manner or who murdered her. The impugned judgment as well as the evidence led at the trial suggests that since the appellant Surojit Deb was the husband of the victim, he committed her murder. Evidence on record shows that the said appellant Surojit Deb was presently residing in matrimonial relationship with the other appellant Lipika Poddar and she assisted the appellant Surojit Deb in the commission of such murder. Another appellant, Sanjoy Biswas was allegedly hired by the two appellants, after committing murder, to cut the dead body into several pieces, ostensibly, in order to enable the appellants in disposing of the dead body and causing disappearance of evidence of murder.

54. It is not in dispute that appellant Surojit Deb was the husband of the victim. There is also no dispute that the said appellant Surojit Deb, at the time of incident, was residing with appellant Lipika Poddar at a place away from the place of occurrence i.e. the flat where the victim used to reside at Lake Town. No evidence has been produced at the trial that the appellant Surojit Deb used to reside in the flat where incidence took place. On the contrary, there is sufficient evidence that the said appellant has been living separate from his wife since much prior to the incident.

They were married in 1994 and resided in the flat at Lake Town. They had a 21 years old daughter out of the said wedlock. PW5, the secretary of the apartment where the flat is situated stated in his deposition that the appellant Surojit Deb and the victim started residing in the flat since 2004. There were certain family disputes between them which was tried to be resolved by the association but failed. Later on, the appellant Surojit Deb left the flat with his daughter and started residing somewhere else. The fact of strained relations between husband and wife was also corroborated by the sister of the victim i.e. PW11.

55. PW5 stated in his deposition that a few days prior to the incident Surojit came back with his daughter and started residing with the victim and that he used to hear quarrels in the flat sometimes. However such statement of PW5 has not received any corroboration from any corner. To its contrary, such statement is established to be unfounded. The investigating officer, PW25, admitted in his cross examination that no such statement was made by PW5 in his statement before police. PW25 categorically stated in his cross examination that he was informed by the Secretary of the apartment that from May 19, 2014 till the morning of May 20, 2014, appellant Surojit Deb was seen in the flat, however, such fact was not reflected in the statement of such Secretary recorded under Section 161 of the Code of Criminal Procedure. PW25 also admitted in his cross examination that he, neither examined any of the adjoining flat owners or neighbours in the locality nor did he receive any information

that the appellant Surojit Deb was seen in the flat or locality within reasonable proximity of the date and time of incidence. PW25 also stated that no information was received during investigation about the presence of any of the appellants on the night of May 19, 2014 in the flat at Lake Town.

56. In fact, there is overwhelming evidence, that the appellant Surojit Deb left the matrimonial company of the victim much prior to the incident and that too, with his daughter and started residing elsewhere. It has also come out in evidence that the said appellant has been residing with appellant Lipika Poddar as husband and wife in a separate place. There is absolutely no evidence led at the trial that any of the appellant was seen in the vicinity within reasonable proximity of the date of incident to suspect that they might have committed the crime.

57. Several articles are shown to have been recovered from the flat where the victim used to reside. It included certain articles with bloodstains. A few of such seized articles were found to contain human blood on chemical and serological examination. Some articles were recovered from the present residence of the appellants as well. A sharp cutting dagger was recovered from the house of appellant Sanjoy Biswas. All such articles were shown to be recovered in terms of the leading statements of the three appellants. However, the prosecution never endeavored to record judicial confession of such appellants except the appellant Sanjoy Biswas. Moreover, the fact of recovery of certain

bloodstained articles on the leading statement of the appellants, were not specifically confronted to such appellants in their examination under Section 313 of the Code of Criminal Procedure, though they were confronted with mere recovery thereof. In such examination, the appellants retracted and denied having made any statement that they had confessed their guilt.

58. At the time of hearing, learned advocate for the State heavily banked upon a statement of appellant Sanjoy Biswas, recorded under Section 164 of the Code of Criminal Procedure (Exhibit 26). There is nothing in the evidence; the said appellant was ever persuaded on behalf of State to turn an approver. Such statement was admitted in evidence at the instance of learned Judicial Magistrate who recorded it. The maker of the statement has not passed the test of cross examination. Moreover, the entire purport of Exhibit 26 is in relation to disposal of the dead body. It has no materials in respect of the offence of murder. It explains that appellant Sanjoy Biswas was contacted by Lipika Poddar and was hired to execute the dismemberment of parts of the dead body of the victim after her murder was already accomplished. Such act was performed by appellant Sanjoy Biswas under duress and threat of instant death. Such statement seems to be exculpatory in nature.

59. We are afraid such a statement can hardly be classified as a confession. Besides that, such statement was also not confronted to the appellants in their examination under Section 313 of the Code of Criminal

Procedure. As noted earlier, the other appellants had no opportunity to cross examine the maker of such statement. The circumstances do suggest the a lady who was so intimate to appellant Sanjoy Biswas that she confided in him for disposal of the dead body of a victim killed by her, but the appellant was not even aware of the title of her name. It is trite law that confessions can be used to buttress other evidence but not vice-versa. In the case at hand, there appears no evidence whatsoever, to associate the appellants with the crime of murder of the victim. Their presence at the scene of crime at the relevant time has not been proved convincingly.

60. In such circumstances, we are of the view that the prosecution had hopelessly failed to bring home the charges levelled against the appellants at the trial, beyond all reasonable doubts sufficient enough to secure their conviction. We therefore, set aside the impugned judgment of conviction and the consequential order of sentence. Death sentence awarded to the appellants, cannot, therefore, be sustained even, less to talk of its confirmation. Accordingly, the appellants are hereby acquitted of all the charges framed against them.

61. The death reference being DR 4 of 2019 as well as the three appeals being CRA 477 of 2019, CRA 482 of 2019 and CRA 587 of 2019, are accordingly disposed of in terms of the observations made hereinabove. Consequently, the convicts Surojit Deb, Lipika Poddar and Sanjoy Biswas, be set at liberty forthwith, if not wanted in connection

with any other case, subject to execution of a bond to the satisfaction of the learned Trial Court which shall remain in force for a period of six months, in terms of Section 437A of the Code of Criminal Procedure. Connected applications, including pending bail applications, if any, shall also stand disposed of.

62. A copy of this judgment along with the Trial Court records be remitted to the appropriate Trial Court forthwith. In view of the disposal of the death reference and the connected appeals, any warrant issued by the appropriate Court with regard thereto in respect of Surojit Deb, Lipika Poddar and Sanjoy Biswas stands set aside and cancelled in terms of this judgment and order.

63. Department will inform the Correctional Home, where the appellants are lodged, as to this judgment and order. The Correctional Home will record the fact of cancellation of death penalty and acquittal awarded by this judgment and order in respect of Surojit Deb, Lipika Poddar and Sanjoy Biswas, in their records.

64. Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties on priority basis upon compliance of all formalities.

[MD. SHABBAR RASHIDI, J.]

65. I agree.

[DEBANGSU BASAK, J.]