

**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. 06 OF 2023

THE STATE OF WEST BENGAL

... APPELLANT

Vs.

SUNIL DAS@ HARI CHARAN DAS

@ HARI BABA @ SWARUP ROY @ GURUDEV

... RESPONDENT

With

CRIMINAL APPEAL (DB) NO. 191 OF 2024

CRAN 1 of 2024

SUNIL DAS@ HARI CHARAN DAS

@ HARI BABA @ SWARUP ROY @ GURUDEV

... APPELLANT

Vs.

STATE OF WEST BENGAL

... RESPONDENT

For the Appellant

: Mr. Kallol Mondal, Sr. Adv.
Mr. Krishan Ray, Adv.
Mr. Souvik Das, Adv.
Mr. Anamitra Banerjee, Adv.
Mr. Akbar Laskar, Adv.

For the State

: Mr. Debasish Roy, Ld. P.P.
Mrs. Amita Gaur, Ld. Sr. Govt. Adv.
Ms. Rajnandini Das, Adv.

Hearing concluded on

: 20.08.2025

Judgment on

: 18.09.2025

MD. SHABBAR RASHIDI, J.:-

1. The Death Reference and the appeal have emanated out of the impugned judgment of conviction dated August 28, 2023 and the order of sentence dated August 29, 2023 passed by learned Additional Sessions Judge, Rampurhat, Birbhum, South 24-Parganas, in Sessions Trial No. 06 (February) of 2021 arising out of Sessions Case No. 72 of 2020.

2. By the impugned judgment, the convict was found guilty and was convicted of the offences punishable under Sections 376/201/302 of the Indian Penal Code, 1860. By the impugned order of sentence, the convict was sentenced to suffer imprisonment for life and a fine ₹10,000/- and in default of payment of fine, the convict was directed to suffer rigorous imprisonment for a further period of 6 months for the offence punishable under Section 376 of the Indian Penal Code. The convict was further sentenced to suffer rigorous imprisonment for 7 years and a fine ₹5,000/- and in default of payment of fine, the convict was directed to undergo rigorous imprisonment for a further period of 3 months for the offence punishable under Section 201 of the Indian Penal Code. The convict was also sentenced to death penalty and a fine of ₹20,000/- for the commission of offence punishable under Section 302 of the Indian Penal Code. The other accused Kakali

Patra @ Guruma was however, found not guilty of the charges and was acquitted by the learned trial Court.

3. The learned advocate for the appellant submitted that the case is entirely based on circumstantial evidence. There is no direct ocular evidence in support of the case of prosecution to establish the offences of rape and murder. It was submitted that the prosecution has not been able to establish the chain of circumstance so closely knit to point out the guilt of the appellant only, to the exclusion of anyone else. Referring to evidence of PW 34, learned advocate for the appellant submitted that the incident allegedly occurred on May 17, 2020 and it was reported to the police on May 18, 2020 whereas PW34 claimed to have conducted inquest over the dead bodies on May 17, 2020 itself. According to learned advocate, such facts lead to material contradiction as to how inquest was conducted over the dead bodies even before the incident was reported to the police.

4. Learned advocate for the appellant also pointed out that initially, in the First Information Report, allegation were against the husband of the deceased namely Milon Mondal. He was arrested in connection with the case and was in custody for a considerable period. All of a sudden, the allegations were turned towards the present appellant and the prosecution has offered no explanation in this regard.

5. Learned advocate for the appellant further submitted, in reference to the evidence of prosecution witnesses, more specifically,

PW1, PW2, PW3, PW4, PW6 and PW7 that there were admitted material contradictions in the testimony of such witnesses vis-à-vis their statements recorded under Section 161 of the Code of Criminal Procedure so far as it related to the transaction of money between the appellant and the victim, the performance of the rituals of 'Jogya' as well as the conduct of the appellant. The identification of the appellant by such witnesses and attribution of the motive for commission of the offence was based on hearsay information. According to learned advocate for the appellant, statement of such witnesses ought not to have been relied upon to secure conviction of the appellant.

6. Learned advocate for the appellant further submitted that the alleged confessional statement of the appellant was not voluntary, rather an outcome of coercion and as such, the same cannot be relied upon. The appellant was arrested after four months of the incident and thereafter, such statement was recorded. Moreover, according to learned advocate, the statement of the appellant recorded under Section 164 of the Code of the Criminal Procedure, revealed a hypothesis quite contrary to the case of the prosecution. Furthermore, the articles recovered from the house of the victims were visible and accessible to all since the house was under the control of police since May 18, 2020. A third party intervention cannot be ruled out. There was also no forensic report in respect of the recovered articles to be

the articles used by the appellant in the commission of the crime involved in this case.

7. Learned advocate for the appellant also contended that the medical examination report/post mortem report does not establish the offence of rape. In fact, no evidence was led at the trial to link the appellant with the victims of alleged crime. For the aforesaid blemishes in the case of the prosecution, it was contended by learned advocate for the appellant, the impugned judgment of conviction and order of sentence deserves to be set aside.

8. On the other hand, learned advocate representing the State submitted, referring to the evidence of PW6, PW7 and PW10, that there is sufficient evidence on record that the appellant was last seen together in the company of victims within a reasonable proximity of time. The appellant never endeavoured to discharge his obligation in terms of Section 106 of the Indian Evidence Act. An adverse inference against the appellant necessarily follows. It was submitted by learned advocate for the State that the prosecution has been able to sufficiently establish the charges levelled against the appellant with the help of evidence led at the trial. He referred to exhibit 28 and exhibit 29 as well as evidence of PW18, PW19 and PW20 to contend that the appellant was faced with similar kind of allegation and another case, in this regard, was registered against him in Mayureswar police station. Learned advocate for the State stood by the

impugned judgment and order. However, no material could be placed to establish that the appellant is beyond reformation.

9. One of the victims (hereinafter to be referred as F1) was married to one Milon Mondal and they had a 17 years girl child i.e. the other victim (hereinafter to be referred as F2), out of such wedlock. F1 had strained relations with her husband which she frequently used to inform her sister i.e. the de-facto complainant. On May 17, 2020 in the afternoon at about 2.00 p.m. the de-facto complainant was informed over telephone that her sister, F1 and daughter of such sister were murdered. Hearing the news, the de-facto complainant, rushed to the house of her sister and found that the dead bodies of her sister and niece were being taken for post mortem examination. The de-facto complainant lodged a written complaint to the officer-in-charge of Mollarpur police station, over the incident stating interalia that her sister and niece were killed by her brother-in-law with others.

10. On the basis of such written complaint, Mollarpur PS Case No. 64 of 2020 dated May 18, 2020 under Sections 498A/302/201/120B/34 of the Indian Penal Code, 1860 was started against one Milon Mondal. The police took up investigation of the case and on completion of such investigation, submitted charge sheet against the present appellant Sunil Das and one Kakali Patra. The original accused Milon Mondal was not charge sheeted and was not sent up for trial. Accordingly, on the basis of materials in the case diary, charges

under Sections 120B/302/201/376/34 of the Indian Penal Code were framed against the appellant on February 4, 2021. Separate charges under Sections 120B/302/201/34 were framed against one Kakali Patra @ Guruma.

11. In order to substantiate the charges, levelled against the appellant, prosecution examined as many as 34 witnesses. In addition to the ocular evidence, prosecution also relied upon certain documentary as well as material evidences.

12. The de-facto complainant herself deposed as PW1. She stated that the two victims were her sister and niece. Her sister, who was an employee of Food Supply Department, was married to Milon Mondal and thereafter, they started living in matrimony upon construction of a dwelling house. Her sister and niece were murdered. She further stated that after hearing the news, PW1 went to the house of her sister. The two dead bodies were taken for post mortem examination. On the following day, she lodged a written complaint with Mollarpur police station. She proved her signature on the written complaint.

13. In her deposition, PW1 also stated that her niece sustained burn injuries. Burn spots had developed on her body. Her sister engaged one 'Sadhubaba' to cure the spots. She identified the appellant in court as the 'Sadhubaba'. She further stated that it was reported by her deceased sister that she gave ₹83,000/- to the appellant and had agreed to pay another ₹61,000/- to the appellant. The appellant had

demanded ₹1,44,000/- for curing the burn spots on the body of victim F2 upon performing a 'Joggo'. However, the burn spots were not cured rather; the victims were murdered by the appellant. She stated that being mentally disturbed over the death of her sister and niece, she could not lodge the written complaint on the day when the dead body was found and sent for post mortem examination. PW1 was cross examined on behalf of the appellant.

14. One nephew of the victim F1 deposed as PW2. He stated that on May 17, 2020 he received a phone call about a mishap at the house of Milon Mondal. He rushed to the place of occurrence and found that the two victims were murdered. Dead body of F1 was in the eastern room on the first floor of the house of Milon Mondal, tied with ropes and covered with blanket and quilt, and that of F2 was in the left side varandah on the ground floor of the house also tied with rope. He also stated that police conducted inquest over the dead bodies. He proved his signature on such reports. Police also seized blood stained quilt, 'Kantha' and piece of cloth from the place of occurrence. PW2 proved his signature on the seizure list dated May 18, 2020 and identified the seized articles in court which were marked as Mat. Exhibits I, II and III. PW2 identified the appellant in court. PW2 also stated that he came to know that the victim F2 sustained burn spots on her body and the appellant undertook to cure the spot in lieu of money. He also

heard that money was paid to the appellant and when he failed to cure the spots, F1 demanded the money back.

15. In his cross examination, PW2 admitted that he did not know the appellant from before and he could identify him in court, being in dock. He also stated that he had no knowledge of the quantum of money paid to or demanded by the appellant. He also acknowledged that police had reached the place of occurrence before his arrival.

16. A villager of Milon Mondal deposed as PW3. He stated that on May 17, 2020 the wife and daughter of Milon Mondal were murdered. Hearing the news, when he came to the house of Milon Mondal, he noticed that police had already arrived. He saw the dead body of F1 tied with rope and wrapped in a quilt lying on the first floor of the house. The dead body of F2 with bleeding from her mouth was lying on the ground floor wrapped in a piece of cloth. However, Milon Mondal was not present there. He submitted a writing seeking post mortem examination of the dead bodies which he proved as exhibit 5. PW3 also stated that police seized a 'Kantha', quilt and piece of cloth, all stained with blood under a seizure list. He proved his signature on the seizure list dated May 18, 2020. He also identified the seized 'Kantha', quilt and piece of cloth in court.

17. PW3 also stated that he heard that the victim F2 sustained burn spots on her body and the appellant undertook to cure the spots in lieu of money. He also heard that Milon Mondal paid money to the

appellant for holding a Joggo in his house and murdered the victims. He further stated that though he did not see the incident but seeing the dead bodies he firmly believed that the victims were murdered by the appellant. PW3 identified the appellant in Court and stated that he had seen his Ashram.

18. Another nephew of Milon Mondal was examined as PW4. He knew Milon Mondal and the two victims as wife and daughter of Milon Mondal. The victim F1 was an employee of Food Supply office. He stated that the wife and daughter of Milon Mondal were murdered. He came to know on May 17, 2020 that the dead bodies of the two victims were found in the house of Milon Mondal. Initially, the suspicion of murder was against Milon Mondal because he was found absent after the incident. But when Milon Mondal emerged, it was learnt that the murder was committed by Sadhubaba and his associate. PW4 identified the accused persons in Court.

19. PW4 also stated that 3/4 years prior to the incident, his cousin sister, F2 sustained burn injuries on the occasion of Durga Puja resulting in burn spots on her body. She underwent several treatments for such spots but could not be cured. Later, the appellant came in contact with Milon Mondal and assured to cure the burn spots of F2 by performing a 'Joggo'. He demanded ₹1,80,000/- out of which ₹80,000/- was paid by F1 to the appellant for such purpose. Accordingly, the appellant made arrangements for Joggo in the house

of Milon Mondal. In the night of performing Joggo, the victims were murdered by the accused persons including the appellant. PW4 was reported by F1 that she paid ₹80,000/- to the appellant. Since the burn spots on the body of F2 could not be cured, F1 demanded the money back for which they were murdered.

20. PW4 further stated that after getting the news, he went to the house of his uncle. He found the dead body of his aunt in the eastern room on the first floor of the house, covered with a quilt whereas, that of his cousin sister was in the left side room on the ground floor. Police conducted inquest over dead bodies in his presence. He proved his signature on the inquest report. Police also seized 'Kantha', quilt and a piece of cloth under a seizure list. He proved his signature on such seizure list dated May 18, 2020.

21. A relative of Milon Mondal deposed as PW5. Milon Mondal was the son of his maternal uncle. He stated that he heard the wife and daughter of Milon Mondal were murdered and he saw the dead body of F1 on the upper floor and that of F2 on the ground floor. PW5 also proved his signature on the inquest report and on the seizure list through which 'Kantha', quilt and a piece of cloth were seized. He also identified the seized articles in court. PW5 further stated that he heard of certain disputes between F1 and the 'Sadhubaba'. He identified the 'Sadhubaba' in Court.

22. A neighbour of F1 was examined as PW6. He also knew the daughter of F1. Both F1 and F2 were murdered. He stated that about 3/4 years prior to the incident, F2 sustained burn injuries on Saptami day of Durga Puja, at her house. She was medically treated for the said injuries by several doctors but could not be cured completely. In order to cure F2, her mother gave money to the appellant for offering 'Joggo'. It was agreed that F1 would pay ₹1,61,000/- to the appellant for the Joggo, out of which ₹83,000/- was already paid to the appellant in instalments. PW6 also stated that the appellant used to visit the house of Milon Mondal. F2 was not cured by appellant for which, F1 demanded the money back. The appellant threatened F1 to kill her, and lastly, 3/4 days prior to the incident, PW6 heard the appellant threatening F1 to kill her. He also heard frequent altercations between F1 and the appellant.

23. PW6 further stated that he came to know about the murder at about 12.00/12.30 p.m. on May 17, 2020 and went to the house of Milon Mondal. He found the dead body of F1 lying on the floor of eastern side room on the first floor covered with thick cloth like blanket. The dead body was stained with blood and mouth of F1 was filled with cloth. The dead body of F2 was found in the eastern side cover space of the house lying on the ground and tied with ropes. Milon Mondal, the husband of F1 was however, not found there. PW6 also stated that 2/3 days prior to the discovery of dead bodies, he saw

the appellant entering the house of F1 in the night accompanied by the other accused Kakali. PW6 also stated that 3/4 days after the incident, he accompanied the forensic expert to the house of victims when certain articles were seized under a seizure list. He proved his signature on the seizure list dated May 19, 2020. He identified the appellant in Court.

24. Another neighbour of the victims deposed as PW7. He stated that he heard that the victims were murdered by the appellant whom, he identified in Court. He further stated that about four years prior to the incident, the victim F2 sustained burn injuries on her lower parts. In spite of treatments, she could not be cured. Thereafter, the victim F1 came in contact with the appellant who assured her curing her daughter. There was a contract for payment of ₹1,61,000/- for such treatment, out of which F1 paid a sum of ₹84,000/- to the appellant in instalments. The appellant performed Joggo at the house of F1 and gave herbal products but F2 could not be cured. Thereafter, F1 demanded the money back. The appellant threatened to kill her. PW7 claimed to have heard altercations between the appellant and F1 4/5 days prior to the incident. After 2/3 days of such altercations, PW7 saw the appellant and other two persons entering into the house of F1 for the purpose of performing 'Joggo'. PW7 also stated that he heard that the appellant administered medicines to F1, F2 and Milon Mondal.

25. PW7 also stated that the appellant kept Milon Mondal in a separate room on the ground floor whereas; F1 and F2 were kept in separate room on the first floor of the house. He also stated that one day after the 'Joggo' was performed, he saw the appellant accompanied by Milon Mondal leaving his house by a scooty. On that very day, at about 12.00/1.00 p.m. police came to the house of F1 and PW7 heard that F1 and F2 were murdered. Hearing the news he went there and found the dead body of F1, her hands tied with ropes and mouth gagged with cloths, lying on the floor in a pool of blood. The dead body of F2 was found lying on the ground floor with her hands being tied with rope. PW7 also stated that police arrived at the spot and collected blood samples under a seizure list. He proved his signature on the seizure list dated May 19, 2020. Later on, police again came to the place of occurrence with the appellant who narrated as to how he perpetrated the crime. Several articles were seized by police as shown by the appellant. PW7 proved his signature on the seizure list dated July 23, 2020. He also identified the seized articles which were marked as Mat. Exhibits IV, V, VI, VI/I, VII, VII/I and VIII. He was interrogated by police and he narrated the incident what he heard from the mouth of the appellant.

26. The scribe of the written complaint was examined as PW8. He stated that he scribed the written complaint at the instructions of PW1

which he read over and explained to such complainant. He proved the written complaint which was admitted in evidence as exhibit 1/1.

27. A professional photographer was examined as PW9. He stated that he went to schoolpara on July 23, 2020 and July 24, 2020 as per the request of police. The appellant was accompanying the police when he prepared the videography. He further stated that on July 24, 2020, the appellant showed the police as to how he threw away the strip of medicines namely 'cetzine' and 'alzoem' from the house of Milon Mondal through the eastern side window on the first floor of the two storied building. PW9 prepared videography of event through his camera and copied the video from his camera chip to a pen drive which he handed over to the police. Police seized the pen drive under a seizure list. PW9 proved his signature on such seizure list (exhibit 8) and the pen drive (Mat. Ex. IX). He identified the appellant in Court.

28. A local resident deposed as PW10. He claimed to identify Milon Mondal, his wife and daughter. He stated that on the day the dead bodies were recovered, he saw the appellant, Milon Mondal and one another person going with a scooty at about 4.30 a.m. PW10 saw them coming from the side of the house of Milon Mondal and were moving towards Mallarpur market. He identified the appellant in Court.

29. One of the persons who discovered the dead bodies deposed as PW11. He also claimed to know the two victims. He stated in his deposition that Milon Mondal, the husband of F1 was a homeopathy

practitioner. PW11 and one Ratnakar Mondal paid money to Milon Mondal to buy some medicines. He called Milon Mondal over telephone to know if he had brought the medicines but Milon Mondal did not pick up the phone. Whereupon, PW11 went to his house at about 12.00/1.00 p.m. on May 17, 2020 and found the main gate of the house open. He called Milon Mondal but received no response. Since Milon Mondal used to reside on the first floor, PW 11 went to the first floor of the house and found all the fans and lights were on. He also found the articles in the room in a scattered condition. The other room was closed. PW 11 also stated that on opening the closed room, he found a body covered with pillow and mattress under the quilt. PW 11 came downstairs and contacted the sister and her husband over telephone. They informed the police. On arrival of police and villagers, the police uncovered the face of the said body whereupon it was detected that the body was of the wife of Milon Mondal. Thereafter police came downstairs and on the ground floor the body of F 2 was found in the covered balcony. The hands and legs of F 2 were tied with ropes. Milon Mondal was not present at that time nor was his scooty there.

30. PW 11 also stated that for the absence of Milon Mondal, he along with others suspected that the murder was committed by Milon Mondal. After two months of the incident, police arrested the appellant. He further stated that in his presence, police reconstructed

the scene which was video graphed. PW 11 also stated that during such reconstruction of the scene, the appellant disclosed that the victim F 2 sustained burn injuries three years ago on the occasion of Saraswati Puja. The appellant assured that he will cure the burn injuries of the victim and for such reason, he demanded ₹63,000/- out of which he had already received ₹80,000/- to ₹85,000/-. When the victim was not cured, the victim demanded the money back. PW 11 also stated that the appellant gave out that the victim would be cured by one Swarupbaba and talked to the victim pretending himself to be such Swarupbaba. At the time of reconstruction of crime scene, the appellant spoke in the voice of such Swarupbaba. He further stated that on May 15, 2020, the appellant came to the house of Milon Mondal and asked the victims to observe fasting for Home Joggo at their house. For such purpose, the appellant directed to prepare a list of cashew nut. The appellant brought Cetzine and Alzolem medicines which he mixed with the paste to be eaten by the victims as per Prasad. He also directed Milon Mondal to stay on the ground floor and the two victims were kept in separate rooms of first floor.

31. PW 11 also stated that at the time of reconstruction of scene, the appellant also disclosed that he committed rape upon F 2 once and when he was trying to commit rape for the second time, F 1 regained her senses. At that time the appellant murdered F 1 with a sharp cutting weapon used for cutting fruits. The appellant also disclosed

during a reconstruction of scene that after committing murder of F1, when the appellant was cleaning the blood stains, F2 also regained senses and asked to see her mother. The appellant told her that she could see her mother if her father permits and brought F2 on the ground floor. Reaching the covered balcony, the appellant committed murder of F2 by pressing his feet against her throat. At that time, Milon Mondal was sleeping being administered with sleeping drugs by the appellant. The appellant also disclosed in the reconstruction of scene that after committing murder of F1 and F2, he took out ₹63,000/- from the almirah. PW11 also stated that the appellant entered into the house of Milon Mondal in the evening of May 15, 2020 and left therefrom at the dawn of May 17, 2020 taking along Milon Mondal on pretext of bringing soil from five places in the name of 'Gog Shiva'. In the reconstruction of scene, the appellant also disclosed that meanwhile; the appellant went to his 'Astana' on one day to change his dress and returned. Milon Mondal kept wandering during these days in search of soil and stayed in the Ashram.

32. PW11 further stated that the appellant also disclosed that he took Milon Mondal to a Kali Temple at Santsal and asked him to bring a lotus for offering Puja. The daily priest of such Kali Temple informed Milon Mondal that wife and daughter of the brother of Ashoke Mondal were murdered. He also showed how the appellant prepared drink to administer to the victims and Milon Mondal. The sharp cutting

weapon i.e. 'Bonti' was identified by PW11 as the weapon which the appellant confessed to use for committing murder of F1 in the reconstruction of scene (Mat. Ext. IV). PW11 also proved his signature on the seizure lists dated May 23, 2020 through which such weapon and other articles were seized as per the leading statement of the appellant (exhibit 9 and exhibit 10). He further stated that after 2/3 days of the incident, he received a phone call from the mobile phone belonging to Milon Mondal when Milon Mondal was at the police station. The appellant later admitted that he made such call in order to divert the investigation. PW11 also proved his signature on the seizure lists dated May 24, 2020 through which the strips of unused medicines and mobile phone were seized (exhibit 11 and 12). He also identified the seized articles in Court. PW11 also recorded statement before learned Magistrate and proved his signatures on such statement. PW11 was cross examined on behalf of the appellant at length.

33. PW12 is a neighbour of Milon Mondal. He was also present when the scene of crime was reconstructed and videographed. He has reiterated and corroborated the statements made by PW11. He also testified that during the reconstruction, the appellant confessed and admitted the murder of two victims with great details. He stated that the appellant explained in the reconstruction, as to how he killed the two victims. He has corroborated that the victim F1 was murdered

with the help of a sharp cutting weapon whereas, F2 was killed by smothering. Administering of stupefying substance and that Milon Mondal was asked by him to bring some soil was also explained by the appellant. PW12 also identified his signature on the seizure lists through which sharp cutting weapon, strip of unused medicines and other articles were seized as shown by the appellant.

34. PW 13 is another neighbour. He was also present at the house of Milon Mondal when the scene of crime was reconstructed. Police and the appellant were present in such a reconstruction. He further stated that he knew Milon Mondal, his wife and daughter. He has corroborated each and every statement of PW 11 and PW 12. He stated that during a reconstruction of the scene, the appellant explained as to how he committed murder of the two victims which was recorded in a videography. He also corroborated that the appellant administered cashew nut paste with medicine to the two victims for performing home Joggo. He also corroborated that the three persons including the two victims and Milon Mondal were kept in three separate rooms. Thereafter the appellant committed rape upon F2 and murder of F1. When F2 wanted to see her mother, she was taken to the ground floor and was murdered by the appellant in the balcony. Milon Mondal was sent by the appellant for bringing some soil. PW 13 identified his signature on seizure lists through which the sharp cutting weapon,

strips of unused medicine and other articles were seized. The appellant was identified by the witness in court.

35. Another person who was present during the reconstruction of the scene was examined as PW 14. He has corroborated the statement of PW 11. He also stated that during the reconstruction of the scene, the appellant explained in great details as to how he committed murder of the two victims and sent Milon Mondal for bringing some soil. In fact, PW 14 also gave money to Milon Mondal for buying some medicine. After 3/4 days, he called Milon Mondal but he did not receive the call. Thereafter, he along with PW 11 went to the house of Milon Mondal on May 17, 2020 and found the outer gate of the house open. They called from outside but did not receive any response. Then they entered into the house and found the light and fans on. They noticed somebody lying wrapped with pillow and blanket in the right side of on the first floor. Being afraid they came down and gave a call to the brother-in-law of Milon Mondal and also the police. The sister of Milon Mondal and police came to the spot. The dead body of F1 was found wrapped with pillow and blanket. That of F2 was found on the ground floor, her hands and legs lying tied with rope. Milon Mondal was not found in the house then.

36. After two months of the incident, police came with the appellant and crime scene was reconstructed. In course of reconstruction, the appellant narrated as to how he committed murder of the two victims.

Such reconstruction of scene of crime was videographed. PW14 has described the statements of appellant during such reconstruction of scene, in great details which is in thorough corroboration of the narration of PW11, PW12 and PW13. PW14 also identified his signature on seizure lists through which the sharp cutting weapon, strips of unused medicine and other articles were seized upon the leading statement of appellant. The appellant was identified by PW14 in Court. He also recorded his statement before learned Magistrate.

37. The husband and father of the two victims, Milon Mondal deposed as PW15. He stated that his wife and daughter were murdered by the appellant. He further stated that the appellant had visiting terms at his house from a year prior to the incident. On the day of Durga Puja in the year 2015, his daughter sustained burn injuries while offering puja. PW15 got her treated for the burn spots. The appellant met him in train and advised him to get his daughter treated at Delhi. The appellant asked the husband to accompany him to Delhi for such purpose. One day, the appellant met the daughter of PW15 and upon seeing her; he assured him to cure her in 3 days and took them to a doctor at Sainthia. After 2/4 months, the appellant told PW15 that one Gurubaba namely Swarupbaba can cure his daughter. Thereafter, the appellant started visiting the house of PW15 often for the purpose of performing puja and Joggo to cure his daughter.

38. It was further stated by PW15 that the appellant demanded a sum of ₹1,61,000/- for performing 'Joggo' and medicines to cure his daughter out of which ₹83,000/- to ₹84,000/- was already paid to him between November, 2019 to March, 2020. Thereafter, lock down intervened which halted the process of treatment. Later on, the appellant came to the house of PW15 with a vessel of water and asked his wife to prepare paste of cashew nuts which she made and gave the same to the appellant. A room on the ground floor was cleaned as per the directions of appellant and the appellant performed Joggo on the floor of the room in the night of Saturday. PW15 and the two victims kept waiting for completion of Joggo as per the directions of appellant. On completion of Joggo by the appellant, he called PW15 and the two victims in succession. They all ate up the cashew nut paste given by the appellant. The appellant stayed in the house in the night and slept sharing bed with PW15 on the ground floor. The two victims were sent to first floor for sleeping. After some time, appellant left the bed and went to sleep on the floor. PW15 went to sleep and became unconscious. He could not recollect as to after how many days, he regained senses. PW15 was then woken up and asked by the appellant to go with him in a motorcycle without seeing the face of others to bring flowers from five places for the puja.

39. PW15 further stated that he started by a motor cycle with the appellant riding on pillion but he fell down after going a distance of

two houses from his house as he was not fit to drive the motorcycle. Thereafter, the appellant himself started driving the motorcycle and took PW15 to several places and temples. PW15 made a phone call at his house taking it from a toto driver but it was not responded. The appellant also gave his mobile to PW15 to hear a message by Swarupbaba, which said that his daughter was cured but mother of appellant had died. PW15 insisted to go to the house of appellant. However, the appellant took him to Tasarkata Ashram where they stayed in the night. On the following day, while PW15 was returning home with the appellant, at Kalital bus stand, the appellant left him to collect flowers for puja. PW15 kept waiting for him when the priest of the temple informed PW15 about the death of his wife and daughter. On return of the appellant, he asked about the death whereupon, the appellant told him that his wife and daughter were quite well. Thereafter, the appellant left the place with the motorcycle of PW15 on the plea of recharge of his mobile phone but he never returned. PW15, after waiting for the appellant reached Mallarpur police station from there and narrated the entire incident to the police. He was arrested and later released on bail after 90 days. He also stated that he had never seen Swarupbaba. The mobile phone of PW15 was taken by the appellant and was later recovered from his possession. He also testified that PW11 and PW14 used to come to his house often for medicines.

40. A police constable was examined as PW16. He was a witness to seizure list dated July 25, 2020 through which a pen drive was seized by the police. He proved his signature on such seizure list.

41. Another police constable who witnessed the seizure list dated July 24, 2020 deposed as PW17. Through such seizure list, one mobile phone was seized by police at the police station from PW11. He proved his signature on the seizure list.

42. A person from one 'Math' deposed as PW18. He identified the appellant in Court. He stated in his deposition that about 2 years back (from June 18, 2022), the appellant and Milon Mondal came to his 'Math' by a scooty. Milon Mondal informed him that he was told by the appellant that mother of the appellant had died, however, instead of going to his house; he brought Milon to the Math from Sainthia Gorur Hat. PW18 enquired from the appellant but he was asked to keep silent. In the night, PW18 slept in the room whereas, the appellant slept in the varandah. In the morning, he woke up and found the appellant in search of something. At that time, the appellant reported PW18 that wife and daughter of Milon Mondal were murdered. Whereupon PW18 advised him to go to police. PW18 further stated that while Milon Mondal was still asleep, the appellant left for Panuria.

43. PW18 also stated that sometime after the appellant left, he received a phone call from one Swarupbaba asking him to commit murder of Milon Mondal and throw the dead body in the pond of the

Math. It was also stated that he would collect the dead body on the following day and take it to Kolkata. Later on, Milon Mondal woke up and wanted to go to his house. PW18 made calls to the appellant to pick up Milon Mondal. After several calls, the appellant came to the 'Math' left with Milon Mondal. PW 18 did not tell Milon Mondal about the death of his wife and daughter. He claimed to be interrogated by police in connection with the case. He further stated that he knew the appellant from before and that the appellant had a plan to build an 'Ashram' in Nagara village near Paschim Gamini. He also came to know that the appellant was an accused in respect of a complaint lodged by the daughter of his uncle at Mayureswar police station alleging rape upon her.

44. PW19 stated that he used to go to the Ashram of the accused persons situated at Dakbunglow para, Mallarpur. The appellant assured him of curing diseases in lieu of ₹1,25,000/- He however, refunded ₹50,000/- as he was not able to cure his disease. The female accused used to get money from the appellant. PW19 also stated that besides himself, the appellant also received ₹1,50,000/- from one Dukru and ₹84,000/- from Milon Mondal out of a total amount of ₹1,61,000/-. The appellant failed to cure the burn spots of the daughter of PW15. As PW15 demanded the money back, the appellant threatened him. After few days, the appellant went to the house of PW15 for treatment but committed murder of his wife and daughter

on May 17, 2020 and fled away. PW19 was called at the police station after the appellant was arrested. He was interrogated by police. He identified both the accused including the appellant in Court.

45. The person referred to by PW19 deposed as PW20. He corroborated the statement of PW19 and further stated that he paid ₹1,50,000/- to the appellant in instalment for curing his disease. Such money was received by both the accused however, no receipt was given. Although, PW20 stated about payment of money to the appellant by Milon and another for curing diseases and that he committed murder of the wife and daughter of Milon Mondal but such statements are hearsay as he heard it.

46. A milk seller was examined as PW21. She stated that she used to supply milk at the house of PW15 and knew her wife and daughter who were murdered. She went to supply milk at the house of PW15 and knocked the door but no one responded whereupon she returned to her house.

47. The cousin brother of the appellant deposed as PW 22. He identified the appellant in Court. He stated that about two years ago the appellant went to his house at Metegram with a scooty and given him three mobile phones stating that his disciples gave him the response. He further stated that after the arrest of the appellant, Mallarpur police came to his house along with the appellant. The police asked PW 22 to hand over the mobile phones. The mobile

phones were seized by police under a seizure list in his presence. PW 22 proved his signature on the seizure list dated July 31, 2020 (Exhibit 16). He also identified the seized mobile phones. He was interrogated by police.

48. Another relative of the appellant deposed as PW 23. He stated that the appellant was the son of his maternal father-in-law. He further stated that the appellant gave three mobiles to his son and told that his mother had expired. After a few days, police came to his house and seized the three mobile phones under a seizure list. PW 23 put his left thumb impression on such seizure list. He also identified the seized mobile phones.

49. Another resident of Metegram deposed as PW 24. He stated that he knew the appellant who was permanent resident of Panuria. He came to the house of PW 24 by a scooty, two years ago (from June 22, 2022) and told that his disciples had given him mobile phones. He gave the mobile phones to PW 24 and others. After a few days, police came to his house with the appellant and seized the three mobile phones under a seizure list to which he signed. PW24 proved his signature on the seizure list dated July 31, 2020. He also identified the seized mobile phones produced in Court. He also heard that the appellant committed murder at Mollarapur.

50. An Assistant Sub-inspector of police of Mollarapur police station was examined as PW25. He stated that Constable Sriman Routh

handed over a packet to SI Gopal Chandra Chandra on July 22, 2022 which was seized by him under a seizure list. He signed on such seizure list which he proved.

51. PW26 is the police personnel who carried the dead bodies of the two victims to hospital for post mortem examination under dead body challans on May 17, 2020. He identified the challans.

52. The learned Judicial Magistrate deposed as PW27. He stated that he recorded confessional statement of the appellant after observing all formalities and giving the appellant statutory caution. The appellant made the statement voluntarily and he recorded the same in his pen. PW27 proved such statement (exhibit 18).

53. The medical officer who assisted in the post mortem examination over the dead bodies was examined as PW28. He stated that he assisted and concurred with the opinion of Senior Resident Ringnahring T who actually conducted the autopsy in connection with Mollarpur PS UD Case No. 18 of 2020 dated May 17, 2020 and Mollarpur PS UD Case No. 19 of 2020 dated May 17, 2020.

54. PW 28 also stated that the body of F1 was found decomposed with rigor mortis passed on. He also found blotting of face, protrusion of right eyeball, marbling over chest, abdomen and thigh, greenish discolouration of abdomen, peeling of skin at places especially over lower part of face, chest, neck, arm and hands, blood and froth from nostrils. The hands were tied at the level of wrist with a yellow cloth.

One piece of cloth gagged deep inside the mouth. Neck was loosely tied with a brown black cloth. Upon examination, the dead body of F1 was found to contain the injuries viz. :

- 1) *“Incised wound measuring 1”x .5” over right forehead 2” above supraorbital margin and 2” lateral to midline.*
- 2) *One abrasion measuring 2.5”x 1”over right posterior tip of olecranon process.*
- 3) *Incised wound measuring .5”x .5” over right middle finger at the level of middle interflangeal joint.*
- 4) *Incised wound measuring .4”x .3” over right ring finger at proximal phalanx.*
- 5) *Incised wound obliquely placed measuring .3”x .2” over right index finger on dorsal surface of distal phalanx with surrounding groups 3”x2” over base of the index, middle and ring finger.*
- 6) *Incised wound measuring 3”x .1” over posterior lateral aspect of left arm 4” above tip of olecranon process.*
- 7) *Incised wound measuring 2”x 1” obliquely placed over posterior lateral aspect of left eye 6” above tip of olecranon process.*
- 8) *Incised wound measuring 2”x 0.2” placed over posterior lateral aspect of left arm 7” above tip of olecranon process.*
- 9) *Bruise measuring 2”x 1” over left lateral chest wall along anterior axillary line.*
- 10) *Bruise measuring 2”x 1” over left chest wall 7” below tip of shoulder.*
- 11) *Incised wound measuring 2”x 0.8” over left shoulder just anterior to tip of acromion process.*
- 12) *Chop wound measuring 2.5”x 1”x bone deep over right wrist joint with fracture of lower end of ulna and dislocation of wrist joint.*

- 13) *Incised wound measuring 0.5"x 0.5" over proximal phalanx of left middle finger.*
- 14) *Incised wound measuring 0.2"x 0.2" over knuckle of left middle finger.*
- 15) *Incised wound measuring 0.5"x 0.2" over distal phalanx of left index finger.*
- 16) *Incised wound measuring 0.2"x 0.1" over distal phalanx of left middle finger."*

55. PW28 further stated that on dissection, scalp bruise all over right frontal and parietal region, subdural haemorrhage over right frontal, parietal, temporal region was found. He opined that all the injuries were ante mortem. Abrasion was non-scabbled. Extravasation of blood in and around fracture site was detected. According to PW28, the death of F1 was caused of asphyxia due to the effect gagging which were ante mortem and homicidal in nature. Time of death was opined to be between 24 to 48 hours prior to preservation of the dead body in cold storage. He proved the post mortem report of F1 as exhibit 19.

56. PW28 further stated that on the same day, he along with Dr. Ringnahrng T conducted post mortem on the dead body of F2. On such examination, he found rigor mortis was present on the lower limbs. There was evidence of blackish stains from both nostrils, tip of fingernail beds bruise in colour, face congested, old healed scar mark over lower chest wall, posterior chest wall, abdomen, and external genitalia. The body was found with a yellow and pink colour Dupatta tied around the neck tightly. One piece of loincloth was found inside

the mouth as gag material and both her hands were tied at the level of wrist joint with the pink white Gamcha. Both her legs were tied with yellow Dupatta at the level of knees. PW 28 also stated that on post-mortem examination of the dead body following injuries were found on the person of F2 that is to say: -

- 1) *“Abrasion measuring 2 cm x cm over left Ala of nose.*
- 2) *Abrasion measuring 2.5 cm x 1 cm over anterior midline of neck 3.8 cm above suprasternal notch.*
- 3) *Abrasion measuring 2 cm x 1.3 cm over right side of neck 3 cm above medial end of right clavicle and 5 cm lateral to midline.*
- 4) *Abrasion measuring 0.2 cm x 0.1 cm over left joe 2 cm above body of mandible and 6 cm left to midline.*
- 5) *One dark brown continuous ligature mark measuring 30 cm x 2.3 cm around the neck 7 cm below symphysis menti placed transversely below thyroid cartilage.”*

57. On dissection under the surface of the strangulation ligature mark was condensed parchmented. A skin over ligature mark was abraded, non-scabbled. Extravasation of blood around the tissue and neck muscle. Scalp bruise measuring 10 cm x 7.5 cm over right occipito temporal region. PW 28 opined that all the injuries were ante mortem in nature. Bruises were in red colour and the abrasions were non-scabbled. He further opined that the death of F2 was due to the effect of asphyxia caused by gagging and strangulation by ligature and were homicidal in manner. The post mortem report of F2 was proved

as exhibit 20. The viscera and other articles extracted from the two dead bodies were preserved.

58. A Sub-inspector of police deposed as PW29. He stated that on May 18, 2020 Constable Tapan Ghosh handed over the wearing apparel, viscera, scalp hair, vaginal swab etc. of the two victims to SI Indranil Sarkar of Mollarpur PS which were seized by him under seizure lists in presence of PW29. He proved his signature on such seizure lists (exhibit 21 and 22). He also proved his signature on the seizure list dated July 25, 2020 through which a pen drive containing videography was seized from one Arijit Banerjee (exhibit 8/2).

59. A NVF posted at Mollarpur PS was examined as PW30. He proved his signature on the seizure list dated July 22, 2020 (exhibit 17/1).

60. A lady constable of Mollarpur Police Station deposed as PW31. She accompanied the police to the house of victims on May 17, 2020 where dead bodies of two ladies were discovered, one from the ground floor with tied hands and one from the first floor. She assisted the police officer in conducting the inquest.

61. Another Judicial Magistrate deposed as PW32. He recorded the statement under Section 164 of the Code of Criminal Procedure of two witnesses namely Nisin Kumar Mondal and Ratnakar Mondal on July 27, 2020 in connection with Mollarpur PS Case No. 64 of 2020 dated July 18, 2020. He proved such statements (exhibits 13/2 and 15/2).

He further stated that he also recorded the confessional statement of the appellant on January 28, 2021 in connection with Sessions Case No. 72 of 2020 arising out of Mollarpur PS Case No. 64 of 2020 dated July 18, 2020. He recorded the confessional statement after observing all legal formalities and after sending him in segregation and being satisfied as to its voluntariness. He proved the confessional statement of the appellant (exhibit 23).

62. The second investigating officer of the case deposed as PW33. He was endorsed with the investigation of the case on transfer of the first investigating officer. In his deposition he has described the various steps taken by him in the investigation of the case. In his part of investigation, he examined witnesses and recorded their statements under Section 161 of the Code of Criminal Procedure and arrested the appellant. The appellant was produced before the Court with a prayer for his police custody. During the PC period, scene of crime was reconstructed with the help of appellant, video of which was recorded by one Arijit Banerjee and a pen drive containing such video was seized by PW33 under a seizure list (exhibit 8/3). He further stated that the wearing apparels of the appellant stained with blood, was recovered on the leading statement of the appellant from Gopal Ashram. The portion of leading statement of the appellant and the seizure list dated July 24, 2020 were proved by PW 33 (Exhibit 24 and 14/2). PW33 also recorded the statement of the appellant under

Section 161 of the Code of Criminal Procedure on the basis of which, mobile phone was recovered. The portion of such a statement leading to recovery of mobile phone was marked as Exhibit 25. He also proved the seizure list through which the mobile phone was seized (Exhibit 16/2). PW 33 also seized the mobile phone of PW 11 under a seizure list dated July 24, 2020 (Exhibit 12/3). The portion of statement of the appellant recorded under Section 161 of the Code of Criminal Procedure leading to recovery of the offending weapon was marked as Exhibit 26. On the basis of such a statement leading to recovery, a sharp cutting weapon (Bonti) was recovered by PW 33 on July 23, 2020 under a seizure list which was marked as Exhibit 9/3.

63. PW 33 also stated that on the basis of statement made by the appellant, certain articles like plastic bowl, steel glass, plastic bottle etc. were seized by him under a seizure list dated July 23, 2020 (Exhibit 10/3). On the basis of leading statement of the appellant, he also seized the strip of unused Cetirizine and Alzolam tablets under a separate seizure list (exhibit 11/4). He also arranged for recording of the statement of witnesses under Section 164 of the Code of Criminal Procedure. PW33 submitted prayer for medical examination of the appellant and collected the report thereof together with the semen of the appellant collected by the medical officer under separate seizure lists (exhibit 27 and 17/2). He also seized certified copy of an FIR of Mayureswar PS Case No. 219 of 2012 (exhibit 29) under seizure list

dated July 30, 2020 (exhibit 28). He also collected post-mortem reports and sent the seized articles for chemical examination by Forensic Science Laboratory. On conclusion of investigation, he submitted charge sheet against the appellant and Kakoli Patra under Sections 302/201/376/120B/34 of the Indian Penal Code, 1860. PW33 was cross examined at length.

64. The first investigating officer was examined as PW34. On May 18, 2020, he was endorsed with the investigation of the case being Mollarpur PS Case No. 64 of 2020 dated May 18, 2020. He proved the endorsement of receipt of written complaint as well as Formal First Information Report in the pen and signature of the Officer-in-charge of Mollarpur PS (exhibit 1/2 and 31). During his part of investigation, PW34 visited the place of occurrence and recovered the dead bodies as per identification of the witnesses. He conducted inquest over the dead bodies and prepared his report. He also seized blanket, Kantha, part of cloth, controlled blood and other articles from the dead bodies and nearby under seizure lists and sent the dead bodies for post mortem examination under proper dead body challans. He also proved the rough sketch map with index of the place of occurrence. PW34 also arrested accused Milon Mondal and Kakoli Patra and seized mobile phones from accused Kakoli Patra and from Gopal Ashram as shown by Milon Mondal. He also collected CDRs of such mobile phones. He also seized the wearing apparel, viscera, vaginal swab, hairs etc. of the

two dead bodies brought by one police constable. He sent the aforesaid articles to FSL for chemical examination. He also arranged for examination of the place of occurrence by FSL team. Thereafter, owing to his transfer, he made over the case diary for further investigation.

65. Upon conclusion of the evidence of the prosecution, the appellant was examined under Section 313 of the Code of Criminal Procedure. In such examination, the appellant denied all the allegations, though, he admitted to have visited the house of Milon Mondal once. He, however, declined to adduce any defence witness.

66. According to the case of the prosecution, the two victims were found dead in their house in suspicious conditions. Evidence led at the trial shows that the victims were murdered by smothering and gagging. After the dead bodies were recovered, inquest was conducted and thereafter the dead bodies underwent post mortem examination as well. The autopsy surgeon PW28 found as many as 16 injuries on the person of victim F1 which included the ligature marks. On his examination PW28 opined that the injuries were ante mortem and homicidal in nature and the death of F1 to be caused due to effects of asphyxia on account of gagging which was found to be ante mortem and homicidal in nature. Similarly, PW28 found at least 5 injuries on the person of F2. He had opined that the death of F2 was due to the effect of asphyxia caused by gagging and strangulation by ligature and were homicidal in manner.

67. Besides that, the dead bodies were found by PW28 also noticed blood and froth from nostrils of F1. Her hands were tied at the level of wrist with a yellow cloth. One piece of cloth gagged deep inside the mouth. Neck was loosely tied with a brown black cloth. As regards the victim F2, PW28 noticed there was evidence of blackish stains from both nostrils, tip of fingernail beds bruise in colour, face congested, old healed scar Mark over lower chest wall, posterior chest wall, abdomen, and external genitalia. The body was found with a yellow and pink colour Dupatta tied around the neck tightly. One piece of loincloth was found inside the mouth as gag material and both her hands were tied at the level of wrist joint with the pink white Gamcha. Both her legs were tied with yellow Dupatta at the level of knees.

68. Therefore, considering the circumstances under which the dead bodies were recovered, physical condition of the dead bodies, the nature of injuries thereon, presence of gagging materials, the hands and legs being found in tied condition and also taking into account the opinion of the autopsy surgeon as to the cause of death of the victims, we find no doubts in arriving at a conclusion that the two victims were murdered.

69. The prosecution has come up with case that the appellant took money for curing the victim F2 in the name of performing Joggo. However he failed to keep his commitment. The money was allegedly demanded back. In order to terrorize the victims and to avoid the

return of such money, the appellant committed murder of the two victims. He came to the house of the victims in the name of performing Joggo in their house, stayed in the night, made them to prepare cashew nut paste for such purpose, mixed some medicine in it and gave it to the victims to consume in the name of sacred offering (Prasad). After taking the 'prasad' the victims went unconscious. The appellant killed the victim F1 by smothering while she was unconscious and thereafter, the appellant killed F2 also by throttling.

70. The husband of victim F1 and Father of F2, PW15 has testified such facts. In his deposition PW15 has described the entire incident with great details. He narrated that he came in contact with the appellant on a train in course of treatment of his daughter who sustained burn injuries. The appellant assured him of curing his daughter and took him to a doctor at Sainthia. After 2/4 months, the appellant told PW15 that one Gurubaba namely Swarupbaba can cure his daughter. Thereafter, the appellant started visiting the house of PW15 often for the purpose of performing puja and Joggo to cure his daughter. The appellant demanded a sum of ₹1,61,000/- for performing 'Joggo' and medicines to cure his daughter out of which ₹83,000/- or ₹84,000/- was already paid to him between November, 2019 to March, 2020.

71. It was also testified by PW15 that one day, the appellant came to the house of PW15 with a vessel of water and asked his wife to prepare

paste of cashew nuts which she made and gave the same to the appellant. A room on the ground floor was cleaned as per the directions of appellant and the appellant performed Joggo on the floor of the room in the night of Saturday. PW15 and the two victims kept waiting for completion of Joggo as per the directions of appellant. On completion of Joggo by the appellant, he called PW15 and the two victims in succession. They all ate up the cashew nut paste given by the appellant. After taking the cashew nut paste the victims were sent to sleep on the first floor whereas PW15 slept with the appellant and went unconscious. PW15 was later woke up and asked by the appellant to go with him in a motorcycle without seeing the face of others to bring flowers from five places for the puja. He also described as to how he went with the appellant to several places. He also tried to contact his family members through the mobile phone of a toto driver but found no response. He was informed of the death of his wife and daughter by the priest of a temple and thereafter, he came directly to the police station. In the cross examination, the testimony of PW15 could not be dislodged.

72. Moreover, the testimony of PW15 was emphatically corroborated by two of his patients PW11 and PW14. They narrated in detail what the appellant described how he perpetrated the incident in the reconstruction of the scene of crime. The reconstruction by the appellant was videographed and was admitted in evidence. PW6 has

also stated that 2/3 days prior to the discovery of dead bodies, he saw the appellant entering the house of F1 in the night accompanied by the other accused Kakali. PW7 stated in his deposition that the appellant performed Joggo at the house of F1 and gave herbal products but F2 could not be cured. Thereafter, F1 demanded the money back. The appellant threatened to kill her. PW7 heard altercations between the appellant and F1 4/5 days prior to the incident. After 2/3 days of such altercations, PW7 saw the appellant and other two persons entering into the house of F1 for the purpose of performing 'Joggo'.

73. Another witness PW10 corroborated the statement of PW15 to the effect that on the day the dead bodies were recovered, he saw the appellant, PW15 and one another person going with a scooty at about 4.30 a.m. PW10 saw them coming from the side of the house of Milon Mondal and were moving towards Mallarpur market. He identified the appellant in Court as the person whom he saw with PW15. PW18 has also corroborated the statement of PW15 in so far as he stated that the appellant came to his 'Math' with PW15 and stayed in the night. In the following morning PW18 found the appellant in search of something. On a query made by him, the appellant disclosed before him that wife and daughter of PW15 had died and thereafter, while PW15 was still asleep, he left the Math. PW18 also stated in his deposition that after the appellant left the 'Math' he received a phone

call pretending to be made by one Swarupbaba and asked him to kill PW15. However later on, the appellant came back and left 'Math' with PW15. PW19 and PW20 also paid money to the appellant for curing diseases.

74. Therefore, from the evidence of aforesaid witnesses especially PW15, it is evident that the appellant took huge amount of money for curing burn injuries of F2 by performing 'Home and Joggo'. However, when he failed to cure, the money was demanded back. He threatened the victim as well as PW15. There are evidences that the appellant had altercations with the victim over the return of money. Evidence on record shows that the appellant went to the house of PW15 to perform Joggo and administered 'Prasad' mixed with sedatives. The unused strips of such sedative medicines, 'Cetirizine' and 'Alzolam' were recovered following the leading statement of the appellant. The victims and PW15 went unconscious. The appellant was also seen leaving the house of the victims in the following morning with PW15 through his scooty. PW15 has also detailed in his deposition, that he was not allowed by the appellant to meet the victims while leaving the house in the morning in the name of collecting soils and flowers for offering Puja. The testimony of PW15 has not been perturbed rather it gets corroborated by several witnesses like PW11, PW14, PW18 as well as other witnesses.

75. PW15 also testified that the appellant took him to several places, temples and 'Math' in the name of collecting flowers for puja. He was informed of the death of his wife and daughter by the priest of 'Math' where he was taken by the appellant and stayed in the night. The said priest also deposed in the case as PW18 and corroborated the testimony of PW15 to that effect. Not only that he has made a statement to the effect that the appellant confided in him that the wife and daughter of PW15 were murdered, when they stayed in the night in his 'Math' and at that time PW15 was still asleep. Such conduct of the appellant seems to be a desperate attempt on the part of appellant to delay or thwart the discovery of death of the two victims. PW18 was also asked over telephone pretending to be from one Swarupbaba to kill the appellant in his Math. The mobile phones were later recovered to be in the possession of the appellant which he left with his relatives PW 22, PW23 and PW24, stating that those were given to him by his disciples. Apart from an evasive denial in his examination under Section 313 of the Code of Criminal Procedure, no explanation has been put forward on the part of the appellant to explain the recovery of mobile phones. Evidence on record demonstrates that the recovered mobile phone was used at least twice to make a call in the name of one Swarupbaba.

76. Besides, the appellant recorded statements under Section 161 of the Code of Criminal Procedure and on the basis of such statements,

the alleged offending sharp cutting weapon (Bonti) was recovered and seized. Such statements as well as the seized articles were proved at the trial. Although, according to the opinion of autopsy surgeon the immediate cause of death of the victims was asphyxia due to gagging and smothering but as many as 16 injuries were detected on the persons of victim F1 out of which 11 injuries were incised wound. Therefore in view of the nature of injuries, use of sharp cutting weapon like 'Bonti' in the commission of the offence cannot be ruled out.

77. Therefore, in view of the evidence discussed hereinabove we find no reason to interfere with the impugned judgment and order in so far as it relates to the conviction of the appellant for the offence punishable under Section 302/201 of the Indian Penal Code. So far as the conviction of the appellant for the offence punishable under Section 376 of the Indian Penal Code is concerned, the witnesses examined on behalf of the prosecution have stated that the appellant committed rape upon F2 once and when he was trying to commit rape for the second time, F1 regained her senses. Such statement has not been corroborated by PW15 or the other witnesses. The medical evidence of PW28 also did not find any injury to support the case of the prosecution with regard to sexual assault upon the victim. All the injuries found on the person of F2, who is said to have been sexually assaulted, seem to be placed on the anterior part of her body. No

injury appears to have been detected on the posterior part or private parts. In such view of the facts, a conviction under Section 376 of the Indian Penal Code cannot be sustained. The same is liable to be set aside.

78. So far as the quantum of punishment imposed upon the appellant especially that for the offence punishable under Section 302 of the Indian Penal Code is concerned, by the impugned order of sentence, the appellant has been awarded death penalty. No doubt, the appellant has been held guilty of very heinous act of murder of two ladies, apparently on account of monetary disputes.

79. It is now settled position that through its various pronouncements, the Hon'ble Supreme Court has been pleased to lay down certain guidelines where death penalty may be imposed. Such principles ordain that death penalty should be resorted to in exceptional circumstances where the court awarding the sentence is convinced that the case falls within the category of 'rarest of rare cases' and a punishment other than death sentence would be insufficient in the facts and circumstances of the particular case. The court must also come to a definite conclusion that the possibility of reform of the convict stood foreclosed. In order to hold a case as 'rarest of rare case' the Hon'ble Supreme Court has directed evaluation of the circumstances on the parameters of 'aggravating circumstances' and 'mitigating circumstances'. That apart, in a case of murder, it is to be

conclusively established that the offence was committed in a manner which can be termed as cold blooded. The age of the convict is also a relevant factor to be considered for awarding such punishment. The Hon'ble Supreme Court has noted time and again that a convict, too young or too old, should not be awarded with death penalty.

80. In course of hearing of this appeal we called upon the State to submit a report with regard to psychological evaluation, socio-economic assessment and criminal antecedent of the appellant. Such reports disclosed that the appellant is aged about 45 years. His psychological assessment did not reveal that the appellant was suffering from any diagnosable psychiatric condition, mental illness or intellectual disability.

81. The socio-economic assessment report depicts that the appellant has no brother. He has two sisters alive residing in their respective in-law's house. Another sister is dead. His parents are already dead. He has his wife, a son and a daughter. He did not receive adequate care and protection in his age of adolescence and did not receive the basic education. The report also demonstrates that the appellant comes from a poor economic background. His ancestral dwelling house was already sold which forced him to live in temples, Ashrams and other religious places. No record of any criminal antecedent against the appellant or any member of his family was reported on enquiry. The report submitted by the concerned police station however, disclosed

that the appellant was an accused in a case registered at Mayureshwar Police Station but later on he was acquitted upon trial. The report also disclosed that the appellant had no fixed income. He used to earn from doing religious works in temples and Ashrams. Earlier he had a cloth business. There was no history of unstable social and psychological behaviour against the appellant. His conduct in the correctional home was reported to be good.

82. In the facts and circumstances of the case, we are not in a position to arrive at a definite finding that any punishment other than death penalty would be insufficient and possibility of such punishment is absolutely foreclosed. The State has also not placed anything to establish that the appellant is beyond reformation.

83. Therefore, taking into consideration the entire facts and circumstances of the case discussed hereinbefore and in consideration of the guidelines laid down by the Hon'ble Supreme Court in its various pronouncements, we are minded to commute the death sentence awarded to the appellant for the offence punishable under Section 302 of the Indian Penal Code, 1860, into one of life imprisonment. However, considering the age of the appellant as well as the nature of offence and other circumstances obtaining from the facts of the case including the fact that there were similar allegations against the appellant in the past and he habitually engaged himself in extracting money from unsuspecting members of society on the plea of

curing diseases or bestowing corporeal and incorporeal benefits as Gurubaba, the society at large requires to be protected from the appellant for a considerable length of time. For such reason, the imprisonment of life so awarded to the appellant shall mean imprisonment for life without remission until 40 years from the date of his arrest.

84. Accordingly, Death Reference 6 of 2023 along with the appeal being C.R.A. (DB) No. 191 of 2024 stand disposed of. Connected application being CRAN 1 of 2024 also disposed of.

85. A copy of this judgment along with the Trial Court records be remitted to the appropriate Court forthwith. In view of the commutation of the death penalty of Sunil Das@ Hari Charan Das @ Hari Baba @ Swarup @ Gurudev, any warrant issued by the appropriate Court with regard thereto in respect of Sunil Das @ Hari Charan Das @ Hari Baba @ Swarup @ Gurudev stands modified in terms of this judgment and order. Department will inform the Correctional Home, where the appellant 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 Sunil Das @ Hari Charan Das @ Hari Baba @ Swarup @ Gurudev, in their records.

86. 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.

87. 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.]

88. I agree.

[DEBANGSU BASAK, J.]