

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**

**C.R.A. 651 of 2014
With
CRAN 2 of 2022**

Mahesh Keshri @ Keshori
– Vs. –
The State of West Bengal

For the Appellant : Mr. Anirban Mitra,
Mr. Amit Halder,
Mr. Amit Roy.

For the State in CRA 651 of 2014: Mr. Debasish Roy, ld. P.P.
Mrs. Amita Gaur,
Mr. Atanu Ghosh,

For the State in CRAN 2 of 2022 : Mrs. Z. N. Khan,
Mr. Ashok Das.

Heard on : August 14, 2025 and August 19, 2025.

Judgment on : August 19, 2025.

Rajasekhar Mantha, J.:

1. The instant appeal is directed against the judgment of conviction dated 27th August, 2014 and order of sentence dated 28th August, 2014, passed by the learned Additional Sessions Judge, Durgapur, Burdwan in Sessions Trial No. 28 of 2011 arising out of Sessions Case No. 95 of 2011. The appellant was convicted for life under Section 302 of the Indian Penal Code for life.

THE PROSECUTION CASE:

2. The prosecution case in brief is that on 25th March, 2011, sometime around 11:00 am, the victim Mukti Bauri was found with his throat slit inside the mobile and electronic shop room of the appellant. The shop room was located in a busy market area called Chichuria under Haripur, Burdwan. There was a broken knife found at the place of occurrence, with a handle attached to one part. The appellant was allegedly seen by PW-5 and PW-6, fleeing out of the shop room with his clothes stained in blood. PW-4 and PW-5 are stated to have informed PW-1, father of the victim/complainant, who arrived at the place of occurrence.
3. Around the same time, some shop owners in the said market area were found to be downing their shutters. A huge commotion broke out with local persons raising a hue, cry and protest. The Investigating Officer of the case (PW-12), who happened to be in the vicinity, reached the place of occurrence upon being instructed by his superiors. He found officials of Kenda Outpost of Jamuria Police Station already present and trying to control the crowds at the P.O. PW-12 also first engaged himself in controlling the crowds.
4. Inquest was conducted on the body. The witnesses to the inquest did not inform the Inquest Officer (PW-8) as to the reasons behind the murder of the victim. The appellant was named as the culprit by PW-1 and PW-7, who were witnesses to the Inquest report. The other two witnesses, namely, Satrugan Bauri and Dinobandhu Dan, were not examined by the prosecution. The body was sent for post mortem.
5. There is conflicting evidence as to where the appellant was arrested. The Investigating Officer of the case deposed that he arrested the victim at

Jamuria. In cross-examination, the Investigating Officer of the case seized the victim's apparel somewhere in the Pandaveswar area. PW-8 stated that the wearing apparel of the victim was seized at the Pandaveshwar P.S. PW-12 explained that he had provided a fresh set of clothes to the appellant after seizure of his wearing apparel. No document of such purchase is available on record.

6. Be that as it may, the post mortem of the victim was conducted. The post mortem report indicated that the throat of the victim was slit from left to right and a portion of his left thumb was amputated in the struggle. The weapon used was a saw-like knife with a handle. The knife was found and seized, broken in two pieces. The weapon and wearing apparel were sent for forensic examination. The forensic report indicates that the wearing apparel received did not contain any blood, and was not sufficient for examination. Blood on the seized knife was stated to be human. The same was not matched with the victim's blood group. The fingerprints of the appellant were not taken in course of the investigation to compare with any fingerprint on the knife. The investigation was completed and charge-sheet was filed. The charge under Section 302 of the Indian Penal Code was framed against the appellant.

THE TRIAL AND THE EVIDENCE RECORDED:

7. **PW-1, Lal Mohan Bouri**, was the complainant. He filed the complaint with the Pandaveswar Police Station on the next day of the incident, namely, 26th March, 2011. He stated that the victim, Mukti Bauri, his son, 26 years of age, was playing with his brother-in-law, Bapi Bauri, in the morning on the

date of occurrence. The appellant came over to his house and called the victim, and accompanied him outside the house. Later in the day, at around 11 am, Bapi Bauri (PW 6) informed PW 1 over the telephone that he went to the shop room of the appellant at Chichuria to recharge his phone, and found that the victim was lying dead inside the said shop room. On reaching the place of occurrence, PW-1 found the victim with his throat slit, lying in a pool of his blood inside the shop room of the appellant. He also noticed that a portion of the thumb of the victim was cut, and there was an iron cutting saw/blade lying near the body. Several people had gathered at the P.O. PW 1 deposed that the appellant suspected that the victim had abducted his wife.

8. The Investigating Officer of the case (PW-12) has deposed that PW-1 had not stated to him that the victim was playing outside the house in the morning or that the appellant had called the victim and the latter had accompanied the appellant. He also did not inform the I.O. of the alleged motive behind the appellant killing the victim. In cross-examination, he deposed that the shop room of the appellant was located in a very busy market area where there was a Rickshaw Stand and a Taxi Stand. Various shops selling a variety of articles and vegetable vendors were also present in the said area.
9. **PW-2, Raja Choudhury**, was the scribe of the complaint. He had a Medicine Shop in Haripur at a slight distance from Chichuria and the place of occurrence. On coming to know of the incident, he reached the place of occurrence where several people had gathered. He did not know how the victim had died. He knew the appellant.

10. **PW-3 was Tarun Das Bauri**, the nephew of PW-1. He was present in the house of the victim and was allegedly playing indoor games with PW-6 and the victim. He deposed that the appellant came and asked the victim to accompany him, and the appellant left the place. He further stated that at around 11 am, PW-6 called PW-1 over the telephone, informing him of the death of the victim and that the body was lying inside the shop room of the appellant. He accompanied PW-1 to the place of occurrence. He came to know from the others that the appellant had murdered the victim on the suspicion that the victim was having an illicit relationship with his wife. None of the above facts were stated by PW 3 before the I.O. (PW 12) during the investigation. The evidence of PW-1, PW-2 and PW-3, of the appellant coming to the victim's house and accompanying him to the market, is contradicted by the evidence of PW-4, the mother of the victim.

11. **PW-4, Annapurna Bouri**, was the mother of the victim. She was taking a bath at the relevant point of time. She deposed that the appellant visited their house twice, at 7:00 am and 8:00 am on the date of occurrence, but the victim did not accompany the appellant. He was working on a Tower near the house of the appellant. She further deposed that on seeing the appellant on the Tower at about 11:00 am near the house, she called him and asked him to take a bath. She deposed that she was informed by PW-5 and PW-6 of the death of her son. She, however, did not inform the Investigating Officer of the case about the aforesaid facts during the investigation and deposed as such for the first time in Court.

12. **PW-5 was Rina Bouri.** She is the cousin of the victim. She was an ICDS worker and had taken the day off. She went to the market to buy vegetables. She claimed to have seen the appellant run away from the shop room with blood-stained clothes. There were people running hector and cactus around the area. She, however, did not mention the presence of any other witnesses for the prosecution at the place of occurrence. She had not stated any of the aforesaid facts to the Investigating Officer in course of investigation. She deposed as such for the first time in the trial that the appellant was found running away from the shop room in blood-stained clothes.
13. PW 5 also claimed that she had informed her aunt, the mother of the victim (PW-4), of the incident. This was also not stated to the Investigating Officer during investigation. She noticed other persons, namely, Bijoy Burnwal, also running away from the place of occurrence. She deposed that about 50-60 people entered the shop room of the appellant to see the victim, and about 500 people had gathered in front of the shop. This Court reasonably apprehends that the scene of the crime had been substantially contaminated, leaving little scope for investigation. She did not mention that PW-6 was present at the place of occurrence or that he had handed over his daughter to her. The evidence of PW-5 is, therefore, partly unreliable.
14. **PW-6, Bapi Bouri,** was the son-in-law of PW-1. He had gone to the market where the shop of the appellant was located to purchase a charger, accompanied by his seven-year old daughter, Manisha. When his daughter started crying, he bought her a chocolate in the market and handed the child over to PW-5. As soon as he reached the shop room of the appellant, he

stated that he saw the appellant run away from the place of occurrence with blood-stained cloths after pushing him. He entered the shop room and noticed that the victim was lying on the floor, his throat slit, and one finger also sliced. A knife was found on the floor of the shop room. He thereafter claims that he informed his father-in-law over the phone. Several facts deposed above have not been told to the I.O. He further deposed that several shop owners of the locality had assembled at the place and time.

15. **PW-7, Bhim Rana**, was a carpenter and a resident of Haripur Panchayetpara. He had a furniture shop in the said market area, Chinchuria. He was in his shop around noon when he heard hue and cry and that a murder had taken place inside the shop room of the appellant. He rushed to the said shop room and found several people assembled thereat. He entered the shop room and found the victim lying dead with his throat slit. There was a slice of a thumb and a knife on the floor. He deposed that the victim worked in a telephone tower, which was situated behind the house of the appellant. He was not an eyewitness to the incident. He was a witness to the inquest report as well as the seizure of the blood, the knife and the earth recovered from the place of occurrence.

16. **PW-8, Dhrubojyoti Mondal**, who was an ASI of Police. He conducted the inquest and claimed that at around 7:45 pm on the said date in his presence, the I.O. had seized the blood-stained wearing apparel of the appellant, comprising of jeans pant, full sleeve shirt and half sleeve ganjee (vest). The seizure was effected in the police station where the appellant was brought. He identified the seized wearing apparel in Court. There were no

labels on the wearing apparel produced in Court. He deposed that the I.O. had given the appellant a new shirt and pants after seizing the wearing apparel of the appellant. He was a witness to the seizure. No document of purchase of new clothes was produced in Court.

17. **PW-9** was a night guard of the Pandaveswar Bazar and declared hostile. He was also witness to the seizure of wearing apparel.

18. **PW-10** was a Police Constable. He carried the body of the victim from the place of occurrence to the post mortem doctor.

19. **PW-11 is Dr. Swapan Kumar Saha**, who conducted the post mortem of the victim. He found a deep cut throat injury from the left side to the right side of the victim's neck. A trachea cut injury, measuring 3 inches long x 2 inches wide and 2¹/₂ inches deep, was found on the victim. There was also a cut injury on both sides of the sternocleidomastoid muscles of the neck vessels. Other muscles were cut. Another defensive cut injury with amputation of the proximal part of the left thumb was also found during post mortem examination. Death occurred due to shock and haemorrhage due to brain injury. The injuries were ante mortem and homicidal in nature.

20. **PW-12 was the Investigating Officer**. He deposed that he was asked to reach the place of occurrence by his superior and take over the investigation. He conducted the investigation as indicated hereinabove. He further deposed that sometime on 6th February of the same year, the appellant had lodged a missing person's diary of his wife Sova Keshri. In the said complaint, he only stated that the wife was wearing ornaments. There was no allegation against

the victim or mention thereof in the complaint, which is registered as a GD entry by the Pandaveswar Police Station.

21. He confirmed that the viscera of the victim was sent to FSL along with the weapon and the wearing apparel of the appellant. While the FSL report, which was exhibited in the Trial Court, indicated that the blood on the knife was human, the same was not matched with that of the victim. No fingerprints were taken from the knife. The FSL report of the wearing apparel indicated that there was no blood found, and the sample sent was too inadequate for any conclusive view. He further deposed that there were several persons, who were present at the place and time of occurrence, and he was busy dealing with the agitated men and women folk in the locality.

22. He deposed that the P.O. and the area were congested. He deposed that he recorded the statement of Dinabandhu Dan and Satrughana Bauri, who were witnesses to the inquest. They were cited in the charge sheet as witnesses but not examined by the prosecution. He, however, deposed that he did not find any witness seeing the victim having entered the shop room of the appellant. He also examined local shop owners like Prakash Verma, Bijoy Burnwal, Biltu Burdwal, Avijit Das and Pradip Maddi. He also found Riyajul Haque, the owner of a tyre repairing shop, Kuntal Yadav, Paresh Chatterjee, Tapan Banerjee and Ramaesh Kesri, all adjacent shop owners. None of them had been examined by the I.O. or quoted as witnesses.

23. He claimed to have arrested the appellant 16 km away from the place of occurrence, in Jamuria, at 07:05 pm on the date of occurrence. He, however, stated that the seizure of the wearing apparel was done at Pandaveswar

area. There are several other inconsistencies evident from the cross-examination of PW-12. He admitted that he did not obtain fingerprints of the appellant or any outsider. There was no note in the case diary as to whether the knife was collected. He confirmed that the appellant in his missing person's diary on 6th February, 2011, did not make any allegation against the victim. He deposed that the relations between the victim's family and the appellant's family were extremely cordial. They invited each other to all functions. He denied that PW-3, PW-4, PW-5 and PW-6 had stated to him in course of investigation what they deposed in Court. He specifically denied that he had arrested the appellant near Kenda Police Station.

24. The appellant was examined under Section 313 of the Cr.P.C. He deposed against question no. 5 that the victim had fallen on the side of the road at a distance of 5 ft. from the shop room, and against question no. 6, he stated that the body of the victim was not lying inside the shop room. Seeing the victim struggling on the road, the local people brought him inside the shop room when he rushed to the nearby Kenda Outpost of the Jamuria Police Station. He reiterated that the victim was lying on the side of the road against circumstance no. 11.

25. Against circumstance no. 16, the appellant stated that he did not flee away and had actually gone to the Kenda Police Outpost of Jamuria Police Station. He denied that he went to the house of PW-1 to call the victim. He also denied that there was any blood on his wearing apparel. He deposed that he did not see PW-6 at the place of occurrence and that he pushed him.

26. He further deposed against circumstance no. 24 that he did not know that the victim worked at a telephone tower. Against circumstance no. 25 confronted to the appellant, he clearly deposed that he went into the custody of the police in the same clothes that he wore before leaving his house in the morning on the date of occurrence. He specifically deposed that against circumstance no. 33 that the police arrested him at Kenda Outpost, and he did not give his wearing apparel to the police. He further deposed against circumstance no. 34 that he had lodged a missing person's diary of his wife on 6th February, 2011. The wife had left the house, taking ornaments and jewellery with her, and he had not accused or named any person. He stated against question no. 34 under Section 313 of the Cr. P.C. that seeing the victim struggling on the road he rushed to the Police Station, leaving his shop room open.

27. The appellant, however, did not bring any witness in support of his defence.

The Trial Judge, based on the evidence on record, convicted the appellant for life under Section 302 of the IPC based on the circumstantial evidence.

THIS COURT'S ANALYSIS:

28. Having carefully considered the arguments of the learned counsel for the appellant, Mr. Mitra, and learned Public Prosecutor, Mr. Debasish Roy assisted by Ms. Amita Gaur, this Court notices first that there are absolutely no eyewitnesses to the incident. There are no eyewitnesses to the charge against the appellant of having murdered the victim by slitting his throat. The only evidence that could have possibly implicated the appellant was the evidence of PW-5 and PW-6. Both of them had stated that they had seen the

appellant running away from the shop room with blood-stained clothes. The evidence of PW-5 and PW-6 must be held as underlying for the following reasons:

(a) PW-5 did not mention the presence of PW-6 in course of her evidence.

She also did not mention that PW-6 handed over his daughter, Manisha, who was 7 years old, to her and had proceeded towards the shop room.

(b) Even assuming for the sake of argument that one should rely upon the evidence of PW-6, it is surprising that not a single independent or natural witness, such as, the neighbouring shop owners, rickshaw walas, taxi drivers etc., were examined to confirm that the appellant fled away from the place of occurrence in blood-stained clothes.

(c) The theory of the appellant's clothes being blood-stained has been rendered seriously questionable given the forensic evidence that has come on record. The forensic report indicates that no blood stain was found on the portions of such apparel sent for examination and opinion. It was also found that the materials sent for forensic examination were not sufficient. There is, therefore, no evidence whatsoever of any blood-stained clothes being on the appellant.

(d) The case of the prosecution that the appellant had dashed PW-6 in blood-stained clothes, pushed him and ran away from the scene, is not corroborated by any independent witness at all.

29. The evidence of PW-5 and 6 is found wholly unreliable for the reasons indicated hereinabove. Hence the possibility of PWs 1, 3, 4, 5, and 6 being

members of the same family trying to implicate the appellant, cannot be ruled out.

30. In the backdrop of the above, the first major link in the chain of circumstances has been rendered weak and unreliable.

31. The evidence of blood-stained clothes and its alleged seizure is itself shrouded in mystery. While the Investigating Officer states that the appellant was arrested somewhere in Jamuria area and the wearing apparel was seized somewhere in Pandaveswar area, PW-8 had deposed that the wearing apparel of the appellant was seized within the Pandaveswar Police Station against the signatures of witnesses being PW-8, PW-9 and PW-10. This is another unestablished and doubtful link in the chain of circumstances against the appellant.

32. PW-9 was a night guard at the said market at Chinchuria, Haripur. As to how PW-9 was present in the Pandaveswar area or in Jamuria for that matter, being the alleged place of occurrence of the appellant, remains unexplained by the prosecution.

33. The seizure of the wearing apparel of the appellant, and that too in a blood-stained condition, is, therefore, seriously questionable. It is equally difficult for this Court to believe that the appellant was wearing the same blood-stained clothes from 11.00 am to 7.45 pm when he was arrested. A person of ordinary prudence, who has blood on his wearing apparel and was fleeing, would have shed and changed his clothes soon after coming out of the place of occurrence.

34. In light of the above, the seizure of the blood-stained wearing apparel of the appellant cannot be accepted by this Court. This link in the chain of circumstance is equally weak and unstable.
35. Insofar as the weapon, being a broken knife, with one end having been found with the handle and the other part, being blood-stained, has been certified by the FSL to contain human blood. Surprisingly, the blood on the knife has not been matched with the blood of the victim or the appellant, for that matter. No fingerprints have been collected on the knife or from the appellant, as admitted by PW-12 in course of his evidence. The blood-stained knife cannot, therefore, be attributed or attached to the appellant. Interestingly, the knife was not placed before the PM Doctor. The PM Doctor could have easily matched the weapon with the injury. Yet another link in the chain of circumstances of the prosecution case falls flat.
36. In the backdrop of the above, the deposition of the appellant under Section 313 of the Cr.P.C. definitely creates and gives rise to an alternative possibility of the circumstances under which the victim had died. While it is true that the defence has not adduced any evidence, the prosecution has failed to bring about a single strong link in the chain of circumstance. The question of completion of any chain does not and cannot arise.
37. What can easily be described as the final nail in the coffin of the prosecution case is the absence of proof of any motive of the appellant in committing the murder of the victim. The relations between the appellant and his wife may have been strained. The appellant's wife had been missing since 6th February, 2011. He had lodged a complaint, which was diarized by

Pandaveswar Police Station. There is no mention of any person responsible for the appellant's wife being missing or any illicit relationship between the victim and the appellant's wife. On the contrary, the evidence of PW-12 and PW-1 indicates that the relation between the two families of the victim and the appellant was extremely cordial. They visited each other on a regular basis and attended functions at each other's houses.

38. The most vital link in the chain of circumstances to convict a person is the motive. The motive of the appellant to end the life of the victim has not been established by the prosecution even remotely. The chain of circumstance does not even begin to get established in these facts.

39. It is now well settled that in a conviction based on circumstantial evidence, each link in the chain must be established firmly and undisputably. The chain must be such that it must only and only point towards the guilt of the appellant. No other theory or conclusion must be possible or probable. Once it is found that any of the links in the chain are weak or unstable, the chain must be considered incomplete. If there is a possibility of another conclusion or chance of another theory, there can be no conviction against an accused.

40. Learned Public Prosecutor has relied upon Section 106 of the Evidence Act and has sought to argue that the appellant is deemed to have special knowledge of the circumstances under which the body of the victim was found inside the shop room. In the absence of any effective explanation of the body of the victim having been found in the shop room, a presumption must be drawn against the appellant of having been responsible for the death of the victim.

41. The arguments of the learned Public Prosecutor cannot be accepted. The burden of proof and shifting thereof, even under Section 106 of the Indian Evidence Act, 1872 would arise only and only after the prosecution is able to establish a strong, unbreakable and unimpeachable chain of circumstance. Reference in this regard is made to paragraphs 34, 35, 36, and 37 of the decision of the Hon'ble Supreme Court of India in the case of **Dinesh Kumar – Vs. – State of Haryana** reported in **(2023) 20 SCC 49**.

“34. Section 106 of the Act creates an exception to Section 101 and reads as under:

“106. Burden of proving fact especially within knowledge.—When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.”

35. Section 106 of the Act is an exception to the rule which is Section 101 of the Act, and it comes into play only in a limited sense where the evidence is of a nature which is especially within the knowledge of that person and then the burden of proving that fact shifts upon him that person.

36. The burden of proof is always with the prosecution. It is the prosecution which has to prove its case beyond a reasonable doubt. Section 106 of the Act does not alter that position. It only places burden for disclosure of a fact on the establishment of certain circumstances. We have no reason to doubt the testimony of PW 10 (Karanjit Singh), the sole witness of last seen. In his statement under Section 313 of the Code of Criminal Procedure, when the appellant was questioned about being in the company of the deceased on 8-5-2000 along with co-accused Mange Ram, no explanation was given by the appellant about his whereabouts. It is for this reason that it has been held that the accused has not been able to discharge his burden under Section 106 of the Act and therefore this has to be read as an additional link in the chain of evidence against the appellant. To our mind, however, Section 106 of the Act would not even come to play here under the facts and circumstances of the present case.

37. What has to be kept in mind is that Section 106 of the Act, only comes into play when the other facts have been established by the prosecution. In this case when the evidence of last seen itself is on a

weak footing, considering the long gap of time between last seen by PW 10 and the time of death of the deceased, Section 106 of the Act would not be applicable under the peculiar facts and the circumstances of the case.”

42. In the instant case, applying the dicta laid down above, this Court is of the view that the prosecution itself having failed to establish the chain of circumstance, the question of any burden shifting on the appellant under Section 106 of the Indian Evidence Act, 1872 or any burden to explain any special knowledge that the appellant may have, does not and cannot arise.

43. It is difficult to apply Section 106 of the Evidence Act, 1872 in the facts and circumstances of the case since the shop room of the appellant is rather large and open to the public at large. The shop room is visible as it ought to be, to the customers and the general public. There is serious doubt as to whether the appellant can be imputed with any special knowledge as regards the body of the victim and its presence in his shop room.

44. For the reasons stated hereinabove, the impugned judgment of conviction and the order of sentencing are liable to be set aside and are hereby set aside.

45. C.R.A. 651 of 2014 is allowed and disposed of.

46. In view of disposal of the appeal itself, the connected application being CRAN 2 of 2022 shall also stand disposed of.

47. The appellant, namely, Mahesh Keshri alias Keshori shall be set at liberty forthwith from 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. 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.)