

Form No. J(1)

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

Present :

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

C.R.A. 174 of 2010

**Pranab Kumar Sasmal alias Pranab Sasmal
Versus
The State of West Bengal**

For the Appellant:	Mr. Amajit Dey, Ms. Poulami Basu, Mr. Gouranga Dey.
For the State:	Mrs. Zareen Nasima Khan, Ms. Snigdha Saha.
For the State in CRAN:	Mr. Binoy Kumar Panda, Ms. Puspita Saha,
Heard on:	06.01.2026.
Judgment on:	January 6, 2026.

Rajasekhar Mantha, J.:

1. The present appeal is directed against judgment and order of conviction dated 22.02.2010 passed by the learned Additional Sessions Judge, 2nd Fast Track Court Contai, Purba Medinipur in Sessions Trial No. 35/October/2006. The appellant was convicted under Section 302 of the IPC. The appellant was sentenced to life imprisonment and to pay a fine of Rs 10, 000. In default thereof, he was directed to further undergo a simple imprisonment of 2 years. The period detention already undergone was directed to be set off from the imprisonment imposed.

THE PROSECUTION CASE

2. The case in the complaint is that on 30th of July, 2001 at about 8:00 A.M., **PW 1**, the father of the victim came to know that the appellant and his elder brother were beating the victim, who was the wife of the appellant. He rushed to the house of the victim and was severely assaulted by the appellant thereat. PW 1 was taking his daughter to the local Police Station for lodging a complaint to that effect. However, they were intercepted by Bhudev Majhi, a friend of the appellant, who forcibly took the the victim, away.

3. The victim went back home and her father left the same day assuring the victim that he would come back on the next morning. On the next morning the complainant PW 1 came to know that the victim was killed by the appellant and his brother by throttling her and beating her with a wooden broom.

4. A complaint was lodged on 31st July, 2001 with the Patashpur Police Station. A formal FIR No. 47 of 2001 dated 31st July, 2001 was registered by Patashpur Police Station against the appellant, his brother Tapas Kumar Sasmal and one Bhudev Majhi, a resident of Debichak village.

5. Inquest was conducted on the body of the victim where injuries were found. The mouth was open, teeth visible and the tongue was tied between the upper and lower teeth. The throat had scar marks of scuffle. There was some other marks on the throat inflicted by a sharp instrument.

6. The family members of the victim informed the Inquest Officer that the appellant was an evil person and of loose character and did not have good relations with his wife.

7. The body of the victim was sent for post mortem. Investigation completed and charge sheet filed. Charges were framed against three accused persons under Sections 498A/302 of the Indian Penal Code. The Trial commenced.

THE EVIDENCE ON RECORD

8. In course of trial, **PW-1, Monoranjan Ghorai**, the complainant and father of the victim, turned hostile and denied the prosecution case. He stated that he was not examined by the Investigating Officer of the case. He was declared hostile. In his cross-examination by the prosecution, he denied that the complaint was written in his presence or under his instructions.

9. **PW-2, was Mrinal Ghorai**, sister of the deceased. She was also declared hostile. She only stated that the appellant inflicted physical and mental torture on the victim.

10. **PW-3, was Dipak Ghorai**, uncle of the deceased. He was also declared hostile. He deposed that the appellant inflicted torture on his wife. He only heard that the victim was throttled by the accused persons. He was not an eyewitness to the incident.

11. **PW-4, was Gobardhan Ghorai**, another uncle of the victim. He was also declared hostile. He was not examined by the Investigating Officer of the case.

12. **PW-5**, was **Syed Rahul Amin**. He was a Driver by profession, who drove a hired car of the police officials of Patashpur Police Station. He signed on the seizure list on many occasions of the police. He identified his signature. He could not say whether the clothes of the victim were seized on the date mentioned in the seizure list. He was declared hostile.
13. **PW-6** was **Kajal Ghorai**, the mother of the victim. She did not make any allegation of torture against the appellant and did not know how her daughter had died. She was declared hostile.
14. **PW-7** was **Sagar Chakraborty**, the Block Development Officer of Patashpur-I, who conducted the inquest on the deceased. He did not depose in the trial that the relatives of the deceased had made any allegation against the appellant.
15. **PW-8** was the **Post Mortem Doctor**, Tapas Kumar Gayen. He stated that the post mortem examination was conducted on 1st August, 2001 i.e. the day after the alleged incident. He found the body fully decomposed. As to how or why body of the victim became so decomposed in a span of 30 hrs baffles this Court. \ It was found that the skin of the scalp is peeled off and the cause of death could not be identified by the Post Mortem Doctor due to putrefaction of internal organs. PW-8 could not even indicate as to whether hyoid bone/laryngeal cartilage was fractured or broken.

16. **PW-9** was the Investigating Officer of the case. He stated that he sent the victim for recording his confessional statement under Section 164 of the Code of Criminal Procedure.
17. **PW-12**, was **Nandalal Ghorai**, a local villager, who was also declared hostile. He did not notice any mark of injury on the neck of the victim when he saw the body on the date of incident.
18. **PW-13** was **Devdas Mukherjee**. He was the Sub-Inspector of Police, who conducted the first part of the investigation.
19. **PW-14** was **Ashis Kumar Hazra**, the Assistant District & Sessions Judge, who was the then Judicial Magistrate and recorded the confessional statement of the appellant in connection with the FIR in question. He proved the said statement in Court.
20. All the accused persons were examined under Section 313 of the Code of Criminal Procedure. The appellant, however, in his examination under Section 313 of the Code of Criminal Procedure has stated that he was compelled to record his statement before the Magistrate under Section 164 of the Code of Criminal Procedure. He stated that he was tutored by the Police. Such compulsion, according to him, was inflicted while he was in jail custody.
21. He further deposed that he had informed the Magistrate in the Trial Court about such forced confession by taking out an application in writing. He has informed about the forced confession before the Court which tried him for the said offences

22. The Trial Judge accepted the confessional statement of the victim which was corroborated by the evidence of PW-7 and PW-8 and found the appellant guilty of the offence under Section 302 of the Indian Penal Code. The other accused persons were acquitted.

THE ANALYSIS OF THIS COURT

23. The prosecution's case was based on circumstantial evidence. The first link in the chain of circumstances was the complaint lodged by PW 1, the father of the victim. He is alleged to have arrived at the matrimonial house of the victim upon learning that her daughter is beaten by his son in law, the appellant. Upon arrival, PW 1 found that the appellant and others were beating the victim. PW 1 is alleged to have made an attempt to take the victim to the local Police Station. He, however, was resisted by a friend of the appellant. He thus was unable to take the victim to the local PS on that day. The PW 1, however denied the said story during his examination before the Trial Court.
24. The prosecution, therefore, was unable to prove the first link in the chain. The same removes the very basis of the prosecution's case. It prevents the prosecution from proceeding any further to link the appellant with the death of the victim.
25. The second link in the chain of circumstances was the motive of the appellant to kill his wife, the victim. The motive arose from the alleged sour relations between the appellant and his wife. The inquest report in this regard recorded that the local villagers had told the inquest officer, PW 7, that the appellant was an evil man. The appellant did not

have a cordial relation with his wife. This, however, was not deposed by the PW 7 during his examination in the trial.

26. The prosecution, therefore, has also been unable to prove the motive of the appellant to kill the victim, which provides a vital link in a case based on circumstantial evidence. Reference in this may be made to the decision in **Shankar v. State of Maharashtra, reported in (2023) 19 SCC 553**, wherein it was held as follows

‘20. There can be no doubt with respect to the fact that in a case where the conviction is based on circumstantial evidence, motive assumes great significance. A three-Judge Bench of this Court in Nandu Singh v. State of M.P. [Nandu Singh v. State of M.P., (2022) 19 SCC 301] by its judgment dated 25-2-2022, after observing thus, held as under : (SCC p. 304, para 9)

“9. ... It is not as if motive alone becomes the crucial link in the case to be established by the prosecution and in its absence the case of prosecution must be discarded. **But, at the same time, complete absence of motive assumes a different complexion and such absence definitely weighs in favour of the accused.**”

We may add here that just like **complete absence of motive failure to establish motive after attributing one, should also give a different complexion in a case based on circumstantial evidence and it will certainly enfeeble the case of prosecution.**’

Emphasis applied

28. The third link in the chain of circumstances was the medical evidence. The medical evidence has failed to link the appellant with the crime. The post-mortem doctor, PW 8, was unable to state whether the death of the victim was homicidal or natural. The reason offered for the same was that the body of the victim had decomposed at the time of the post-mortem. The post-mortem doctor was not

examined by the prosecution as to whether there was any other scientific method by which the cause of death of a decomposed body can be deciphered. Further, it remains unexplained as to how, within a period of 30 hrs, the body of the victim decomposed. The evidence of PW 8 was based on assumptions. He gave out conjectures as regards the death of the victim. The evidence of PW 7 and 8, therefore, cannot be relied on.

29. The medical evidence has two facets. The first part records the injuries on the body of the victim. This is substantive evidence. The second part records the opinion of the doctor formed based on the injuries found. The opinion is an expert opinion. Thus, it is not a piece of direct and substantive evidence. The injuries and opinion recorded on the post-mortem report must therefore be corroborated by the other witnesses. A post-mortem doctor, here being PW 8, is not a direct witness.

30. An inquest officer records the immediate circumstances surrounding the POA. He or she, therefore, is not a direct witness. The contents of an inquest report, therefore, must be corroborated by other witnesses.

31. The trial court has erred in drawing support from the evidence of PW 7 and PW 8 to substantiate the confessional statement. A confessional statement is equally not a substantial piece of evidence. It must be corroborated by the other witnesses.

32.The trial court has relied on the confessional statement and the evidence of PW 7 and PW 8. All of them are non-substantive and weak pieces of evidence. A non-substantive piece of evidence, which is not corroborated by substantive evidence, cannot offer force to another non-substantive piece of evidence. Therefore, the evidence of PW 7 and 8 lacks evidentiary value. No reliance whatsoever could have been placed by the Trial Judge on the evidences of PW-7 and PW-8.

33.In so far as the confessional statement of the appellant before the learned Magistrate under Section 164 of the Code of Criminal Procedure is concerned, the same was duly retracted by him, firstly by addressing a complaint to the Trial Court before the commencement of Trial and thereafter in course of examination under Section 313 of the Code of Criminal Procedure.

34.Learned Counsel for the State has vehemently argued that the confessional statement was made by the appellant while in jail custody, the question of any coercion or tutoring of the appellant could not have arisen.

35.This Court firstly notes that for recording of any statement before a Magistrate under Section 164 of the Code of Criminal Procedure, the appellant was required to be taken from the jail, duly accompanied by Police to the Magistrate. Even during jail custody, access to the jail staff by the police cannot be ruled out. Likelihood of the tutoring

or coercion by the police on the appellant, therefore, in the facts and circumstances of present case cannot be ruled out.

36. It further transpires from the confessional statement itself that the appellant was taken to a local office of a political party by the victim's family. It is stated by the appellant that his client was advised by the said political party members to make a confession before the Magistrate. The statement under Section 164 of the Code of Criminal Procedure of the appellant contains the above. The confessional statement also records that the members of the said political party had coerced the petitioner to make a confession. There are several inconsistencies in the confessional statement. Reference in this regard may be made to the decision in ***Shankaria v. State of Rajasthan, reported in (1978) 3 SCC 435***, which has laid two fold test for examining the voluntariness trustworthiness of the confession. Paragraph nos. 23, 43 and 44 of ***Shankaria decision (Supra) are set out below:-***

23. This confession was retracted by the appellant when he was examined at the trial under Section 311 CrPC on June 14, 1975. **It is well settled that a confession, if voluntarily and truthfully made, is an efficacious proof of guilt. Therefore, when in a capital case the prosecution demands a conviction of the accused, primarily on the basis of his confession recorded under Section 164 CrPC, the court must apply a double test:**

- (1) Whether the confession was perfectly voluntary?
- (2) If so, **whether it is true and trustworthy?**

Satisfaction of the first test is a sine qua non for its admissibility in evidence. If the confession appears to the court to have been caused by any inducement, threat or promise such

as is mentioned in Section 24 of the Evidence Act, it must be excluded and rejected *brevi manu*. In such a case, the question of proceeding further to apply the second test, does not arise. If the first test is satisfied, the court must, before acting upon the confession reach the finding that what is stated therein is true and reliable. ***For judging the reliability of such a confession, or for that matter of any substantive piece of evidence, there is no rigid canon of universal application. Even so, one broad method which may be useful in most cases for evaluating a confession may be indicated. The court should carefully examine the confession and compare it with the rest of the evidence, in the light of the surrounding circumstances and probabilities of the case. If on such examination and comparison, the confession appears to be a probable catalogue of events and naturally fits in with the rest of the evidence and the surrounding circumstances, it may be taken to have satisfied the second test.***

43. In *Sarwan Singh v. State of Punjab* [AIR 1957 SC 637 : 1957 SCR 953 : 1957 Cri LJ 1014] this Court had emphasised that before recording a confession, the Magistrate should see that the mind of the accused person was completely free from any possible inference of the police. **In that context, it was observed that “the effective way of securing such freedom from fear to the accused person is to send him to jail custody and give him adequate time to consider whether he should make a confession at all”. In this connection, it was suggested: “... speaking generally, it would, we think, be reasonable to insist upon giving an accused person at least 24 hours to decide whether or not he should make a confession.” The Court was careful enough to preface this suggestion with the remark that “it would naturally be difficult to lay down any hard and fast rule as to the time which should be allowed to an accused person in any given case”.**

44. It will be seen that how much time for reflection should be allowed to an accused person before recording his confession, is a question which depends on the circumstances of each case. The object of giving such time for reflection to the accused, is to ensure that he is completely free from police influence. **If immediately before the recording of the confession, the accused was in judicial custody beyond the reach of the investigating police for some days, then such custody from its very nature, may itself be a factor dispelling fear or influence of the police from the mind of the accused.**

37.The confession in question has not passed the first test of voluntariness since the appellant having retracted from it well before the commencement of trial. The appellant further alleged that he was tutored to make the said confession. Doubts are further cast on the confession given that the prosecution witnesses turned hostile during the trial. The same indicates that the investigating agency probably has forced the witnesses to depose along the lines of the prosecution's case. The confession is equally not trustworthy in view of the applications and statement made by the appellant before the Trial Court that he was forced to give the said confession. The present case is not one where the accused retracted from his confession at the last moment.

38.The aforesaid are some of the factors that throw some doubts on the bona fides of the confessional statement of the appellant.

39.It is now well-settled that a conviction cannot be based solely on confessional statement even under Section 164 of the Code of Criminal Procedure. The appellant has not confessed before the Trial Court.

40.The Trial Judge has duly realized the same and has therefore sought to support the confessional statement by the evidence of PW-7 and PW-8.

41.As already discussed hereinabove, there is absolutely no value whatsoever that can be attributed to the evidence of PW-7 and PW-8. There is no evidence whatsoever that supports the prosecution case. The mother, the father and the uncles of the victim have all turned

hostile and have been declared as such. There is no eyewitness to the incident. The conviction, if at all, of the appellant could have been made on the basis of a chain of circumstances. The only two links available in the facts of the case are that the victim was last seen with the appellant and that there was a scuffle between the appellant and his wife on the prior date.

42. This fact has not also been clearly brought on record by the prosecution. On the contrary, the portions of the confessional statement indicate that the appellant was severely assaulted by his father-in-law, P.W.-1 on the previous night and was about to be eliminated by several persons led by his father-in-law, who was already inebriated on the said day.

43. The aforesaid are only some of the links in a chain of circumstances and hence are definitely not complete. The Trial Judge, therefore, totally erred and misdirected himself in accepting the confessional statement as purportedly corroborated by the evidences of P.W.-7 and P.W.-8. What further remains unexplained is how a body of a victim can decompose to such an extent as described by the post mortem doctor within a span of 30 hours. The prosecution's case has not stood proved in terms of the decision in ***Sharad Birdhichand Sharda v. State of Maharashtra reported in (1984) 4 SCC 116***, wherein it was held as follows:-

“153...

(1) **the circumstances from which the conclusion of guilt is to be drawn should be fully established.**

- (2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,
- (3) **the circumstances should be of a conclusive nature and tendency,**
- (4) they should exclude every possible hypothesis except the one to be proved, and
- (5) **there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.**

Emphasis Applied

44. For the reasons stated hereinabove, the impugned judgment and/or order of conviction is not sustainable and is liable to be set aside.

45. Accordingly, CRA 174 of 2010 is allowed. Consequently, all connected pending applications, if any, are also disposed of.

46. The appellant, namely, Pranab Kumar Sasmal alias Pranab Sasmal 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.

47. Let the Trial Court Records and a copy of the judgment be sent back to the court below.

48. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)

(Ajay Kumar Gupta, J.)