

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

Present:

**The Hon'ble Justice Debangsu Basak
&
The Hon'ble Justice Prasenjit Biswas**

C.R.A. 335 of 2021

Md. Mobarak & Anr.

-Versus-

The State of West Bengal

For the Appellants : Mr. Amitabha Karmakar,
Mr. Arup Kumar Bhowmick.

For the State : Mr. Madhusudan Sur, Ld. A.P.P.
Mr. Mujibar RliNaskar.

Hearing concluded on : 10th July, 2025

Judgment On : 31st July, 2025

Prasenjit Biswas, J:-

1. This appeal is directed against the judgment and order dated 07.10.2021 passed by the learned Additional Sessions Judge, 1st Court, Malda in connection with Sessions Case No. 62/2021 (Sessions Trial Case No. 43/2021) at the behest of the appellant.

2. By passing the impugned judgment and order this appellant was found guilty for commission of offence punishable under Section 302 of the Indian Penal Code and they were sentenced to suffer rigorous imprisonment for life along with a fine of Rs. 10,000/- and in default of payment to undergo further rigorous imprisonment for one year and they were also convicted under Section 120B of the Indian Penal Code and were sentenced to suffer rigorous imprisonment for two years.

3. Being aggrieved and dissatisfied with the impugned judgment and order of conviction passed by the learned Trial Court, the present appellants have preferred this instant appeal.

4. Brief facts relevant and essential for the disposal of this appeal are as follows:

“The case was started on the basis of a complaint lodged by the de-facto complainant Abhisekh Rai stating, inter alia, that his uncle Hanuman Rai was a Railway employee and was residing at the Quarter No. 349/A at the Railway Kalibari Colony, P.S. English Bazar, Dist. Malda. It is further stated that on

26.10.2010 at about 9 PM, this de-facto complainant received a phone call from the neighbour of the victim Samudh Gosai from whom he came to know that his uncle was lying in his quarter with bleeding injury and was naked and senseless condition on the floor. This de-facto complainant and other local persons took the victim to the emergency department of Malda Medical College and Hospital and the on-duty doctor declared him as dead. This de-facto complainant suspected that the victim was murdered and as such, he filed this complaint before the concerned police station. Over the complaint lodged by the de-facto complainant a case being English Bazar P.S. Case No. 1010/2020 dated 27.10.2020 was started under Section 302 of the Indian Penal Code.”

5. After completion of investigation charge-sheet was submitted by the Prosecuting Agency against the accused persons under Section 302/34 of the Indian Penal Code. The charge was framed against these appellants by the Trial Court under Section

302/120B/34 of the Indian Penal Code which was read over and explained to the appellants and they pleaded not guilty and claimed to be tried.

6. In this case 17 (seventeen) witnesses were examined by the side of the prosecution. Documents as well as seized materials were marked as exhibits in this case. No oral evidence was adduced on behalf of the defence but certain documents in support of their contentions were marked as exhibits in this case.

7. Mr. Amitabha Karmakar, learned Advocate for the appellants said that there is no direct evidence in the instant case and the prosecution case was solely depended upon circumstantial evidence. It is said by the learned Advocate that in order to complete the chain of circumstances, prosecution tried to establish that two mobile phones were seized from the possession of these appellants but from the seizure list it would appear that there is no mention about the date and time of seizure and no independent witness was there in the seizure list and as such, the story of seizure is absolutely false and fabricated. As per submission of the learned Advocate the prosecution has failed to

establish that these appellants had any involvement in the alleged offence. It is further assailed by the learned Advocate that the call details record (C.D.R.) only indicate date and time of communication between the parties but does not disclose the contents of the conversation and as such, it cannot be said that these appellants were present at the place of occurrence. The learned Advocate further said that the prosecution case is based upon CCTV footage where it is found that these appellants were passing the road which is a busy road as the same place is very much adjacent to the Malda Railway Station. So, it is said that the conviction based upon the CCTV footage does not stand under the eye of law. As per submission of the learned Advocate chain of circumstances were not proved in this case whereas under the provision of law each and every circumstantial evidence must be established beyond reasonable doubt. It is said by the learned Advocate that there was no eye witness to the incident and the prosecution case was based on circumstantial evidence but there are various contradictions in the statements of the prosecution witnesses which made the story of the prosecution unreliable. It is

further said by the learned Advocate that the learned Trial Court at the time of passing the impugned judgment and order of conviction against these appellants lost sight of the inconsistencies in the evidences of the prosecution which cumulatively goes to the root at the prosecution which renders the prosecution case unreliable. So, it is said by the learned Advocate that the impugned judgment and order of conviction passed by the learned Trial Court may be set aside.

8. Mr. Madhusudan Sur, learned Advocate for the State said that there is no contradictions and omissions in the statement of the witnesses for which the impugned judgment and order of conviction may be interfered with. It is said by the learned Advocate that the impugned judgment and order of conviction the testimony of each prosecution witness is meticulously discussed and analysed. It is said by the learned Advocate that after examination of each of the links of incriminating circumstantial evidence it formed an unbroken chain and with the hypothesis of the guilt of the accused. The attention of this Court is drawn by the learned Advocate regarding testimony of the witnesses and it

is said that prosecution was able to prove the guilt of the appellants beyond reasonable doubt. So, it is said that the instant appeal may be rejected outright.

9. We have given our thoughtful consideration to the submissions advanced by both the parties and have gone through the judgments of the Trial Court as well as the evidences available on record.

10. Indisputably, the prosecution case rests on circumstantial evidence. In cases where the evidence is of circumstantial in nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. The circumstances should be of a conclusive nature and tendency, and they should be such as to exclude every hypothesis but the one proposed to be proved.

11. In this case, it is admitted position that the victim Hanuman Rai was an employee of the Railway and he resided in the quarter of Railway at 349A, Kalibari Colony Quarter, Nema Sarani, P.O.

Jhaljhalia, P.S. English Bazar, Dist. Malda and he was found dead in his said quarter on 26.10.2020.

12. PW11, Abhisekh Rai, de-facto complainant stated in his evidence that on 26.10.2020 he was at Uttar Pradesh and one Samudh Gosai called over phone to his youngest brother Nitesh Rai, son of the victim at 8.30 to 9 PM and told that his father was lying in his room at the quarter in naked condition with bleeding injury on his face, nose and mouth. It is further said that Nitesh called this witness over phone and then he again called to Samudh Gosai and this witness was told that somebody killed his uncle. This PW11 stated in his evidence that the victim had one red colour mobile of OPPO Company and he had two sim numbers one is 9434231802 and another is 6295287982. This PW11 said that on the relevant date i.e. on 26.10.2020 the victim was alone in his quarter as he had sent his family members to U.P. on 15.10.2020 as he was going to be retired on 31.10.2020. It is said by this witness that the wife of the victim was using the Sim No. 6295287982 from 15.10.2020.

13. PW1, Amit Chakraborty, Supervisor of Hotel Sunshine who provided the CCTV footage in this case, said in his evidence that there are 22 CCTV cameras in their hotel and out of that two cameras were installed outside of the hotel facing to the station road. It is said by this witness that police told him that they wanted to see the footage of those CCTV cameras dated 26.10.2020 and when it was zoomed, he saw two persons were going thorough opposite footpath in front of their hotel and they crossed the road and went towards the station. This PW1 further said that when he zoomed, he found two persons, one of whom wore a blue colour shirt. It is further said by this witness that the police seized the memory card and prepared a seizure list on which this witness put signature on 06.11.2020 and his signature is marked as exhibit 1 in this case. It is further said by this witness that one Suman Chakraborty, another staff of their hotel was also cited as a witness to the seizure and his signature was marked as exhibit 2 in this case. In cross-examination, this witness reiterated the said fact that when he zoomed the CCTV footage, he saw two persons one of whom wore a blue colour shirt.

We have already said that PW11 has stated in his evidence that the victim had one red colour mobile of OPPO Company and he had two sim numbers, whereas the accused Mobarak had sim being no. 7718685542 (Jio) and another number of 9474354082 (BSNL). The accused namely, Jakir had one sim number which is 7679967689 (Jio). It appears from the C.D.R and S.D.R. report that the last call had come from the mobile of the accused Mobarak being no. 7718685542 to the mobile number of the victim (9494231802) on 26.10.2020 at 12.04 in the morning.

14. PW6, Arpan Kr. Kar, Nodal Executive of Vodaphone Idea Company Limited has stated in his evidence that a requisition was received by his office for the C.D.R. and S.D.R. regarding mobile no. 9434231802 stood in the name of the victim Hanuman Rai and they have supplied the hard copy after receiving the second requisition along with an authenticated certificate under Section 65B of the Evidence Act and the certificate had the annexure of the C.D.R. report from 20.10.2020 to 31.10.2020 which is marked as exhibit 31/1 series and the S.D.R. report is marked as exhibit 32 in the case. This witness has stated further that the said

mobile number has been used during the period in the mobile handset whose IMEI no. is 869372030676500 and the last call in the duration from 20.10.2020 to 31.10.2020 was done on 26.10.2020 at 12.04 morning from mobile no. 7718685542 and the corresponding cell ID is 405670417610293. It is said by this witness that after decoding the cell I.D. they can get nearest tower location. PW6 further stated that from the authenticated copy of S.D.R. it appears from the mobile number of the victim Hanuman Rai that he resided in the premises no. 349A, Kalibari Colony Quarter, Nimasarai, P.O. Jhaljhalia, Railway Colony, P.S. English Bazar, Malda. So, it appears from the evidence of PW6 that on 26.10.2020 on 12.04 at morning a last call was made from the mobile number of the accused Mobarak.

15. PW9, Captain Aritra Rakshit, Nodal Officer of Reliance Jio Infotech Ltd. has stated in his evidence that he received one requisition on 13.11.2020 in connection with three mobile numbers which are 6295287982, 7679967689 and 7718685542, asking for authenticated SDR and CDR with effect from 20.10.2020 to 31.10.2020 along with certificate under Section

65B of the Evidence Act. It is said by this witness that the SDR and CDR of those three mobile numbers along with certificate under Section 65B of the Evidence Act was produced before the Court and the said certificate issued under Section 65B of the Indian Evidence Act and signed by this witness and stamped on the company letter head with seal marked as Exhibit 36 in this case. The SDR and CDR of the three numbers were marked as Exhibits 37 to 39 in this case. This witness said that SIM of mobile no. 7679967689 was used in a mobile whose IMEI No. is 869372030676500 from 29.10.2020 till 31.10.2020. The said mobile number being 7679967689 stood in the name of the accused Jakir.

16. It appears from the Exhibit no. 31/3 that there was a mobile communication between 7718685542 i.e. the mobile number of the accused Md. Mobarak and 9434231802 i.e. the mobile number of the victim Hanuman Rai on 26.10.2020 at 12.03 hours for 30 seconds. So, it is evident that Md. Mobarak lastly called the victim Hanuman Rai and thereafter, the mobile number of the victim got switched off. It further appears from the CDR that the

location of the mobile number being 7718685542 on 26.10.2020 at 12.03 hrs. was near to the place of occurrence.

17. It appears from the CDR of mobile no. 7679967689, the SDR of which is in the name of the accused person Jakir Sk. It appears that prior to arrest and seizure of mobile of the victim, the accused Jakir inserted his SIM Card into the said mobile phone and used the same for few days.

18. PW17, I.O of this case has stated that at the time of interrogation, the accused Mobarak stated before him that the victim Hanuman Rai was a homosexual person and the victim forcefully did sex with Mobarak on many times. Hanuman Rai also captured the moments of homo-sexual activity with Md. Mobarak in his red coloured OPPO mobile phone and threatened him that he would make those videos viral to the social media and blackmailed him. The accused Mobarak made statement before PW17 that the victim Hanuman Rai used to make sex with Md. Mobarak forcefully on threat and the victim told the accused Md. Mobarak to bring a new young boy with him to make sex with that boy. Md. Mobarak could not bear this sexual torture anymore; he

told all the facts to the other accused Jakir Sk. and planned to murder Hanuman Rai and accordingly they murdered the victim. It is said by PW17 that the accused Mobarak made statement before him that according to pre-plan he pressed the neck of the victim and the another accused Jakir at the same time with a 'gamcha' which was at his waist strangulated the neck of Hanuman Rai and after seeing that Hanuman Rai became near about senseless and blood was coming out from the nose and mouth of the victim, then they took away Rs. 270/- from the pocket of the jeans pant of Hanuman Rai and red OPPO mobile and they left the 'gamcha' by which they strangulated the victim on the 'chouki' (cot) of the room.

19. PW5, Debesh Kishor Singh, Railway staff and neighbour of the victim stated that on the relevant date of incident two staffs namely, Dulal and Samhut Gosai of his department told him that those two persons wanted to go to the quarter of the victim for the key of motorcycle of their 'boss' who was on transfer. This PW5 called the victim over phone but he did not respond the same. So, the said two persons were told to go to the quarter of the victim to

see what happened and this PW5 went with them and on reaching to the place of occurrence they found the door was closed but it was not bolted and as such, they opened the door and found the dead body of the victim in the floor of the first room after the veranda, just in front of the door in naked condition. It is said by this PW5 that the garments of the victim were scattered in the room and on the 'chouki' (cot) there was a 'gamcha' and a blue colour button. They found; blood was coming out from the mouth of the victim, face and nose.

20. PW3, Dr. Arindam Chakraborty, Autopsy Surgeon stated in his evidence that in the post-mortem report he observed all the injuries are ante-mortem in nature and the injuries in the victim's body provides evidence of strangulation supported by both manual strangulation and strangulation by ligature directly corroborated the statements of both the accused persons before they were taken into custody. In the opinion of this witness the death was due to the effects of manual strangulation and antemortem and homicidal in nature. The process of strangulation, whether by hand (manual), or by ligature, results in

blunt force injury of the tissues of the neck and all the injuries are vital reaction positive means ante mortem in nature.

21. PW8, Dr. Mrinal Kanti Saha has stated in his evidence that on 31.10.2020 he examined the accused Md. Mobarak and on examination he found one bite mark on his ulnar side of left hand and on asking regarding history of injury the accused stated that the victim Hanuman Roy bite him on 26.10.2020 at Malda Railway Station Quarter. The shirt with blue button which was seized from the place of occurrence was sent to CFSL and it compared the button with other buttons under ultra violet rays and reported that those buttons are of the same shirt. On asking Mobarak said that he gave the mobile of the victim to his friend another accused Jakir and the Jakir produced the mobile of Hanuman Roy from his house. The mobile of the victim in which the accused Jakir inserted his SIM being no. 7679967689 and used for some time and the same mobile phone was recovered from the house of the Jakir after the unnatural death of the victim which proves the circumstantial evidence and its link. The mobile phone of the victim Hanuman Roy was taken away by these

appellants and one of them used that phone for three days which was detected by the electronic process and there is no such evidence in the record for which such inference can be shattered.

22. We have already said that it appears from the electronic evidence that the last mobile phone call was received by the victim from the accused Md. Mobarak at 12.04 Hrs. and thereafter, no communication was made to or through his mobile, the said call was made by the accused Mobarak to the victim prior to his murder. During investigation CDR and SDR of the mobile numbers of the victim and the accused persons were collected by the Investigating Agency and on analysis of the same it was found that the accused persons and the victim were last seen at the place of occurrence which was electronically being proved by the evidence of PW9 which supported by decoded tower location of said ID (Exhibit 40). So, the presence of both the accused at the place of occurrence cannot be ruled out. The CDR of the phone number of the accused Jakir Sk also reflects the fact of use of the victim's red colour OPPO phone by him prior to his arrest and the said phone was recovered and seized from his possession. As per

report of CFSL expert, the mobile number registered in the name of the accused Jakir Sk was found in the mobile phone of the victim and hence there is no doubt about his involvement in the alleged offence. It appears that the appellants did not take away garments of the victim or they did not steal anything except the OPPO mobile of the victim and Rs. 270/-. We have already stated that there was homo-sexual relationship between the accused Mobarak and the victim and the deceased started to blackmail the accused Mobarak by taking obscene video-graphs held in between them. The accused Mobarak found in no other way planned with his friend, other accused Jakir to murder the victim and as such, the victim was murdered. The electronic evidence including the CCTV footage established the link with each other to conclude in a conclusive nature with the hypothesis of the guilt of the accused. Exhibit 40 issued by PW9 also provided that the victim and the accused persons were near to the place of occurrence during the relevant date and time. So, in this case, the accused persons and the victim were last seen at the place of occurrence electronically being proved and the presence of the accused in the place of

occurrence is well established. The CDR and SDR of the two phone numbers of the victim and the accused Mobarak provides that there was a last call with one of the accused persons and thereafter, the mobile number became switched off. The decoded tower location of the victim's number shows his presence near the place of occurrence and those two phone numbers provides a linkage between the last call with the victim. The decoded tower location number of the accused persons also shows their presence near the place of occurrence. It appears from the IMEI number of the phone of the victim together with the CDRs that the phone was used by the victim till 12.04 PM on 26.10.2020 and thereafter till 31.10.2020 by the accused Jakir until it was seized from the possession of the said Jakir Sk.

23. So, from the above discussion it is evident that on the relevant date and time both the appellants were present at the place of occurrence. From the CCTV footage it appears that two persons were going through the road and one of whom wore a blue shirt. The blue button was seized from the place of occurrence which matched with the other button of seized blue shirt from the

possession by the accused Md. Mobarak. From the exhibited CCTV footage, it was seen that two boys were going together by the road and one of whom wore a blue shirt with cap on his head and white handkerchief on his face. The appellant Mobarak produced the blue shirt from his house and not from the house of anybody else. The mobile phone of the victim was seized from the possession of another accused Jakir Sk. at his house. So, the presumption shifts upon both the accused persons to explain the above which is nothing but the question of the special knowledge which should be adduced only by the cogent evidence by both the accused persons but the accused persons were not successful to discharge the burden of presumption of special knowledge to explain those facts rather they stated the explanation which is not believable at all.

24. Electronic evidence, like emails, messages, documents, and digital recordings, plays an increasingly crucial role in Indian court proceedings. However, establishing its reliability is paramount for its admissibility in court. CDRs are electronic records admissible as evidence, but require certification under

Section 65 B(4) of the Indian Evidence Act. This certificate must confirm that the CDRs were generated by a computer during regular use and that the information originated from data entered during ordinary activity. A competent witness, usually a Nodal Officer from the telecom company, must produce the CDRs and testify to their authenticity. CDRs must show a link between the accused and the victim or crime scene. This can be through call frequency and timing or by showing both parties were in the same location based on CDR data and supporting evidence like witness statements or forensic evidence. In the case at hand CCTV footage, coupled with CDRs and SDRs with proper authentication and certification, helps establish the presence of the accused at the crime scene. The circumstance that the location of mobile phone used by the appellant Mobarak on the relevant date was found to be of the same area from where the dead body of the victim had been recovered strengthens the prosecution plea that it was them who had murdered the victim. The accused Mobarak led PW17 to the house of another accused Jakir Sk from whose possession the victim's OPPO phone was recovered and he was using the said

phone by inserting his own SIM Card within it. The CDR of the phone number of the accused Jakir Sk proved that he used the phone of the victim till his arrest. As per CFSL report mobile number registered in the name of Jakir Sk is found in the mobile phone of the victim. The digital evidence proves the presence of the accused persons at the place of occurrence at the relevant date and time and their involvement in the commission of offence cannot be ruled out.

25. We hold CDRs/SDRs were lawfully read into evidence.

26. It is true, no confession made by any person while he was in the custody of police shall be proved against him. But, the Evidence Act provides that even when an accused being in the custody of police makes a statement that reveals some information leading to the recovery of incriminating material or discovery of any fact concerning the alleged offence, such statement can be proved against him. From the statement of the appellant, it is clear that he had explained the way in which he and the other accused committed the crime. In the instant case, from the evidences on record, it stands clearly proved that the appellants

had committed the murder of the deceased who was at his railway quarter on the day of occurrence. The motive was to take revenge as the accused Mobarak was constantly under black mailing by the deceased regarding their relation of homo sexuality. The recovery of red colored OPPO Mobile Phone of the victim and the blue colored shirt and its button used while committing the said offence clearly connects chain of evidence to hold that it was the accused persons, who had committed the crime in question. These all-incriminating circumstances stand established against accused and the onus was on them to rebut such evidence and incriminating circumstances against them. As noticed above, the defence chose not to lead any evidence in support of innocence of accused. Be that as it may, on an overall assessment of the entire gamut of evidence, we are of the comprehension that the charges against the appellants stand proved beyond reasonable doubt.

27. Considering the entire facts and circumstances and discussion made above, we are of the opinion that there is nothing materials on record for which the impugned judgment and order

of conviction passed by the learned Trial Court may be interfered with.

28. Accordingly, the instant appeal be and the same is hereby **dismissed**.

29. The impugned judgment and order of conviction passed by the learned Trial Court dated 07.10.2021 is hereby affirmed.

30. Let a copy of this order along with the Trial Court Record be sent down to the Trial Court immediately for taking necessary steps in this regard.

31. Urgent Photostat certified copy of this order, if applied for, be given to the parties on payment of requisite fees.

[PRASENJIT BISWAS, J.]

32. I Agree

[DEBANGSU BASAK, J.]