

Calcutta High Court
In the Circuit Bench at Jalpaiguri
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

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

CRA (DB) 6 of 2024
IA NO: CRAN/4/2026

Sujit Barman @ Kalu
Vs.
The State of West Bengal & Anr.
With
CRA (DB) 52 of 2023

Sujit Barman @ Kalu
Vs.
The State of West Bengal

For the Appellant : Mr. Hillol Saha Podder, Advocate

For the State : Mr. Aditi Shankar Chakraborty, Ld. A.P.P
Mr. Subhasish Misra, Advocate

Heard and Judgment on: 19.03.2026

DEBANGSU BASAK, J.:-

1. Appeal is directed against judgment of conviction dated August 18, 2023 and the order of sentence dated August 19, 2023 passed by the Learned Additional Sessions Judge-cum-Judge Special Court (under the Protection of Children from Sexual Offences Act, 2012), Alipurduar in connection with Special Case No.17 of 2017, corresponding to Sessions Trial No.05 of 2017.

2. By the impugned judgment of conviction, the appellant was found guilty of rape and murder of the victim amongst others. By the impugned order of sentence, appellant was sentenced to rigorous life imprisonment amongst others.
3. Police received a written complaint on March 25, 2016 at about 09.05 hrs. with regard to the victim. Police registered the same as a First Information Report and commenced investigation. Police arrested the appellant. Subsequently, on completion of investigation, police submitted charge-sheet as against the appellant. Charges under Section 6 of the Act of 2012 and under Sections 302/201 of the Indian Penal Code, 1860 were framed as against the appellant on July 8, 2017. Appellant pleaded not guilty and therefore, the appellant faced the trial.
4. At the trial, prosecution examined 19 witnesses. Prosecution tendered various documents which were marked as exhibits at the trial. Prosecution also tendered various materials which were marked as Material Exhibits at the trial. On the completion of evidence of the prosecution, the appellant was examined under Section 313 of the Criminal Procedure Code. Appellant declined to adduce any evidence in support of his defence.
5. P.W.1 is the de facto complainant and the grand-father of the victim. He stated that, the victim used to stay with him when she was one year old. He stated that, the victim died on March 24, 2016. On that date, victim left home from 11 a.m. for the purpose of plying Holi and did not return till 2.00/2.30 p.m. Thereafter, he along with local people went in search

of the victim but could not find her. Thereafter, the appellant came to the house of the P.W.1 in the evening wearing one yellow colour towel when he noticed mud on his legs, hands and body. The victim was not traced out in night. Thereafter, at around 8/9p.m. he contacted local panchayat who advised him to lodge a missing diary and accordingly, he lodged a missing diary. On the next date i.e., on March 25, 2016, he was informed by a member of the gram panchayat that, the victim was found floating in the river. Thereafter, he rushed to the river. He found the body of the victim in a naked condition. He informed the police. Police recovered the body. He identified the body as that of the victim. He noticed marks of injuries on the body of the victim. He lodged the police complaint. He identified his police complaint which was marked as Exhibit-1. His is a witness to the inquest which was tendered and marked as Exhibit-2. He stated that, after seven days appellant was taken to the bank of the river where recovery were made on the appellant showing the apparels of the victim. He is a witnesses to the seizure made. Such seizure list was tendered in evidence and marked as Exhibit-3. He stated that, the thread used for wearing 'jalkathi' on the waist of the victim was recovered on being shown by the appellant at the place occurrence but the 'jalkathi' was not recovered. The original birth certificate of the victim was seized and marked as Exhibit-6. The seizure list with regard to the birth certificate and Zimmanama was prepared from the Exhibit-4 and 5 respectively which was examined by the defence when nothing material for the defence transpired.

6. A member of the gram panchayat was examined as P.W.2. He stated that, on March 24, 2016 the victim went to play Holi and since thereafter her whereabouts were not known. He received information on March 25, 2016 at about 8 a.m. that one dead body was lying in the river. Thereafter, he went and saw the dead body. Police came to the spot. He also identified the dead body recovered as that of victim. He is a witness to the inquest report. He was examined by the defence when nothing fruitful was achieved by the defence.
7. A neighbour of P.W.1 deposed as P.W.3. He stated that, the victim used to stay in the house of the P.W.1 since the age of one year. Father of the victim died and thereafter, mother of the victim married the appellant. Mother of the victim used to stay with the appellant. Victim was a school going girl. On March 24, 2016, victim went to play Holi and was found missing. Search for the victim was started at about 2 p.m. He saw the appellant was loitering near Kali temple in front of his house at about 10/10:30a.m. on March 24, 2016. Victim was not traced on March 24, 2016. Thereafter, the dead body was recovered. He identified the appellant in Court.
8. Scribe of the written complaint was examined as P.W.5. He tendered his signature in the written complaint which was marked as Exhibit-1/1.
9. P.W.4 is a classmate of the victim. He stated that, the victim was known to him and that, they were playing Holi together. After playing Holi on March 24, 2016, they went to the river to take bath and on that date, victim stated after bath that she will come later as she did not complete

her bath. Thereafter, P.W.4 started for his home and on the way, he saw the appellant proceeding towards the river. He identified the appellant in Court.

10. Grand-mother of the victim deposed as P.W.6. He stated that, mother of the victim married the appellant. After such marriage, P.W.1 and 6 used to look after the victim. She stated that, victim used to wear string (dhaga) and one iron made weight (jalkati) on her waist. She corroborated the evidence of P.W.1 with regard to the victim being missing, search taking place and dead body ultimately being recovered as also dhaga and jalkati not found on the waist. She also corroborated P.W.1 with regard to the injury mark over the private parts of the victim. She stated that, after four days villagers along with P.W.6 went to the house of the appellant when, the appellant admitted his guilt stating that, he assaulted the victim, raped her, killed her by throttling and threw the dead body into the river. Thereafter, police came and the appellant repeated the same before the police. Thereafter, the appellant was arrested and taken to a place of occurrence where, seizures were made. She identified her left thumb impression on the seizure list. She identified the appellant in Court.

11. The son of P.W.1, deposed as P.W.7. He corroborated the evidence of P.W.1 and P.W.6 with regard to the victim being missing, recovery of dead body as also recovery of articles belonging to the victim. He corroborated P.W.1 and P.W.6 with regard to the extra judicial confession made by the appellant in presence of the villagers.

12. Neighbour of P.W.1 and 6 deposed as P.W.8. He corroborated the statements of P.W.1, 6 and 7 with regard to the seizure of the articles belonging to the victim on the leading statement made by the appellant. He identified the seizure made at the place of occurrence which was marked as Exhibit 8 and the seizure made at the house of the appellant which was marked as Exhibit.9.
13. Brother of the victim deposed as P.W. 9. He corroborated the version of P.W. 1, 6, 7 and 8. He corroborated P.W. 1, 6, 7 and 8 with regard to the extra-judicial confession made by the appellant to the villagers. He is a witness to the seizure list being Exhibit-3.
14. A seizure list witness deposed as P.W. 10. He identified his signature in the seizure list which was marked as Exhibit-9.
15. A home guard deposed as P.W. 11. He identified his signature on the seizure list which was marked as Exhibit-10.
16. A constable deposed as P.W. 12. He took the certificate and the dead body challan as also the dead body of the victim to the hospital for postmortem. He identified his signature on the seizure list.
17. A neighbour who accompanied P.W. 1 to the police station to handover the death certificate of the victim to the police deposed as P.W. 13. He identified his signature on exhibit-4.
18. A reporter and video photographer deposed as P.W. 14. He stated that, on the instruction of the Investigating Officer, he video photographed some incidents relating to the case as also to the investigations. He tendered a compact disc in which such video photography was recorded, which was

tendered in evidence and marked as Exhibit-5. The compact disc was marked as material exhibit-II.

19. Another video photographer deposed as P.W. 15. He stated that, he recorded certain videos on the instructions of the Investigating Officer. He prepared a compact disc which was tendered in evidence.
20. The owner of the studio in which the video recording was down loaded in the compact disc deposed as P.W. 16. He tendered his signature on the seizure list which was marked as Exhibit-5.
21. The doctor who conducted the postmortem on the dead body of the victim deposed as P.W. 17. She stated that, she examined the dead body on March 26, 2016. She found 21 injuries over the dead body of the deceased. She described the injuries found on the dead body. She opined that the cause of death was due to the effects of asphyxia as a result of manual strangulation, ante-mortem and homicidal in nature. She tendered the postmortem report, which was marked as Exhibit-13. She was recalled for further examination. On such recall, she stated that, the victim was raped. Rape was so violent that stool came out. She also stated that, inhuman sexual assault was committed upon the victim.
22. P.W. 17 was cross-examined. In her cross-examination, the opinion as to the cause of death as also the nature of rape was not dislodged.
23. P.W. 18 is a friend of the appellant. He stated that, he went to the house of the appellant in the morning. He took refreshment with the appellant and returned to the house on March 24, 2016. After reaching his house, he was told that the victim was missing. He joined the search of the

victim with the local people. On the next morning that is March 25, 2016, he met the appellant at the bus stand. He asked the appellant about the victim when the appellant replied that the victim could not be traced out. Thereafter, the appellant disclosed that, he committed a mistake. He threw the victim into the river after raping and killing her.

24. P.W. 18 was cross-examined at length by the defence. However, the extra judicial confession which was recorded in the testimony of the P.W.18, was not dislodged.
25. PW. 18 was further examined on February 28, 2023 when the statements recorded under Section 164 of the Criminal Procedure Code was tendered in evidence and marked as Exhibit-18 on consent.
26. P.W. 19 is a police personnel. He received the written complaint and endorsed it. He stated that, the Inspector-in-Charge filled up the formal FIR. He tendered the formal FIR which was marked as Exhibit-14. He is the Investigating Officer. He narrated about the conduct of the investigations. He stated that, he directed video photography of the investigation. He stated that, he interrogated the appellant and recorded his statement under Section 161 of the Criminal Procedure Code. He stated that, the appellant made a statement leading to the recovery of the articles belonging to the victim. He tendered such portion of the statement which was marked as Exhibit-16.
27. As noted above, on conclusion of the evidence of the prosecution, appellant was examined under Section 313 of the Criminal Procedure Code.

28. In his statement recorded under Section 313 of the Criminal Procedure Code, appellant claimed to be innocent. He claimed that he was falsely implicated. He denied his presence at the time and place of occurrence.
29. Learned advocate appearing for the appellant contends that, the prosecution was unable to establish the charges beyond reasonable doubt. He refers to the evidence on record. He submits that, the so-called extra-judicial confession is a very poor piece of evidence which remains uncorroborated by other evidence on record. Moreover, the so-called extra-judicial confession is said to be made four days after the date of the incident. Furthermore, the persons who claimed that the appellant made such extra-judicial confession are interested witnesses in the sense that they are all relating to the victim.
30. Learned advocate appearing for the appellant submits that, the victim was not residing with the appellant. Appellant is the step-father of the victim. Dead body of the victim was found at a river. Prosecution did not examine any person as a witness to the incident of rape and murder. Therefore, the appellant was falsely implicated.
31. Learned advocate appearing for the appellant submits that, the appellant explained the evidence led as against him, at the trial in the examination under Section 313 of the Code of Criminal Procedure. He draws the attention of the Court to the various statements made by the appellant therein.
32. Learned advocate appearing for the State submits that, there are three foundational basis for the prosecution in the present case. One is the

extra-judicial confession. The other is last seen together and the third is recovery of articles belonging to the victim made on the leading statement by the appellant while in custody.

33. Learned advocate appearing for the State draws the attention of the Court to the prosecution witnesses so far as extra-judicial confession is concerned. He submits that, extra-judicial confession was made to both the relatives of the victim as also to the villagers. The relatives of the victim deposed with regard to the extra-judicial confession being prosecution witnesses Nos. 1, 6, 7, 8 and 9.
34. The villager, being P.W. 18 also deposed with regard to the extra-judicial confession. Narration of events with regard to the extra-judicial confession between the two sets of prosecution witnesses are consistent with each other.
35. Learned advocate appearing for the State refers to the evidence of the doctor conducting the examination. He submits that, the nature of rape and death, as deposed by P.W. 17, is consistent and corroborates the nature of the extra-judicial confession narrated by the other prosecution witnesses.
36. So far as last seen together theory is concerned, learned advocate appearing for the State submits that, at least two prosecution witnesses saw the appellant in the near vicinity of the victim at the time of occurrence. He relies upon **(2023) 5 SCC 534 Ram Gopal vs. State of Madhya Pradesh]** in this regard.

37. A dead body of the victim was found on March 25, 2016 floating on the river. Body was identified as that belonging to the victim by P.W.1-grandfather as also the P.W.2.
38. Post-mortem on the body of the victim was conducted by the P.W.17. Post-mortem is Exhibit-13. Opinion of P.W.17 and Exhibit-13 are that, the death was due to asphyxia as a result of manual strangulation, ante-mortem in nature and homicidal.
39. Evidence of P.W.17 on re-examination is that, the victim was brutally raped prior to her murder. Consequently, both rape and murder of the victim stands established by the prosecution beyond any reasonable doubt.
40. Issue is the involvement of the appellant, if any, in the incident of rape and murder.
41. Two prosecution witnesses saw the appellant loitering around near the Kali Mandir at about 10.00/10.30 A.M. and the appellant going towards the ghat of the recovery where the dead body of the victim was ultimately recovered, being P.W. 3 and 4.
42. **Ram Gopal** (*supra*) is of the view that once the theory of “last seen together” was established by the prosecution, the accused was expected to offer some explanation as to when and under what circumstances he parted the company of the victim. If the accused offers no explanation or furnishes a wrong explanation, absconds, motive is established and some other corroborative evidence in the form of recovery of weapon etc.

forming a chain of circumstances is established, the conviction could be based on such evidence.

43. In the facts and circumstances of the present case, apart from the “last seen together” theory, the case of the prosecution is based on other material evidences.
44. Appellant made extra-judicial confession before P.W.1,6,7,8 and 9. All these witnesses are relatives of the victim. Merely because they are relatives of the victim their evidences need not be discarded in its entirety. Their consistent stands in testimony are that they along with other villagers went to the house of the appellant after four days after recovery of the dead body of the victim whereupon the appellant confessed to the crime.
45. P.W.18 is a friend of the appellant who stated that, on March 25, 2016 at about 11 A.M. he met the appellant at a bus stand whereupon on enquiry as to whereabouts of the victim, appellant confessed that he raped and murdered the victim.
46. P.W.18 recorded a statement under Section 164 of the Code of Criminal Procedure which was tendered in evidence and marked as Exhibit-18 on consent. Exhibit-18 was recorded on April 1, 2016.
47. There is hardly any time gap between the date of the incident which is March 24, 2016 and the recording of the statement under Section 164 of the Code of Criminal Procedure by the P.W.18 being Exhibit-18 on April 1, 2016.

48. P.W.18 is consistent in his stand as recorded in Exhibit-18 and in his testimony. He was cross-examined by the defence. His testimony was not dislodged.
49. Independent of the extra-judicial confessions as recorded by P.W. 1,6,7,8 and 9, P.W.18 can be relied upon as there is no material placed before us to doubt the veracity of his testimony.
50. In any event, testimony of P.W.18 and one part of P.W. 1, 6, 7, 8, 9 on the other are consistent with regard to the extra-judicial confession as made by the appellant.
51. Appellant, therefore, made two several extra-judicial confessions one before P.W.18 on March 25, 2016 and the other to the P.W. 1,6,7,8 and 9 four days after the date of the incident.
52. There is nothing on record to disbelieve any of the testimonies of such prosecution witnesses.
53. Recovery of articles belonging to the appellant were made on the leading statement made by the appellant while in custody. Such leading statement was introduced in evidence and marked as Exhibit-16.
54. Facts and circumstances of the case taken together disclose that the prosecution was able to piece together a chain of events which leads to only one conclusion as to the guilt of the appellant in the rape and murder of the victim to the exclusion of any other.
55. That being the situation, we find no reason to interfere with the judgment of a conviction passed by the learned Trial Judge.

56. There is no reason to interfere with the quantum of punishment imposed by the learned Trial Judge with regard to the rape and murder committed by the appellant.
57. The impugned judgment and order is affirmed.
58. Sentence awarded shall run concurrently. Period of detention undergone shall be set off against the sentence undergone.
59. Let a copy of the judgment and order along with Trial Court records be sent down to the learned jurisdictional Court below at once.
60. **CRA (DB) 6 of 2024** and **CRA (DB) 52 of 2023** along with all connected applications are **dismissed**.

(Debangsu Basak, J.)

61. I agree.

(Biswaroop Chowdhury, J.)