

**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

**DR 2 OF 2024
STATE OF WEST BENGAL
Vs.
NEELKANTA SAHA
WITH
CRA (DB) 248 OF 2024
WITH
I.A. NO.: CRAN 1 OF 2025
NILKANTA SAHA @ NEELKANTA SAHA
Vs.
STATE OF WEST BENGAL**

FOR THE APPELLANT : MR. ANSUMAN BERA, ADVOCATE
MR. SUBRATA BHATTACHARYA, ADVOCATE
MS. RUSHA MUKHERJEE, ADVOCATE

FOR THE STATE : MR. DEBASISH ROY, LD. PP
MR. RANABIR ROY CHOWDHURY, ADVOCATE
MR. KARAN BAPULI, ADVOCATE

HEARD & JUDGMENT ON: JUNE 24, 2025

DEBANGSU BASAK, J.

1. Death reference and the connected appeal are taken up for analogous hearing as they emanate out of the same impugned judgment of conviction and order of sentence passed by the learned Additional Sessions Judge, 1st

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Court, Hooghly in Sessions Trial No. 14(03) of 2023 arising out of Sessions Case No. 217 of 2022.

2. By the impugned judgment of conviction, the appellant was found guilty of murder under Section 302 of the Indian Penal Code, 1860 and by the impugned order of sentence, the appellant was awarded a penalty of death.
3. Learned advocate appearing for the appellant submits that the prosecution was unable to establish the charge brought against the appellant beyond reasonable doubt. He submits that, prosecution did not examine any person as an eye-witness. Entirety of the evidence led at the trial are based on circumstances. The chain of circumstances was not established. The materials which were considered as evidence as against the appellant, were not properly marked as exhibits at the trial.
4. Learned advocate appearing for the appellant submits that, all evidence as against the appellant was not put to the appellant in his examination under Section 313 of the Code of Criminal Procedure, 1973.
5. Learned advocate appearing for the appellant submits that although, the victims were alive when admitted at the hospital, they did not name the appellant as the assailant.
6. Learned advocate appearing for the appellant submits that, the appellant is married and that, at present, there is a

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child of about 5 years of the appellant. He submits that, there is no criminal antecedent so far as the appellant is concerned. He contends that, taking into account the fact that, there is a child of the appellant and that, there is no criminal antecedent of the appellant and the age of the appellant, the death sentence should at the very least be commuted if the appellant is not otherwise acquitted.

7. Learned Public Prosecutor appearing for the State submits that the prosecution was able to establish the charge of murder as against the appellant beyond reasonable doubt. He submits that, appellant murdered his parents being his father and step-mother by fatally injuring them on August 23, 2022 at about 09:45 p.m. at their residence. The step-mother succumbed to her injuries on August 25, 2022 at the hospital.
8. Learned advocate appearing for the State submits that there are CCTV footage establishing that the appellant went out of the house and entered the house again at the time of occurrence. He, thereafter, left the house. He submits that the landlord of the premises saw the entry and exit of the appellant at the relevant point of time. Moreover, according to him, it is for the appellant to explain the death in view of Section 106 of the Evidence Act since, the appellant was seen at the place of occurrence with his parents.

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9. Police received a written complaint dated March 24, 2024 which was registered as a First Information Report. Police caused investigation with regard to such First Information Report and submitted a charge-sheet as against the appellant. The Jurisdictional Court, framed charge of murder under Section 302 of the Indian Penal Code, 1860 as against the appellant on March 15, 2023.
10. In order to bring home the charge of murder as against the appellant, prosecution examined 21 witnesses. Prosecution also relied upon various documentary and material evidences to prove the charge.
11. The case of the prosecution at the trial was that, the appellant as the son, murdered his parents on March 23, 2022 at their residence. It is the further case of the prosecution that, one of the parents being the step-mother was taken to the hospital in an injured condition and that she succumbed to her injuries on March 25, 2022 at the Chinsurah Imambara Hospital. It is the case of the prosecution that, the offending knife was recovered and seized by the police from the bush beside Assam Road on the leading statement made by the appellant.
12. Prosecution witness No. 1 is the landlord of the premises at which, the two victims were residing. He stated that, the incident took place on August 23, 2022 at 09:45 p.m. at the

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ground floor of his house which was let out to the victims. P.W. 1 hired on the first floor. At that night, P.W. 1 heard hues and cries coming out from the ground floor rented room whereupon he went down-stairs and while he was on the stairs coming to the ground floor, he was the appellant fleeing away from the rented room. Seeing the appellant running away as such, he came to the rented room on the ground floor and saw both the victims lying on the floor in severe bleeding condition. Father of the appellant was on the floor in sitting condition while the mother was lying on the floor in unconscious state. Father of the appellant told P.W. 1 that appellant injured him and his wife with a knife and ran away. P.W. 1 stated that he saw both the parents of the appellant with multiple cut injuries on their person. On seeing such incident, he came out of the house and started shouting for help from the neighbours. Neighbours hearing such shout came to the place of occurrence. He identified some of the neighbours who took the victims to the hospital for treatment. He stated that, father of the appellant managed to come out from the vehicle and was shifted to the stretcher to the hospital. Step-mother of the appellant was taken to the hospital in their lap and with the stretcher. Before the attending doctor, in course of treatment, father of the appellant succumbed to his injuries

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and mother of the victim was shifted to the Chinsurah Sadar Hospital. He stated that, police arrived and Inquest Report was prepared with regard to the dead body of the father of the appellant. He identified his signatures in the Inquest Report. He lodged the written complaint which he has identified and marked as exhibit-2. The First Information Report was also shown to the appellant which was marked as exhibit-3.

13. P.W. 1 is also the seizure-list witness with regard to the seizures made by the police at the place of occurrence. He identified his signature on such seizure-list. He also stated that, he was examined by the police and he recorded his statement. He stated that the appellant was arrested by the police on August 22, 2022. There, certain seizures were made to which he was a witness. He tendered the seizure-list in evidence. He stated that, the offending weapon was seized by the police as shown by the appellant.
14. P.W. 1 stated that, there was a jewellery shop outside his residence. There was a CCTV to such shop. Police seized such CCTV footage. He tendered the seizure-list with regard to such seizure. He is also the seizure-list witness with regard to other seizures made by the police. He identified the offending knife as also the appellant in Court.

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15. P.W. 1 was cross-examined at great length by the defense without any favourable material being extracted.
16. P.W. 2 is a neighbour of the appellant. He corroborated P.W. 1 with regard to rent of the ground floor to the parents of the appellant. He stated that, his house is near the place of occurrence. He was sitting on his balcony on the fateful night when he saw the appellant to run out from the backside of the ground floor rental room. He stated that the wife of P.W. 1 informed his wife over phone that the appellant slit the throat of his parents. Immediately on coming to know about such incident, he came out of his house and went to the place of occurrence and saw P.W. 1 calling a *toto* driver. He entered the place of occurrence and saw the step-mother of the appellant lying in a pool of blood in unconscious and motionless state, while the father of the appellant sitting in a pool of blood. Seeing such condition, he along with P.W. 1 and others took the victims to the hospital. He corroborated P.W. 1 with regard to the death of the father of the appellant at the hospital and the subsequent steps taken with regard to the removal of the other victim to the other hospital. He is also a seizure-list witness of various materials which he tendered in evidence. He was also cross-examined at great length by the defense without any favourable result.

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17. Evidence of P.W. 3 is primarily hearsay. He was not present at the place of occurrence, therefore, we deem it appropriate not to consider his evidence with regard to the occurrence. He is, however, a seizure-list witness. So far as the seizures made, they should be taken as evidence.
18. Police constable deposed as P.W. 4. He brought the dead body of the father of the appellant for the purpose of post-mortem. He is also a witness to the seizure-list, which he tendered in evidence and marked as exhibits.
19. A Sub-Inspector of Police deposed as P.W. 5. He stated that he was the duty officer of the concerned police station at that material point of time. He conducted certain seizures which he tendered in evidence, and the same were marked as exhibits.
20. Another Assistant Sub-Inspector of Police deposed as P.W. 6. He is a seizure-list witness. He tendered his signature in such seizure-list which was marked as exhibit at the trial.
21. Wife of P.W. 1 deposed as P.W. 7. She corroborated the evidence of P.W. 1. She stated that, she also saw the father of the appellant to be sitting with severe bleeding injuries and the step-mother of the appellant lying unconscious at the place of occurrence. She stated that P.W. 1 told her that, the appellant ran away after committing the murder

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and that, P.W. 1 saw the appellant, who ran away from the place of occurrence.

22. P.W. 7 was cross-examined at great length without any fruitful materials being extracted on behalf of the defence.
23. P.W. 8 is a neighbour and a shop owner. He stated that he never saw the appellant to visit the rental house of the appellant on August 23, 2022. He saw the appellant at around 9.45 P.M. to come out of the backside gate of the house of P.W.1 and run away. P.W. 8 corroborated the statements of P.W. 1, P.W.2 and P.W. 7 with regard to appellant running away from the place of occurrence. He stated that, he heard shouts of P.W. 1 and on hearing the same, he along with other persons came in front of the house of P.W. 1, entered ground floor and found the victims in the injured condition. He stated that, father of the appellant told him that, the appellant injured the parents by a knife and fled away. Appellants were removed to the hospital. He recorded a statement under Section 164 of the Criminal Procedure Code on September 2, 2022, which was tendered in evidence and marked as Exhibit-14.
24. P.W. 9 is the nephew of P.W. 1. He stated that, he received a phone call from PW. 7 and he immediately responded thereto. He came to the place of occurrence and found the mother of the appellant lying on the floor in a pool of blood

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in an unconscious condition. He noticed a bleeding injury over her neck. Father of the appellant was telling them that the appellant injured the father of the appellant and the step mother of the appellant and ran away. He described how, he along with other prosecution witnesses removed the victim to the hospital. He recorded a statement under Section 164 of the Criminal Procedure Code on September 2, 2022 which marked as Exhibit-15. He is a seizure list witness and stated that, the offending weapon was seized on the same being identified by the appellant.

25. P. W. 10 is a shop owner. He stated that, the appellant used to occasionally work and assist his father in the garment shop belonging to the father of the appellant. He stated that he never saw the appellant coming or visiting the rental house of the father of the appellant. However, when he was at his shop, he saw the appellant no. 1 to be sitting in front of the house. Hearing shouts, he came to the place of occurrence whereupon, P.W. 1 told him that the appellant murdered his parents and fled away. He entered the place of occurrence and saw neck and bleeding injuries of both the victims. He described how, victims were thereafter shifted to a medical facility.
26. P.Ws. 11 and 12 are witnesses who saw the reconstruction of the crime. They stated that, as shown by the appellant,

police recovered the offending knife which still contained blood stain. P.W. 12 took the video photograph of such recovery which was seized by the police. The data was tendered in evidence and marked as exhibits.

27. P.W. 13 is the local jewellery shop owner whose CCTV was seized by the police. He tendered the SD card seized by the police in evidence.
28. P.W. 14 is the person who extracted data from the CCTV of PW.13 and tendered the same in evidence.
29. P.W. 15 is the Sub-Inspector of Police who conducted the inquest on the dead body of the step mother of the appellant. Inquest Report prepared was tendered in evidence and marked as an Exhibit.
30. The post-mortem doctor who conducted the post mortem on the dead body of the mother of the appellant, deposed as P.W. 16. He stated that, the cause of the death was due to the effect of cut throat injuries as stated in his post mortem report. He also stated that the injuries noted with the post-mortem report were sufficient to cause death to the victim. The nature of injuries including the injuries over larynx and in that case, the respiratory system stands affected.
31. P.W. 17 is the doctor who treated both the victims at the initial medical facility. He tendered the injury report which he prepared during his course of treatment of the victims.

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He stated that, the father of the appellant made dying declaration implicating the appellant. However, in cross-examination, he stated that he did not record dying declaration of both the patients because of their medical condition.

32. P.W. 18 is the doctor who issued death certificate of the mother of the appellant.
33. P.W. 19 is the doctor who performed the post-mortem report on the dead body of the father of the appellant. He described the injuries he found on such dead body. He opined that the death was due to the effects of haemorrhagic and neurogenic shocks caused and ante mortem injuries.
34. The opinion of the two post-mortem doctors was that the death was homicidal in nature and caused by the injuries inflicted was not dislodged on cross-examination.
35. P.W.21 is the Investigating Officer. He described the nature of investigations. He tendered the evidence that he gathered during his investigations, at the trial. He stated that, the recovery of the offending knife was made on the leading statement made by the appellant while in custody. Leading statement of the appellant was tendered in evidence and marked as an exhibit.

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36. On conclusion of the evidence of the prosecution, appellant was examined under Section 313 of the Criminal Procedure Code.
37. In his statement under Section 313, appellant acknowledged that he entered the place of occurrence on the fateful night. He claimed that, his stepmother used to misbehave with him. He also claimed that, his father was not in good terms with other family members. He stated that, his son used to become sick of and on and he was under financial stress. His parents did not help him in any way. He claimed that, he entered the place of occurrence to take news of his parents and saw them in a bleeding condition. Seeing such condition, he ran away. He claimed to be innocent.
38. Post-mortem reports of the two victims, tendered in evidence and marked as Exhibit-26 (stepmother) and 30 (father) coupled with the deposition of the post-mortem doctors being P.W.s 16 and 19, establish that, both the victims were murdered.
39. P.Ws.1, 2 and 7 saw the appellant to run away from the place of occurrence.
40. The prosecution witnesses who saw the appellant to flee away from the place of occurrence corroborated each other

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with regard to the date and time as also the manner in which the appellant fled away from the place of occurrence. CCTV footage introduced at the trial establishes the appellant to flee away from the place of occurrence.

41. Statement of the appellant under Section 313 acknowledges that, he was at that point of time at the place of occurrence. He claimed in such statement that, on entering the place of occurrence, he found his parents were lying in an injured condition and thereafter he fled away from the place of occurrence.
42. Presence of the appellant at the relevant point of time at the place of occurrence stands conclusively established by the prosecution.
43. Three of the prosecution witnesses, namely, prosecution witness nos.1, 8 and 9 stated that, the father of the appellant told them that, the appellant inflicted the cut injuries on them. Both the victims died out of the cut injuries as established in the post-mortem reports which were marked as Exhibits-26 and 30 by the doctors who conducted the post-mortem reports.
44. P.Ws. 1, 8 and 9 were cross-examined at length. Their evidence could not be shaken.
45. Defence could not dislodge the oral dying declaration made by the father of the appellant. There is no material on

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record to disbelieve the testimonies of P.Ws.1, 8 and 9 so far as the oral dying declaration of the father of the appellant being made to them.

46. The doctor who attended the victims also stated in his deposition that, the father of the appellant made a dying declaration implicating the appellant. In cross-examination, however, such doctor proceeded to state that, the dying declaration was not recorded due to the grievous nature of injury. Injury report prepared by such doctor attending the victims was tendered in evidence and marked as Exhibit-27. Such injury report marked as Exhibit-27 is in the handwriting of such doctor and it proceeds to record the declaration of the father of the appellant implicating the appellant.
47. The three oral dying declarations read with the written dying declaration being Exhibit-27 do not contradict each other. Even, if for the sake of argument, if we discount Exhibit-27 which we should not, then also the oral dying declaration stands.
48. In such circumstances, we are of the view that the prosecution was able to conclusively establish the involvement of the appellant in the murder of his parents.
49. In any event, the inability of the appellant to explain the death of the two victims, in the manner as noted above,

after he acknowledges that he was present at the place of occurrence at the material point of time is a factor to be taken into consideration as adverse to him. In our view, he failed to discharge his obligation under Section 106 of the Evidence Act, although, there is evidence of the prosecution witnesses which categorically states that, he did not use to live with his parents at the rented house and was seen to flee therefrom.

50. The offending weapon was recovered on the leading statement made by the appellant. Leading statement of the appellant was tendered in evidence and marked as Exhibit-33. Recovery was videographed and tendered in evidence and marked as an exhibit. Wearing apparel of the appellant was seized, sent for forensic examination and the report is that, it contained human blood. Forensic report of the offending weapon also said that, there is human blood on it. In such conspectus, we are of the view that the prosecution was able to establish beyond reasonable doubt that, the appellant was the murderer of the two victims.
51. Judgment of the Supreme Court reported in **(2023) 2 SCC 353 [Manoj vs. The State of Madhya Pradesh]** requires the Court considering awarding death penalty to seek a psychology report of the accused. It is of the view that, the crime and the criminal test should be applied to find out if

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there was any mitigating circumstance and the nature of the aggravating circumstances. The Court should arrive at a finding that the incident was rarest of the rare cases. State should also produce materials before the Court that, the accused was beyond reformation.

52. We find from the records that, the appellant is presently 26 years of age. He is married. There is a child born out of the wedlock and that, the age of the child is presently about five years. There is no criminal antecedent so far as the appellant is concerned. Report called for by us by our earlier order from the State with regard to the mental condition of the appellant in terms of the paragraph 250 of **Manoj & Ors. (supra)** does not say that the appellant is beyond reformation.
53. Age of the appellant, his marital status with a child of a five years of age being present, there being no criminal antecedent and the State not saying that the appellant is beyond reformation, we are minded to commute the death penalty on applying the crime and criminal test. We are not in a position to arrive at a finding that, the aggravating circumstances are 100 per cent negative as against the appellant and that, there is nothing so far as the mitigating circumstances are concerned, in favour of the appellant. Twin murder is involved. We are not in a position to arrive

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at a finding that the same were so gruesome so as to be classified as rarest of rare cases. Both the victims were removed to the hospital alive, albeit, in a grievously injured state. One of the victims survived for a day. The other victim was able to make dying declaration. The report of the State does not place the appellant beyond reformation.

54. In such circumstances, we commute the death sentence of the appellant to one of life imprisonment. We also impose a fine of Rs.50,000 (Rupees Fifty Thousand) only. In default of payment of which, the appellant will undergo a rigorous imprisonment for a further period of one year.
55. A person who is not connected with the trial, applied for various reliefs by way of IA No.: CRAN 1 of 2025. Applicant therein claims to be the elder brother of the father of the appellant and seeks a direction that the shop room belonging to the father of the appellant be made over to him.
56. We are of the view that, it is entirely a civil dispute and that, we need not enter into the issue. On death of the victims, appellant succeeds to their properties. The shop room is apparently one of such property.
57. A copy of this judgment along with the Trial Court records be remitted to the appropriate Trial Court forthwith. In view of the commutation of the death penalty of Nilkanta

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Saha @ Neelkanta Saha, any warrant issued by the appropriate Court with regard thereto in respect of Nilkanta Saha @ Neelkanta Saha stands modified in terms of this judgment and order.

58. Department will inform the Correctional Home, where the appellant is lodged, as to this judgment and order.
59. The Correctional Home will record the fact of commutation of death penalty to the sentence awarded by this judgment and order in respect of Nilkanta Saha @ Neelkanta Saha, in their records.
60. Period of detention already undergone by the appellant shall be set off against the substantive punishment in terms of the provisions contained in Section 428 of the Code of Criminal Procedure.
61. Consequently, DR 2 of 2024 along with the appeal being CRA (DB) 248 of 2024 and IA NO: CRAN 1 of 2025 are **disposed of**.

(Debangsu Basak, J.)

62. I agree.

(Md. Shabbar Rashidi, J.)