

**In the High Court At Calcutta
CRIMINAL APPELLATE JURISDICTION
CIRCUIT BENCH AT JALPAIGURI
APPELLATE SIDE**

Present:

**The Hon'ble Justice Debangsu Basak
And
The Hon'ble Justice Biswaroop Chowdhury**

***CRA/20/2021*
TUMPA BISWAS
VS
*UJJAL MALLIK AND ORS***

For the Appellant : *Mr. Hillol Saha Podder, Advocate (Amicus curiae)*

For the State : *Mr. Aditi Shankar Chakraborty, APP*
Mr. Arjun Chowdhury, Advocate

Heard & Judgment on: March 23, 2026

Debangsu Basak, J.

1. Appeal is at the behest of the de facto complainant and is directed against a judgment of acquittal dated February 11, 2020 passed by the learned Session Judge, Cooch Behar in Sessions Trial No. 03(03) of 2016 arising out of the Kotwali Police Station Case No. 433 of 2025 dated April 30, 2015.
2. Learned advocate appearing as amicus curiae submits that, although, there are no eye-witnesses to the murder, the prosecution was able to prove the charge of murder as against the private respondents beyond reasonable doubt. He submits that,

the prosecution was able to establish that there was an illicit relationship between the victim and the respondent No.1. Both used to watch television at a neighbour's place. At that particular point of time, on the fateful day, both were absent. On the day when, the victim was found missing, both did not watch television at the neighbour's place.

3. Learned advocate appearing as *amicus curiae* draws the attention of the Court to the testimonies of the prosecution witnesses. He submits that, at least two prosecution witnesses saw the private respondents coming from the river bed, where, ultimately, the dead body of the victim was found. He refers to the postmortem report. He submits that, the victim was murdered by strangulation.
4. Referring to the testimonies of the prosecution witnesses particularly, P.W. 5 and P.W. 6, learned *amicus curiae* submits that, two persons stated about the extra judicial confession made by the private respondents. He submits that, on the basis of such extra judicial confession, coupled with the other material evidence on record, the private respondents should be found guilty of the charge of murder as framed by the learned Trial Judge.
5. State is represented.
6. None appears for the private respondents.
7. Police received a complaint from the appellant which was registered as a First Information Report on April 30, 2015, *inter alia*, under Section 302/201 and 34 of the Indian Penal Code, 1860. Police on completion of investigations, submitted charge sheet as against the private respondents. Charges under Sections 302/201 and 34 of the Indian Penal Code, 1860 was framed as against the private respondents by the order dated March 19, 2016.

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8. Private respondents pleaded not guilty at the trial. At the trial prosecution examined 10 witnesses and tendered various documentary and material evidences which was marked exhibits.
9. P.W. 1 is the de facto complainant/appellant herein. P.W. 1 is the daughter of the victim. She in her testimony stated that private respondents murdered the victim on March 10, 2015. She stated that usually, the victim went to watch television at about 7/7.30 P.M. at the house of her aunty. On the date of the incident, the victim went to watch television at the house of her aunty. Her father also went to the house of her aunty to watch television and did not find her mother in the house of her aunty. Then her father told her and the aunty that her mother was missing and for whole night, they tried to trace her mother. Thereafter, her father lodged a missing diary with the police station. When her father went to cut some grass from the bed of the river, her father found a bad odour and found the wearing apparel of her mother. Her father came back and narrated the incident to her aunty and they rushed to the spot when they found the dead body of her mother. Thereafter, the police was informed.
10. P.W. 1 stated that the private respondents made a confession as to the crime. They confessed in her presence and in the presence of many others that the private respondents tied the wearing apparel and strangled the victim to death. Thereafter, they put the dead body in the bed of the river.
11. P.W. 1 tendered the written complaint in evidence which was marked as Exhibit-1. She was the witness to the inquest held over the dead body. Inquest report was tendered in evidence and marked as Exhibit-2. Pictures of the dead body taken were tendered in evidence and marked as material exhibit-I. Her

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statements recorded under Section 164 of the Criminal Procedure was tendered in evidence and marked as Exhibit-3.

12. P.W.1 stated that, the respondent No. 1 used to propose to her mother that he was in love with her and that, since her mother did not reciprocate such feeling, he threatened her. She stated that, the respondent No. 1, after taking help of the respondent No.2, murdered her mother.
13. In cross-examination, she stated that, the respondent Nos.1 and 2 made the confessional statements in presence of many persons including one Mamata Sarkar also.
14. P.W. 2 is the sister of the victim. She stated that, victim went missing on March 10, 2015. Victim used to come to her house as also to the house of another sister namely, Sabitri Biswas to watch T.V. On the day of the incident, she went to watch T.V. in the house of Sabitri Biswas. She stated that on March 10, 2015, when the victim went missing, she and some other found the respondent No. 1 to be coming from the bed of the river at about 5 A.M. She inquired of the respondent No.1 as to why he did not come to watch television whereupon, respondent No.1 stated that, he was not feeling well and, therefore, did not come. She claimed that, respondent No.1 proposed to develop an illicit relationship with the victim to which, the victim did not agree. She is a seizure list witness. She tendered such seizure list which was marked as Exhibit-4. She recorded a statement under Section 164 of the Criminal Procedure Code which was tendered in evidence and marked as Exhibit-5.
15. In cross-examination, P.W. 2 stated that, when the respondent No. 2 made such confession, many persons were present.

16. Another sister of the victim deposed as P.W. 3. She stated that, on the fateful day, the victim went to watch the television at her house. She corroborated P.W. 2 that, they saw the respondent No.1 coming from the bed of the river at about 5 A.M. in the morning. P.W. 3 corroborated P.W. 1 with regard to discovery of the dead body by the husband of the victim. She stated that, P.W. 2 made a confessional statement before the Investigating Officer when she was arrested. P.W. 3 was arrested on the day when, P.W. 3 also confessed as to the murder of the victim. She recorded her statement under Section 164 of the Criminal Procedure Code, which was tendered in evidence and marked as Exhibit-6.
17. In cross-examination, P.W. 3 stated that, she did not inform the Investigation Officer as to the confessional statement either by P.W. 2 or P.W. 3.
18. P.W. 4 is a neighbour of the victim. He was declared hostile by the prosecution. On cross-examination by the prosecution after being declared hostile, he denied that there was any illicit relationship between the victim and respondent No. 1.
19. P.W. 5 is another neighbour of the victim. He stated that, there was an illicit relationship between respondent No.1 and the victim for a long period of time. The victim was not agreeing to the proposal of the development of illicit relationship made by the respondent No. 1 to her. He claimed that the respondent No.1 used to hold out threat to the victim that if she did not agree to the development of an illicit relationship, then he would kill her. He corroborated the discovery of the dead body of the victim.
20. P.W. 5 stated that, on the discovery of the dead body, respondent No. 1 was brought to such place whereupon respondent No. 1 confessed that he killed the victim with the help of respondent

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No.2. P.W. 3 also stated that, respondent No.1 murdered the victim by tying her sari on her neck. He tendered his signature in the seizure list dated May 6, 2015 which was marked as Exhibit-4/1 as also the signature in the Inquest Report which was marked as Exhibit-2/1.

21. In cross-examination, P.W. 5 stated that, he could not recollect as to whether, he stated to the Investigating Officer that in his presence and in the presence of many other persons, respondent No.1 made the extra judicial confession.
22. P.W. 6 is another neighbour. He also claimed that, respondent No. 1 made the extra judicial confession in his presence as to the murder. In cross-examination, he stated that, he did not make any statement of such nature to the Investigating Officer.
23. The photographer who took the photographs of the dead body, deposed as P.W. 7. He tendered his signature on the seizure list and two videos which was marked as Exhibit-7 and Material Exhibits 2 respectively.
24. P.W. 8 is the doctor who performed the postmortem on the dead body of the victim. He stated that, death was due to asphyxia due to strangulation, ante mortem and homicidal in nature. He stated that the victim was strangled to death with the help of sari which the deceased wore just before her demise. In cross-examination, he stated that the decomposition of the body suggested that the death happened maximum three months from the date of the postmortem or minimum of one month thereafter. He, however, could not state the actual date of death.
25. Investigating Officer deposed as P.W. 9. He narrated about the investigations. He tendered various documents and material exhibits in evidence which was marked as exhibits. In cross-

examination, he stated that, P.W. 1 and P.W. 2 did not state to him that Respondent Nos. 1 and 2 made the extra judicial confession. He also stated that P.W. 3, P.W. 5 and P.W.6 also did not told him about the extra judicial confession made by the respondent Nos. 1 and 2 during investigations.

26. On conclusion of the evidence of the prosecution, respondent Nos. 1 and 2 were examined under Section 313 of the Criminal Procedure Code. In such examination they claimed that, the allegations as against them were false. They claimed that they were innocent. They declined to adduce any evidence at the trial.
27. Victim was initially found missing and a missing diary was lodged. Dead body of the victim was discovered on April 29, 2015 and a written complaint alleging murder was lodged on April 30, 2015 with the police.
28. Inquest was performed on the dead body of the victim on the discovery of the dead body which is Exhibit-2. Postmortem was performed. Postmortem report being exhibit, read with testimony of the doctor performing such postmortem, being P.W. 8, establishes that the death of the victim occurred due to strangulation and was homicidal in nature. Murder of the victim was, therefore, established at the trial.
29. Issue before us is as to whether both the private respondents being respondent Nos. 1 and 2 or any of them are guilty of the murder of the victim as they were charged with or not. Learned Trial Judge acquitted both the private respondents of such charge.
30. At the trial, P.W. 1, P.W.2, P.W. 3, P.W. 5 and P.W. 6 claimed that, the respondent Nos. 1 and 2 made the extra judicial confession with regard to the murder before them and before many other persons.

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31. Version of each of these P.W. 1, P.W.2, P.W. 3, P.W. 5 and P.W. 6 with regard to extra judicial confession allegedly made by the respondent Nos. 1 and 2 varies. P.W. 1 stated that, respondent No. 1 confessed of the murder, while P.W No. 2 stated that, respondent No. 2 did so. P.W. 3 stated that, respondent No.1 confessed of the murder while P.Ws.3, 5 and 6 stated that both respondents confessed to the murder.
32. Significantly, P.Ws. 1, 2 and 3 recorded statements under Sections 164 of the Cr.P.C. They were tendered in evidence and marked as exhibits. We perused such exhibits. We did not find that in such 164 statement any of the P.Ws. 1, 2 or 3 made any claim that any of the respondents made the extra judicial confessions to them.
33. In cross-examination, the Investigating Officer denied that any of the prosecution witnesses, namely, P.Ws. 1, 2, 3, 5 and 6 ever told him that any of the private respondent Nos. 1 and 2 made any extra judicial confession to them.
34. Version of P.Ws 5 and 6 with regard to extra judicial confession are that, when, the dead body was discovered, the respondent Nos. 1 and 2 were arrested and they were brought to the place of discovery of the dead body whereupon, respondent Nos. 1 and 2 allegedly made the extra judicial confession. Such extra judicial confession was made in presence of many persons.
35. However, such claim of the PWs. 5 and 6 stands un-corroborated by the Investigating Officer being P.W. 9. In cross-examination, he categorically stated that neither P.Ws 5 and 6 nor any of the prosecution witnesses made such statement to him.
36. The claim of extra judicial statement was introduced at the trial. It is uncorroborated by contemporaneous conduct of the investigations or any other materials on record.

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37. Last seen together theory is not also available as nobody claimed that the victim was seen last with the respondent Nos. 1 and 2 or any of them.
38. Prosecution did not examine any witness as an eye-witness to the incident of murder. Therefore, the prosecution was unable to establish a chain of circumstances leading to irrefutable conclusion as to the guilt of any of the respondent Nos. 1 and 2 in the incident of murder.
39. In such circumstances, we find no ground to interfere with the judgment of acquittal passed by the learned Trial Judge. Learned Trial Judge found that there was no cogent, consistent and impeachable evidence on record as against the respondent Nos. 1 and 2. Learned Trial Judge also found that the case of the prosecution was wrapped in a veil of doubt. Learned Trial Judge, therefore, proceeded to hold that the prosecution failed to bring home the charges as against any of the respondent Nos. 1 and 2.
40. CRA/20/2021 is accordingly **dismissed**.
41. Let a copy of this judgment along with the Trial Court records be sent down to the learned jurisdictional Court below at once.

(Debangsu Basak, J.)

42. I agree

(Biswaroop Chowdhury, J.)