

**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

D.R. 5 of 2023

The State of West Bengal

vs.

Utpal Behera @ Manoj

For the State : Mr. Debasish Ray, Ld. P.P.
Mr. J. Roy, Advocate
Mr. Kunar Ganguly, Advocate

For the Convict : Mr. Sandipan Ganguly, Ld. Senior Advocate
Mr. Arijit Bhushan Bagchi, Advocate
Mrs. Priyanka Sarkar, Advocate
Mr. Debayudh Ganguly, Advocate

Heard on : 16.06.2025

Judgment on : 16.06.2025

DEBANGSU BASAK, J.:-

1. Death reference is directed against the judgment of conviction dated August 22, 2023 and order of sentence dated August 24, 2023 passed in Sessions Serial No.182 of 2023 by the learned Sessions Judge, Fast Track Third Court, Berhampore, Murshidabad.

2. By the impugned judgment of conviction, learned Trial Judge found the convict guilty of offences under Sections 302/201 of the Indian Penal Code, 1860 and by the impugned order of sentence, learned Trial Judge awarded death penalty as against the convict.
3. Learned Senior Advocate appearing for the convict submits that, the prosecution was unable to establish the charges as against the convict beyond reasonable doubt. He submits that, the case of the prosecution is based on circumstantial evidence. Circumstantial evidence were insufficient to prove guilt of the convict.
4. Learned Senior Advocate appearing for the convict submits that, the so-called forensic evidence should not be relied upon. He points out that, there was a delay of 10 days in the scientific officer visiting the place of occurrence. This delay, according to him, is fatal, as the place of occurrence was interfered with in the meantime. Atleast, prosecution did not establish that, the place of occurrence was kept sanitised for the entirety of the period till such time scientific officer visited such place of occurrence. Consequently, according to him, risk of tampering, contamination, alteration and loss of evidence cannot and should not be ruled out. He submits that, the delay impacted the quality of the investigation.
5. Learned Senior Advocate appearing for the convict submits that, the custody of the so-called seized materials as also the place of occurrence,

was not established appropriately. He contends that, the investigation conducted was perfunctory.

6. Learned Senior Advocate appearing for the convict submits that the testimony of the prosecution witness P.W.15 is unreliable. Police showed the photograph of the convict to P.W.15 before the test identification parade. Therefore, the identification of the convict at the test identification parade should be ignored.
7. Learned Senior Advocate appearing for the convict submits that, Forensic Science Laboratory (F.S.L) report of the alleged apparels of the convict do not confirm the blood stains.
8. With regard to the death reference awarded, learned Senior Advocate appearing for the convict submits that, possibility of reformation was not ruled out by the State. State did not produce materials in terms of **Manoj & Ors. Vs. State of Madhya Pradesh** reported in **(2023) 2 SCC 353** before learned Trial Judge. He submits that, Trial Court failed to apply crime and the criminal test in order to arrive at the finding as to whether death penalty was required or not.
9. Learned Senior Advocate appearing for the convict submits that, in such circumstances, the convict should be acquitted and in the alternative, the death penalty should be commuted.
10. Learned Public Prosecutor submits that, the prosecution was able to prove the charges as against the convict, beyond reasonable doubt. He submits

that, three persons, namely, Bandhu Prakash Pal (Husband), Beauty Pal (Wife) and Arya Pal (Son) were murdered by the convict. Convict was found at the place of occurrence by two ocular witnesses. Such persons gave evidence and identified the convict as the person who was found inside the room with the victims at the time and place of occurrence.

11. Learned Public Prosecutor submits that, the forensic evidence establishes the crime of the convict. He submits that, the fingerprint of the convict was found on the murder weapon. Murder weapon was seized at the place of occurrence. The bag in which, the murder weapon was brought to the place of occurrence was identified by one of the prosecution witnesses as belonging to the convict. Moreover, other prosecution witnesses established that, the convict obtained the murder weapon.
12. In such circumstances, learned Public Prosecutor submits that, judgment of conviction and the order of sentence should not be interfered with.
13. Convict was charged with the murder of three persons, namely, Bandhu Prakash Pal (Husband), Beauty Pal (Wife) and Arya Pal (Son) who were members of the same family. The wife (Beauty Pal) was pregnant at that time.
14. To bring home charges of murder, prosecution examined 42 witnesses and tendered various documents as well as the materials which were marked as exhibits at the trial.

15. Post Mortem Report of the three victims, namely, Bandhu Prakash Pal (Husband), Beauty Pal (Wife) and Arya Pal (Son) being Exbt.31, Exbt.32 and Exbt.33 read with the deposition of the Post Mortem doctor being prosecution witness P.W.12 establishes that, the victims, namely, Bandhu Prakash Pal (Husband), Beauty Pal (Wife) and Arya Pal (Son) were murdered.
16. Post Mortem Report being Exbt.31, Exbt.32 and Exbt.33 as well as the deposition of the doctor conducting the Post Mortem of the three victims, namely, Bandhu Prakash Pal (Husband), Beauty Pal (Wife) and Arya Pal (Son) states that, injuries suffered were ante mortem in nature and were caused by heavy weapon having sharp cutting edge.
17. A weapon bearing such description was seized at the place of occurrence which was tendered in evidence and marked as Material Exbt.II. Forensic evidence so far as fingerprint i.e. Material Exbt.II were taken and found to match with that of the convict. This evidence was established at the trial by the forensic officer deposing as to the same.
18. P.W.12 stated that Material Exhibit II could be used to inflict the injuries resulting in the death of the victims.
19. P.W.9 and P.W.11 saw the convict to run away from the place of occurrence. P.W.9 and P.W.11 identified the convict in the test identification parade held on November 2, 2019 which is about 15 days from the date of his arrest.

20. A black coloured bag of the convict was found at the place of occurrence which was identified by the P.W.20 to be belonging to the convict. Black coloured bag was forensically examined. It contained rust particles which was found on the heavy sharp cutting weapon being Material Exhibit II.
21. Of the three victims, namely, Bandhu Prakash Pal (Husband), Beauty Pal (Wife) and Arya Pal (Son), the wife (Beauty Pal) was pregnant. She was an Insurance Agent. Husband (Bandhu Prakash Pal) and the convict before us were looking after the insurance policy of the father of the convict. The insurance policy booklet of the father of the convict was found at the place of occurrence.
22. Presence of the convict at the time and place of occurrence were conclusively established by the prosecution at the trial, as noted above.
23. At the trial, prosecution examined the manufacturer of the sharp cutting weapon being P.W.10 who deposed that victim required him to manufacture it. P.W.10 identified Material Exhibit II being the heavy sharp cutting weapon used by the convict as the weapon which the convict purchased from him.
24. Police seized T-shirt worn by the convict when fleeing away from the place of occurrence. Such T-shirt was identified to be worn by the convict at the date of occurrence that is on October 8, 2019.
25. P.W.15 deposed at the trial that, a black coloured shirt was purchased by the convict on October 8, 2019 while wearing a vest and a Bermuda. This

establishes that T-shirt was not with the convict when he was with P.W.15. P.W.15 identified the black coloured shirt, vest and the burmuda were of the convict.

26. CCTV footage which was introduced in evidence by the prosecution establishes that, a male carrying a black bag and wearing an off-white pant and white black coloured printed T-shirt at the ferry ghat near the place of occurrence. The exit of ferry ghat CCTV footage shows that, the same male person was wearing a burmuda pant and a vest. CCTV footage was tendered in evidence. It establishes the convict to be using the ferry ghat for entry and exit.
27. At the trial, it is established that, P.W.11 initially, came to the house where the victims namely, Bandhu Prakash Pal (Husband), Beauty Pal (Wife) and Arya Pal (Son) were found dead. He opened the window and found the husband (Bandhu Prakash Pal) to be lying on the floor. He raised a hue and cry whereupon P.W.9 came to the place of occurrence. P.W.9 tried to enter the house where the victims, namely, Bandhu Prakash Pal (Husband), Beauty Pal (Wife) and Arya Pal (Son) were lying, whereupon, they found the convict inside. P.W.9 raised hue and cry. When P.W.9 turned his back towards the convict, the convict fled away from the place of occurrence. Local persons to apprehend the convict gave chase. However, they failed.

28. Both P.W.9 and P.W.11 identified the convict at the test identification parade which was held within 15 days from the date of arrest of the convict.
29. In such circumstances, we are of the view that, the prosecution was able to establish the charge of murder as against the convict beyond reasonable doubt.
30. Prosecution was also able to establish at the trial that, the convict, while fleeing threw away T-shirt at the bush which was subsequently recovered. Therefore, prosecution also was able to establish that the convict was also guilty of destruction of evidence.
31. Learned Trial Judge imposed death penalty as against the convict taking into account the fact that there are three murders with the wife, Beauty Pal being pregnant at the time of the murder and a child of seven years, namely, Arya Pal being murdered. Learned Trial Judge was of the view that, murder was brutal and therefore, classified the same as the rarest of rare cases.
32. Materials placed before us do not suggest that, the prosecution was able to establish that the convict was beyond reformation at the time when the death penalty was awarded to the convict.
33. Be that as it may, we called upon the State to evaluate the convict on the psychological parameters as also on parameters delineated in paragraph-250 of the **Manoj & Ors (supra)**.

34. Report of the State does not establish conclusively the fact that the convict before us is beyond reformation.
35. The report of the State proceeds on the basis that, the convict before us is about 26 years of age. Therefore, on the date of incident, the convict was about 19 years of age.
36. Age is a factor which is to be considered at least on the criminal test. So far as the age of the convict is concerned, it is a mitigating circumstance to him. Moreover, as noted above, State is not in a position to establish that the convict is beyond reformation. There is no criminal antecedents of the convict. Behaviour of the convict post his custody is such that it is to be taken a mitigating circumstance.
37. Although three murders are involved and one of the victims, namely, Beauty Pal (wife) being pregnant and the other victim being a minor, namely, Arya Pal (son), then also, the murders cannot be classified as the rarest of rare cases. A heavy sharp cutting weapon was used for the purpose of inflicting the injuries on the victims, namely, Bandhu Prakash Pal (husband), Beauty Pal (wife) and Arya Pal (son) which led to their death. We should also take into account the mitigating circumstances.
38. In such conspectus we are not minded to confirm the death penalty awarded by the learned Trial Judge. We commute the death penalty to one of life imprisonment. Since we are commuting the death penalty, we impose a fine of Rs.10,000/- (Rupees Ten Thousand) on the convict.

Default of payment of the fine will entail a further incarceration for a period of six months.

39. Sentences imposed will run concurrently.
40. Period of custody undergone during investigation, trial and post conviction, should be set off against the sentence imposed under Section 428 of the Criminal Procedure Code.
41. A copy of this judgment along with the Trial Court records be remitted to the appropriate Court forthwith. In view of the communication of the death penalty of Utpal Behera @ Manoj, any warrant issued by the appropriate Court with regard thereto in respect of Utpal Behera @ Manoj stands modified in terms of this judgment and order. Department will inform the Correctional Home, where the appellant/convict is lodged, as to this judgment and order. The Correctional Home will record the fact of commutation of death penalty to the sentence awarded by this judgment and order in respect of Utpal Behera @ Manoj, in their records.

(Debangsu Basak, J.)

42. I agree.

(Md. Shabbar Rashidi, J.)