

Form No. J(1)

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

Present :

**The Hon'ble Justice Rajasekhar Mantha
And
The Hon'ble Justice Ajay Kumar Gupta**

CRA 548 of 2014

Sukdeb Hait
– Vs. –
The State of West Bengal

For the Appellant: Mr. Moinak Bakshi,
Ms. Niketa Bhattacharjee.

For the State: Mr. Sanjay Banerjee,
Mr. D. Dutta.

Heard on: August 12, 2025 and August 14, 2025.

Judgment on: August 14, 2025.

Rajasekhar Mantha, J.:

1. The instant appeal is directed against the judgment of conviction dated 24th July, 2014 and order of sentence dated 25th July, 2014 passed by the learned Additional Sessions Judge, 2nd Court, Tamluk, Purba Medinipur in Sessions Trial No. 5(5)07 arising out of Sessions Case No. 5(Feb)2007.
2. The appellant was convicted and sentenced to suffer life imprisonment and pay fine of Rs. 5,000/- in default simple imprisonment for two years for commission of the offence under Section 302 of the Indian Penal Code and fine of Rs. 500/- in default for one month for commission of offence under Section 201 of the Indian Penal Code.

THE PROSECUTION CASE:

3. The prosecution case in brief is that on 29th May, 2005, the victim Dulal Chandra Bera left his house after dinner at about 10:00 P.M. to attend a local religious festival called "Mansha Puja". Several people of the village were gathered at the Puja Mandap, and music was playing loudly in several microphones installed thereat.
4. The next day, early in the morning, one Chandan Bera (PW-4), who went to relieve and wash himself at the pond of one Hrishikesh Hait, found the body of the victim floating thereat. He immediately rushed towards the house of the deceased and informed both the mother (PW-8) and wife (PW-1) of the deceased. He, along with PW-2, PW-3, PW-5, PW-6, PW-7 and PW-8 and several other villagers and PW-1 rushed back to the said pond. They struggled for an hour to retrieve the body of the victim from the pond. They brought the body to the house of the victim. PW-3, PW-4, PW-6, as well as PW-1, found ligature marks on the neck of the victim. Some of the aforesaid witnesses found the back of the ears of the victim swollen.
5. PW-4 is stated to have gone to Nandakumar Police Station and had informed the Police. PW-1 is also stated to have given a written complaint to Nandakumar Police Station, who registered a UD Case No. 27 of 2005 dated 29.05.2005. The police arrived at the house of the victim and inquest was conducted by PW-10. The Inquest Officer found ligature marks on the body of the victim. He did not find any other injury. None of the witnesses to the inquest and persons present there, namely, PW-1, PW-2, PW-3, PW-4, PW-5, PW-6, PW-7 and PW-8, told the Investigating Officer about the

circumstances under which the victim died. The inquest report was witnessed by PW-1, PW-3 and PW-4

6. The body of the victim was dispatched to the Tamluk Sadar Hospital on 29th May, 2005. It was received by the Post Mortem Doctor on 30th May, 2005 at about 2:45 P.M. Post Mortem was conducted on the body of the deceased on 31st May, 2005 at 11:00 A.M. Post Mortem Doctor (PW-11) deposed that he found no injuries on the back of the head of the victim. A ligature mark on the neck of the victim was found and it was declared that the death occurred due to asphyxia, antemortem and homicidal in nature. It was therefore concluded that the victim was strangled first and then thrown into the pond since no water was found in the lungs of the deceased.
7. On the same day i.e. on 29th May, 2005, PW-1 to PW-8 and several others went to search for the appellant in his house and were informed that he had left the previous night and did not return. When the appellant returned to his house, 2-3 days later (as deposed by PW-1 and PW-2) or 3-4 days later (as deposed by PW-6, PW-7 and PW-8), he was summoned to a local village 'Salishi' (gathering of elderly persons of the village for dispute resolution). In the said Salishi, on being coerced and pressurized by the village elders and other people present, the appellant is stated to have confessed to killing the victim. He is alleged to have stated that sometime very late in the evening around 11:00 P.M., he asked the victim to accompany him to the said pond of Hrisikesh Hait to consume liquor.

8. While drinking, an altercation is stated to have occurred between the appellant and the deceased. This was allegedly in connection with payment of Rs.1,000/- to the appellant towards dues for work rendered to the victim at his alleged pen factory at Kolaghat. The factory had shut down few years back due to losses. After a heated exchange in course of altercation, the appellant is stated to have confessed that he struck the victim with a torchlight on the back of his head. The victim collapsed and the appellant is stated to have strangled him and thrown the victim into the pond of Hrisikesh Hait.
9. The police, as per versions of PW-4 and PW-5 were present in course of the Salish. It is reasonably assumed that the Salish occurred between 1st and 3rd June, 2005. According to prosecution witnesses, namely PW-6, PW-7 and PW-8, the appellant was handed over to the police and was arrested thereat.
10. PW-9, who was the Inspector-in-Charge of the Nandakumar Police Station is stated to have prepared the written complaint on 5th July, 2005 more than a month after the incident, based on which FIR No.53 of 2005 dated 5th July, 2005 was registered suo motu against unknown persons. During the entire period, the appellant was detained in custody. The reason thereof remains completely unexplained.
11. It appears from the records that in the application for production before the Magistrate, the Nandakumar Police Station was also desirous of recording the statement of the appellant under Section 164 of the Code of Criminal Procedure. No such statement appears to have been produced in the trial.

Investigation was completed, and charge sheet was filed. In course of trial, the appellant was on bail.

12. The Sessions Court framed charges against the appellant under Sections 302 and 201 of the Indian Penal Code for causing the death by murder of the victim Dulal Bera and thereafter concealing this body.

THE TRIAL AND THE EVIDENCE RECORDED:

13. **PW-1, Parul Bera**, was the wife of the deceased. She deposed about the incident exactly as narrated hereinabove and stated that she was informed by PW-4, Chandan Bera, of the death of her husband and that he was lying in a pond on the 29th May, 2005 at about 5 am in the morning. She thereupon took other villagers namely Haradhan Barman (PW-2), Chandan Bera (PW-4), Madhusudan Bera (PW-7), Ranjit Bera (PW-3), Gour Samanta (PW-5), Tulsi Bera (PW-8), Dilip Bera and Suklal Bera and rushed to the pond. The said persons accompanied her to pull the dead body out of the pond and brought it to her house. She found a blackish mark on the neck of the victim, stains of blood and froth in the mouth, swelling marks just beneath the ears, abrasion marks over the eyelids and blackish marks on the back of the victim.
14. She heard from PWs 4, 5 and 6 that her husband was last seen with the appellant the previous night. She further heard from PWs 5 and 6 that the appellant, after sometime, was trembling in fear and his body was smeared with mud along with stains of blood. She deposed that she went to the house of the appellant in the afternoon of the date of incident and asked his family members of his whereabouts. The appellant not being found,

Chandan Bera (PW-4) is stated to have informed the police and filed a written complaint.

15. The police visited the house and interrogated her. She claims to have narrated the entire incident, as heard and seen by her, to the police. She deposed that her husband had a pen-making factory and the appellant was working as a labour thereat. She also deposed that her husband owed the appellant a sum of Rs.1,000/- out of his wages and salaries. It is stated that the appellant came to their house a few times earlier and threatened to kill the victim and stated that he would make her see herself as a widow.
16. She further deposed that the appellant had confessed guilt before the head of the village that he murdered her husband and narrated the alleged incident. The appellant is stated to have accompanied the victim to the pond of Hrisikesh Hait to consume liquor. She also deposed about the altercation between the appellant and her husband and that the appellant had struck her husband with a torchlight below his ear. Her husband became unconscious and the appellant strangled him and pushed the body into the pond of Hrisikesh Hait. She identified the appellant in the Trial Court.
17. In cross-examination she admitted that PW-3, PW-4, PW-5, PW-6 and PW-7 were her relatives. She deposed that she herself had submitted a written complaint to the Officer-in-Charge, Nandakumar Police Station on 29th May, 2005. She admitted that there were no documents to prove the existence of a pen factory of her husband or the alleged dues of the appellant from her husband.

18. **PW-2, Haradhan Barman** was a co-villager. He was present in the Mansha Puja Mandap on the night of the incident. He deposed that he found the victim roaming around with the appellant at about 10:30 pm. He later found the appellant around 1:30 pm roaming around the Puja Mandap without a shirt. The appellant is stated to have picked up the shirt from near a microphone and left the place thereafter. The next morning he was informed by PW-4 of the discovery of the body of the victim in the pond of Hrisikesh Hait. His deposition of the incidents that occurred thereafter, was similar to that of PW-1. He admitted in cross-examination that a majority of the members present in the Salishi had pressurized the appellant and his family members to confess to his guilt for causing the death of the victim. He stated that he had informed the aforesaid incident to the police. He admitted that he and the appellant belonged to one political party and the majority of the prosecution witnesses belonged to a rival political party
19. **PW-3 was Ranjit Bera**, younger brother of the victim. He narrated the entire incident as deposed by PW-1 and PW-2. He stated that he had informed the police of the incident leading to the death of the victim and the village 'Salishi'. He admitted in cross-examination that the confession of the appellant was not recorded, and there were no minutes of the meeting of the 'Salisi' recorded in writing.
20. **PW-4 was Chandan Bera**, who found the body of the victim. He narrated the entire incident and only added that the appellant was found smeared with mud on his bare body around 1.30 to 2.00 A.M. on the date and time of the occurrence and was hesitant. His evidence is absolutely similar to

that of PW-3. He confirmed that the police were present during the village Salishi. He denied having told the police about what he found on the night of the incident before the death of the victim at the 'Mansha Puja' venue. His evidence is similar to that of PW-1, PW-2 and PW-3.

21. **PW-4 was Chandan Bera**, who found the body of the victim. He deposed that he found the body of the victim while washing at the pond of Hrishikesh Hait after relieving himself early morning at 5 am on the 29th of July 2005. He narrated the entire incident to PWs 1, 2, and 3. His evidence is absolutely similar to that of PW-3. He confirmed that the police were present during the village Salishi. He denied having told the police about what he found on the night of the incident before the death of the victim at the 'Mansa Puja' venue.
22. PW-5 narrated the incident on the same lines as PW-2 to PW-4 as did **PW-6, Narayan Chandra Seni** and **PW-7, Madhusudan Bera**.
23. **PW-8, Smt. Tulsi Bera** was the mother of the deceased, Dulal Bera. She narrated the incident exactly on the same lines as that of PW-1 to PW-7.
24. **PW-9 was Sandip Kumar Singha Roy**, the Officer-in-Charge of Nandakumar Police Station. He deposed that he received a written complaint from PW-1 and started a U.D. case being No. 27 of 2005 on 29th May, 2005. He thereafter, based on the opinion of the Postmortem Doctor, prepared a suo moto complaint, registered a suo moto FIR being No. 53 of 2005 dated 5th July, 2005 under Sections 302 and 201 of the IPC against unknown persons, and entrusted the investigation to PW-10.

25. In cross-examination, he confirmed that PW-1 or anyone did not tell him the circumstances under which the victim died. It is for this reason that according to PW-9 that no formal FIR was registered earlier, and the matter was being treated as an unnatural death.
26. **PW-10** was the Investigating Officer who took up the investigation. He claimed that he seized the wearing apparel of the deceased under a seizure list. He held the inquest on the body of the victim and prepared the inquest report. He sent the body to Tamluk Sadar Hospital for postmortem. He admitted that he did not take any fruitful steps in the investigation. He collected the postmortem report and sent the preserved viscera for FSL. The FSL report was collected and exhibited in trial. He deposed in cross-examination that no complaint was lodged by the family of the deceased with the Nandakumar Police Station between 29th May, 2005 and 5th July, 2005. This contradicts the evidence of PW-1 and PW-4. He further confessed that the wearing apparel of the deceased, seized by the police, did not have any odour or mud. He did not also seize any torchlight in course of investigation.
27. He deposed in cross-examination that PWs 3, 4, and 5 did not name the appellant or that the appellant and the victim were moving together between 10.00 to 10.30 on the night of the incident. He also denied that any of the aforesaid prosecution witnesses had told him of the village 'Salishi' or the confession by the appellant or that the appellant and the victim were seen together. He contradicted his evidence-in-chief, when he

stated in cross-examination that the U.D. Case No. 27 of 2005 was started on the basis of the complaint of PW-1.

28. **PW-11** was the Postmortem Doctor. He confirmed that he conducted the postmortem on the victim. He further stated that the death of the victim was due to the effect of asphyxia resulting from compression over the neck and ante mortem and homicidal in nature. He named only one injury on the neck of the victim. He did not find any injury on the back of the head of the victim during postmortem. The appellant was thereafter examined under Section 313 of the Cr. P.C.

THE VERDICT OF THE TRIAL COURT

29. The Trial Court, placing reliance on the confessional statement of the victim found motive and applied the last seen theory of the appellant with the victim. The chain of circumstances, according to the Trial Judge, was complete and the appellant was sentenced under Section 302 and 201 of the IPC.

ANALYSIS OF THIS COURT

30. This Court has carefully considered the evidence on record and the findings of the Trial Court and the arguments advanced by Ld Counsel for the Appellant and the State. There are several infirmities noted by this Court in the evidence that has come on record and the investigation.

31. The incident occurred on the intervening night between 28th May, 2005 and 29th May, 2005. The inquest was conducted on the morning of 29th May, 2005. While PW-10 prepared a suo-moto formal complaint on 5th July 2005, he deposed that a formal complaint in writing was received by the

Nandakumar Police Station from PW-1 on the 29th of July 2005. PW-4 also deposed that he lodged a formal complaint on the same day, i.e. 29th July 2005. The object and purpose behind lodging of the suo-moto complaint by PW-10 that too more than a month after the incident, and the delayed registration of the FIR on the same date remains unexplained by the prosecution.

32. The appellant was arrested by the police sometime on the 2nd or 3rd of June, 2005. As to how and on what basis the appellant was taken into custody remains completely unexplained. The police held the inquest on the morning of 29th May, 2005 at the residence of the victim. Three of the prosecution witnesses signed on the inquest report. In course of inquest, none of the 3 PWs informed PW-10 that the appellant was responsible for the death of the victim. Even assuming for the sake of argument that a 'Salashi' was held and the appellant confessed extra judicially before the villager of his killing the victim, an FIR ought to have been registered on the same day or thereabouts, i.e., between 29th May, 2005 and 2nd or 3rd of June, 2005. The FIR was registered more than a month after the incident i.e. on 5th July, 2005.

33. This Court cannot accept the explanation of the prosecution that the Investigating Officer and the Officer-in-Charge, Nandakumar Police Station were awaiting the postmortem report to ascertain the cause of death. Even if it is assumed that the opinion of the postmortem Doctor could have been awaited in these facts, the postmortem having been conducted on the 31st of May, 2005, the FIR ought to have been registered on the same day taking

the oral opinion of the Postmortem Doctor. The recording of another complaint suo motu by the PW-9 and thereafter registering the formal FIR against the unknown persons, more than a month after the incident, has resulted in extinguishing the substratum of the prosecution case.

34. The examination of witnesses a month after the incident and any subsequent investigation undertaken thereafter by the Police is of little value. The witnesses of the prosecution can always come up with a cooked-up new story in collusion with each other, as appears to have clearly happened in the instant case. The prosecution case must fail on this ground alone.

35. The body was received by the Post Mortem Doctor on 29th May, 2005. Post Mortem was conducted two days thereafter. Post Mortem Doctor of the prosecution has not explained the reason for delaying the post mortem by nearly 48 hours. The decomposition of the body and change in its physical structure may, in most cases, cloud the actual injuries suffered by the victim and also throw doubts and cover up the actual cause of death. This is the second major lapse found by this Court.

36. Neither the post-mortem Doctor nor the forensic expert, who examined the viscera of the victim, found any liquor or alcohol or toxic substance. The absence of the same inflicts a death blow on the evidence of PW-1 to PW-8 that the appellant and the victim consumed liquor immediately before his death. Falsehood in the story cooked up by the prosecution witnesses is exposed. The evidence of the majority of the prosecution witnesses, therefore, becomes wholly unreliable.

37. The evidence of PW-10 further indicates that there was no mud or smell of any kind on the wearing apparel of the deceased. A victim who is throttled beside a pond would have remains of mud on his body, especially during the rainy season or the pre-monsoon season of 2005. A side of a pond often contains wet mud in rural areas. If the victim was struck on the head as deposed by the prosecution witnesses and as allegedly confessed by the appellant, and then throttled and dragged and thrown into the pond, there would be evidence of mud and/or slush on the body of the victim. None was found in course of inquest. None of the wearing apparel of the appellant was either seized or sent for any forensic examination.
38. If the version of the prosecution witnesses, namely, PW-2 to PW-6 is believed along with the alleged confession of the appellant, the appellant was stated to have been found trembling with mud and blood on his body. In the absence of his wearing apparel having been seized by the police and forensically examined, this link in the chain of circumstances also fails the prosecution case gets diluted and the evidence of the prosecution witnesses, namely, PW-1 to PW-8, therefore, becomes more unreliable.
39. One of the most vital links in a case based on circumstantial evidence is motive. The prosecution case is that the motive for the appellant to have killed the victim is an outstanding due of Rs. 1000/-. Neither the prosecution nor any of the prosecution witnesses have been able to bring any documentary proof of the existence of the pen factory of the deceased or to show that the appellant worked in such pen factory or that any dues were owed by the deceased to the appellant. In the absence of any such

proof, the motive for committing the offence has clearly not been established by the prosecution. The most vital link in a case based on circumstantial evidence has not found a place in the evidence on record. The chain of circumstance sought to be established by the prosecution against the appellant is broken on this score.

40. The Trial Judge has based the conviction on the last scene theory. The prosecution witnesses, particularly, PW-1 to PW-7 have in a parrot-like manner narrated that PW-2 to PW-7 have seen the appellant and the victim together on around 10:30 P.M. on 28th May, 2005. It is quite possible that the appellant and the victim may have interacted with each other on the said day. The rest of the story of the prosecution witnesses of them having heard the appellant asking the victim to accompany him to consume liquor has clearly been thrown out and negated by the post mortem and FSL reports.
41. To, therefore, accept that anything else occurred after the appellant and the victim were last seen together by the prosecution witnesses is unacceptable and not supported by any evidence at all. The basic ingredients of last seen theory are not fulfilled in the facts of the instant case. Even assuming for the sake of argument that the appellant and the victim may have been seen together last, a last scene theory cannot by itself be a basis for convicting a person under Section 302 of the Indian Penal Code or any offence under the Indian Penal Code. It is at best one link in the chain of circumstance.
42. PW-10 has admitted in course of cross-examination that PW-2 to PW-5 had not stated to him about the alleged confession of the appellant or the

alleged incident of the appellant last seen with the victim and thereafter. On the contrary, PW-2 to PW-4 have admitted that the appellant and his family were pressurized and coerced, in course of Salishi to confess to the crime. No credence or value to such an extra-judicial confession, which is admittedly made under threat, coercion and duress.

43. While each of the prosecution witnesses who allegedly saw the appellant last with the victim had said that the appellant had returned back at 1:30 P.M. without a shirt. They did not indicate that the appellant in fact left the Puja Mandap with the victim without a shirt. Under what circumstances the appellant took off his shirt and went has not been explained. This would have been first noticed, in the natural course, by persons present at the puja mandap. There is no evidence to indicate the same. The evidence of PW-3 to PW-7 must therefore be deemed as totally unreliable, also on this score and could not have been given any weightage by the Trial Court.

CONCLUSION

44. In the light of the discussions hereinabove, this Court is of the clear and unequivocal view that the conviction of the appellant based on circumstantial evidence was grossly erroneous. There are some weak and incomplete links in the chain of circumstances leading to the death of the victim, on record. The vital links i.e. the motive of the appellant and the absence of liquor in the body of the victim have completely belied and render the evidence of PW-4 to PW-7 untrustworthy. None of the other links in the chain of circumstance have been proved or established by the prosecution.

45. For the reasons stated hereinabove, The prosecution case fails and the impugned judgment of conviction and the order of sentencing are liable to be set aside and is hereby set aside.

46. CRA 548 of 2014 is allowed and disposed of.

47. The appellant, namely, Sukdeb Hait shall be set at liberty forthwith from the custody, if not wanted in any other case, upon execution of a bond to the satisfaction of the Learned Trial Court, which shall remain in force for a period of six months under Section 437A of the Code of Criminal Procedure corresponding to Section 481 of the BNSS, 2023.

48. The TCR along with a copy of this judgement be sent down at once to the learned trial court for necessary action.

49. Urgent photostat certified copy of this order, if applied for, be supplied to the parties as early as possible.

(Rajasekhar Mantha, J.)

I agree.

(Ajay Kumar Gupta, J.)