

IN THE HIGH COURT AT CALCUTTA
Criminal Appellate Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

DR 3 of 2020

The State of West Bengal

Vs.

Nandita Saha @ Mou & Anr.

With

CRA 138 of 2020

Nandita Saha @ Mou & Anr.

Vs.

The State of West Bengal

For the Appellants : Mr. Jayanta Narayan Chatterjee, Adv.
Ms. Nandini Chatterjee, Adv.
Mr. Supreme Naskar, Adv.
Ms. Jayashree Patra, Adv.

For the State : Mr. Madhusudan Sur, Adv.
Mr. Dipankar Pramanick, Adv.

Hearing Concluded on : March 14, 2023

Judgement on : April 12, 2023

DEBANGSU BASAK, J.:-

1. This death reference has emanated out of the judgement of conviction dated February 6, 2020 and the order of sentence dated February 7, 2020 passed by the learned Additional Sessions Judge, 2nd Court, Sealdah, South 24 Parganas in Sessions Trial No. 14 (3) 2009.

2. Two accused had faced trial for charges under Sections 302/201/34 of the Indian Penal Code, 1860.

3. By the impugned judgement of conviction, the learned judge has held that the convicts are guilty of offence punishable under Sections 302/201/34 of the Indian Penal Code, 1860. By the impugned order of sentence, the learned Trial Court has sentenced one of the convicts Nandita Saha to suffer imprisonment for life and also to pay a fine of Rs. 20,000 and in default to suffer further rigorous imprisonment for 2 years for the offence punishable under Section 302/24 of the Indian Penal Code, 1860 and to suffer imprisonment for 3 years and to pay a fine of Rs. 2000 only and in default to suffer further rigorous imprisonment for 6 months for the offence punishable under Section 201/34 of the Indian Penal Code, 1860. The other convict namely, Satya Saha has been sentenced to be hanged by the neck till he was dead and also to pay a fine of Rs. 20,000 and in default to suffer further rigorous imprisonment for 2 years or till date of execution of the death sentence whichever is earlier for the offence punishable under Section 302/34 of the Indian Penal Code, 1860 and to suffer imprisonment for 7 years or till date of execution of death sentence, whichever is earlier and also to

pay a fine of Rs. 2000 only, and in default to suffer further rigorous imprisonment for one year or till date of execution of death sentence, whichever is earlier for the offence punishable under Section 201/34 of the Indian Penal Code, 1860.

4. The convicts have preferred an appeal being CRA No. 138 of 2020 against the impugned judgement of conviction and the order of sentence. The death reference and the appeal of the convicts have been heard analogously.

5. On December 14, 2008, police received information from prosecution witness (PW) 3 that he saw 2 legs of a child which came out of a bag lying beside the water of the banks of a canal. On the basis of such information, police had reached the place and found a child of about 1 ½ years with the mouth of the child being tied with a napkin. Police had recorded the statement of PW 3. On the basis of the statement of PW 3, police had started Ultadanga Police Station FIR No. 302 dated December 14, 2008 under Sections 302/201/34 of the Indian Penal Code, 1860.

6. On the same date, that is, December 14, 2018, PW 25 had lodged a written complaint with Chanditala police station stating that, he saw a sack lying on the wetland and some portion of the sack was wet in blood. On the basis of the

written complaint of PW 25, Chanditala police station had registered Chanditala Police Station FIR No. 166/08 dated December 14, 2008 under Sections 302/201/34 of the Indian Penal Code, 1860.

7. Chanditala FIR No. 166/08 had been tagged with Ultadanga Police Station FIR No. 302 dated December 14, 2008 in terms of an order passed by the learned Additional Chief Judicial Magistrate, Sealdah.

8. Police had filed a charge sheet being No. 58/09 dated March 13, 2009 against the two convicts under Sections 302/201/34 of the Indian Penal Code, 1860. Court had framed charges under Sections 302/201/34 of the Indian Penal Code, 1860 against the two convicts to which, they had pleaded not guilty and claimed to be tried.

9. At the trial, the case of the prosecution had been that the convicts on December 14, 2008 at about 7 A.M at 63, Suren Sarkar Road, Kolkata 700010 murdered the child and wife of PW 4 and caused the bodied of the victims to disappear and gave false evidence knowing the same to be false.

10. At the trial, prosecution had examined 46 witnesses and relied upon various documentary and material exhibits. On conclusion of the evidence of the prosecution, the convicts

had been examined under Section 313 of the Criminal Procedure Code where they claimed to be innocent and falsely implicated. They had declined to produce any defence witness.

11. Learned advocate appearing for the convicts has submitted that, the prosecution failed to establish chain of circumstances leading to the conclusion that the convicts were guilty and none else. He has submitted that; the prosecution did not produce any eyewitnesses of the alleged murder. Prosecution had relied upon circumstantial evidence in order to prove the charges as against the convicts.

12. Learned advocate appearing for the convicts has taken us through the oral testimonies of the prosecution witnesses as also the documents which were marked as exhibits at the trial. He has questioned the veracity of the oral testimonies of the prosecution witnesses and in particular of PW 4, 5, 10, 11 and 12. He has contended that, the conduct of PW 4 and 5 were unusual. In support of his contention that the conduct of PW 4 and 5 were unusual, he has drawn the attention of the Court to the various aspects of the conduct of PW 4 and 5 as appearing from their oral testimonies.

13. Learned advocate appearing for the convicts has submitted that, the claim of PW 10, 11 and 12 that, they had

seen Satya Saha (hereinafter referred to as convict No. 2 for the sake of convenience) to throw away something into the canal and that too on December 14, 2008 which was almost 3 months before the test identification parade which was conducted on March 4, 2008 was unbelievable. He has contended that, at best, all such prosecution witnesses had seen convict No. 2 for a few seconds on December 14, 2008 and for them to remember the convict No. 2 and identify him in the test identification parade held on March 4, 2008 was impossible if the convict No. 2 was not shown by the police to them prior to the test identification parade.

14. Learned advocate appearing for the convicts has contended that, there were contradictions in the depositions of PW 5 and PW 6. He has sought to point out such contradictions.

15. According to the learned advocate appearing for the convicts, PW 5 was a planted witness. It would be harsh for the Court to confirm a death penalty on the basis of the oral testimony of PW 5.

16. Learned advocate appearing for the convicts has contended that, PW 6 had not seen the convict No. 2 to be assaulting any person. According to him, conduct of PW 7 was

unnatural and should not inspire confidence in the Court. He has contended that, oral testimony of PW 10 was shaken in cross examination. According to him, PW 10 was not trustworthy.

17. Referring to the testimony of PW 14, learned advocate appearing for the convicts has submitted that, such witness claimed that, blood marks were collected from the room of the mother of convict No. 2, room of convict No. 2 as also the room of one of the deceased. However, PW 5 and PW 6 had stated that, the alleged incident occurred inside the kitchen of the deceased. Therefore, according to him, blood marks should have been seized from the kitchen and not from the place where PW 14 had claimed.

18. Learned advocate appearing for the convicts has questioned the oral testimonies of PW 15 and PW 25. According to him, prosecution did not examine best possible witnesses at the trial. Investigating officer had claimed that, neighbours and relatives were not examined as they were gained over. Wife and son of PW 5 were not examined.

19. Learned advocate appearing for the convicts has contended that, the prosecution miserably failed to prove how the child was murdered even though it was claimed that there

was mark of throttling on the neck of the child. Prosecution did not try to match the finger marks of any of the 2 convicts with those found on the neck of the child. Serological testimonies regarding bloodstains were not sufficient to implicate any of the 2 convicts.

20. According to the learned advocate appearing for the convicts, even if one relies upon the case of the prosecution then also, there appears involvement of Nandita Saha (hereinafter referred to as the convict No. 1 for the sake of convenience) with regard to the murder. At best, prosecution may have a claim that she was involved in the destruction of the evidence of the crime.

21. Referring to the evidence of the crime, learned advocate appearing for the convicts has submitted that, very faint strutting type bloodstains were detected on the outer surface of the eastern side of the open cot of the room of one of the deceased. Very faint traces of blood was detected just beneath the wooden cot. Traces of blood had been detected on the floor of the room of the convict No. 2 in between the Western Wall of the room on the western side of the double bed which was placed against the northern wall of the room.

No bloodstain had been found from the Ambassador car and the motorcycle.

22. Learned advocate appearing for the convicts has relied upon **2011 volume 11 Supreme Court Cases 754 (Sk. Yusuf vs. State of West Bengal)** and contended that, extrajudicial confession are very weak type of evidence and requires appreciation with great caution. Moreover, the nature of admissibility of facts discovered pursuant to the statement under Section 27 of the Indian Evidence Act, 1872 is very limited. He has contended that, if an accused deposed before the police officer a fact as a result of which, a weapon was discovered, recovery of such weapon does not necessarily lead to an inference as against such accused. There has to be evidence connecting the weapon with the crime alleged to have been committed by the accused.

23. Learned advocate appearing for the convicts has contended that, the convict No. 1 had retracted from her Statement recorded under Section 164 of the Criminal Procedure Code on May 2, 2009.

24. Relying upon **2006 Volume 12 Supreme Court Cases 306 (Vikramjit Singh alias Vicky vs. State of Punjab)** learned advocate appearing for the convicts has contended

that, burden of proving a fact under Section 106 of the Indian Evidence Act, 1872 did not relieve the prosecution of the burden to prove its case beyond all reasonable doubts.

25. Learned advocate appearing for the convicts has contended that, confession of co-accused person is not substantive evidence but can be relied upon for conviction when such confession was properly recorded as per law and was voluntary. Such confession has to be sufficiently corroborated by the evidence of the eyewitnesses, other witnesses, expert witnesses and documentary witnesses. In support of such contention, he has relied upon **2014 Volume 7 Supreme Court Cases 443 (Mohd Jamiluddin Nasir vs. State of West Bengal)**.

26. Learned advocate appearing for the convicts has relied upon **All India Reporter 1958 Supreme Court 66 (Subramania Goundan vs. State of madras)** and **All India Reporter 1963 Supreme Court 1094 (Pyare Lal Bhargava vs. State of Rajasthan)** in support of his contention that, retracted confession may form the legal basis of a conviction if the Court is satisfied that it was true and voluntarily made. However, a Court shall not base a conviction on such confession without corroboration.

27. Relying upon **1980 Supreme Court Cases (criminal) 580 (Bachan Singh vs. State of Punjab)** and **1983 Supreme Court Cases (criminal) 681 (Machhi Singh vs. State of Punjab)** learned advocate appearing for the convicts has contended that, the learned trial judge failed to advert to the mitigating factors in favour of the convicts and the probability of the convicts being reformed and rehabilitated. Learned trial Court had failed to embark into an enquiry as to whether there was any possibility of reformation and rehabilitation of the convicts and whether the alternate option of life imprisonment was foreclosed.

28. Learned advocate appearing for the convicts has relied upon **2022 SCC Online Calcutta 3949 (State of West Bengal vs. Nemai Sasmal)** and contended that, death penalty in such case had been commuted to life imprisonment. He has also relied upon **2005 volume 11 Supreme Court Cases 600 (NCT of Delhi vs. Navjot Sandhu)**, **2021 volume 10 Supreme Court Cases 725 (Nagendra Sah vs. State of Bihar)**, **1984 volume 4 Supreme Court Cases 116 (Sharad Birdhichand Sarda vs. State of Maharashtra)**, **2023 SCC Online SC 50 (Boby vs. State of Kerala)** and **1978 volume 4 Supreme Court Cases**

90 (*Chandran vs. State of Tamil Nadu*) with regard to commutation of death penalty to one of life imprisonment.

29. Learned advocate appearing for the State has submitted that, the convicts were guilty of twin murders. They had murdered their sister-in-law along with one of the children of such sister-in-law and thereafter disposed of the 2 dead bodies at 2 different places in order to destroy the evidences of the crimes, if possible.

30. Learned advocate appearing for the State has submitted that, the dead body of the sister-in-law of the convicts had been discovered from one place when a police case was registered. The dead body of the child had been discovered from another place where a separate police case was registered. Thereafter, both the police cases had been tagged. Police on conclusion of the investigations had submitted the charge sheet against both the convicts for murders and destroying evidence of the crime.

31. Learned advocate appearing for the State has submitted that, several prosecution witnesses had seen convict No. 2 at a time when, he was throwing the dead body of the child. They had identified convict No. 2 appropriately in the test identification parade as also in Court. He has drawn

the attention of the Court to the oral testimony to of PW 3, 4, 7, 10, 11, 25, 33, and 34. He has submitted that, the post-mortem reports of the 2 victims read with the oral testimony of the post-mortem Doctor conclusively established that the victims had been murdered.

32. Learned advocate appearing for the State has submitted that, the impugned judgement of conviction and the order of sentence should be affirmed. The death reference should be answered by upholding the death penalty awarded as against convict No. 2.

33. A constable of the police had deposed as PW 1. He had prepared the sketch map of the place of occurrence, and the 2 places where the 2 dead bodies had been found. He had tendered such sketch maps which were marked as exhibits at the trial.

34. Another police constable who had taken photographs of the dead body of the child, the place from where the dead body of the child had been recovered and the spot from where the dead body of the mother of the child had been recovered deposed as PW 2. He had tendered such photographs in evidence at the trial and the same were marked as material exhibits.

35. The maker of the police complaint which resulted in the registration of the FIR at Ultadanga Police Station had deposed as PW 3. He had stated that, on December 14, 2008 at about 9 AM when he went to answer nature's call at the bank of the canal by the opposite side of premises No. 4 Canal East Road he saw nylon bag in the muddy watery area of the canal from where 2 legs of a child could be seen. He had also seen a blue coloured bedsheet by side and some papers scattered by side. He had become frightened and raised a hue and cry. On hearing his hue and cry some passers-by along with other persons had assembled there. Then he had made a phone call to the police station. Police had arrived there within a short period. Police had barricaded the area. He disclosed his identity to the police. He along with one of his neighbours being PW 13 had identified the nylon bag to the police. Police had taken the nylon bag and the dead body of the child.

36. PW 3 had described the wearing apparel of the child. He had described how the knee and face of the child were covered and tied with a napkin (gamcha). Police had uncovered the face of the child and a photographer had taken photographs of the child. At that time, it had seemed that the child was dead. He had seen a red cord on the neck of the

child and it contained a Tabiz and a locket with a portrait of Lord Shiva on one side and portrait of a person on the other. He had described other pieces of articles which were there on the dead body of the child. He had stated that, police had seized the same. Police had taken the dead body of the child. He had later learnt that the doctors had declared the child is dead. He had lodged a complaint with the police. He had identified the complaint which was tendered in evidence and marked as Exhibit 3. He had witnessed the Seizure. He had identified his signature on the seizure list which was tendered in evidence and marked as exhibit. He had identified the material exhibits.

37. The husband of the lady deceased and father of the child deceased had deposed as PW 4. He had stated that, he resided along with his deceased wife and his deceased son and another son that was still alive along with his mother at premises No. 63, Suren Sarkar Road. The 2 convicts had also resided along with their son in the same premises. PW 5 had resided at the same room along with his wife and son as a tenant. He had described the composition of the premises in question. He had stated that, there were 4 rooms at the premises in question. Out of the 4 rooms one had been in

occupation by him and his family members. One room had been occupied by the 2 convicts and their son. One had been occupied by his mother and another by PW 5 and his family as a tenant. There was only one bathroom which was common.

38. PW 4 had stated that, his wife and his youngest son had been murdered. He had stated that, his elder son was aged about 2 ½ years when his youngest son and wife had been murdered.

39. PW 4 that stated that on December 13, 2008 at about 7 PM he had left his home towards Sealdah Koley market when his wife and 2 sons were at the home. His mother, the 2 convicts and PW 5 along with their families had been at their respective rooms. He could not return home at that night due to pressure of his work. On December 14, 2008 at about 6:30 AM he had received a phone call from his wife who sought his permission to go to her elder sister's home at Tangra with the children with a view to celebrate the birthday of his youngest son. He had advised his wife to go carefully. He had returned home at about 1230/1 PM and found that the door of his room was open. He had found the rooms of the convicts, his mother and PW 5 to be under lock and key. He could not find

his wife and sons at his room. He had also seen the used wet wearing apparels by the side of the door, money bag of his wife, a bag containing articles used by his wife and his sons and chappels of his wife. He had thought that his wife had gone to any nearby home. He tried to find out his wife and sons and enquired from his neighbours but of no result. He had then taken rest on his cot. At about 2/2:30 PM his mother had returned home with his eldest son and told him that she had gone to his maternal aunt's home at Beliaghata to attend a feast. On query, his mother had told him that the convict No. 2 had taken the convict No. 1 and their son, his mother and his eldest son to his maternal aunt's home by the white Ambassador. On his query about his wife and youngest son, his mother had told him that the convicts told that his wife left the home in the morning with the younger son after quarrelling with the convict No. 2. He had thought that my wife had gone to her elder sister's home at Tangra and expected that she would return home by evening with his youngest son.

40. PW 4 had stated that as his wife and his younger son did not return home, he left his home towards the home of the elder sister of his wife. He had arrived at such home when he

was informed that his wife and his youngest son did not come there. He tried to find out about his wife and his youngest son with the help of his relatives at home but of no result. Ultimately, he along with his brother-in-law and others had gone to the Beliaghata police station at about 11 PM. He had lodged a diary with such police station which was tendered in evidence and marked as Exhibit 7. Convict No. 1 had returned home along with a child in the evening. He and his eldest son had stayed at the home of his sister-in-law at that night.

41. On December 15, 2008 police from Beliaghata police station had come at about 10 AM. He had returned home in the morning of December 15, 2008. Police had informed him that the dead body of a child was found by the side of Ultadanga, and requested him to accompany them to identify the child. He had gone to the police station when he was taken to the Ultadanga police station where he was shown the photograph of a child. He had told the police that it was the photograph of his child. Then police had taken him to R G Kar Hospital Morgue. He had identified the dead body of his son at such hospital. He had burst into tears and lost his senses. He had been taken home by his relatives.

42. On December 15, 2008 police from Ultadanga police station had come again at about 7/7:30 PM. At that time PW 5, his wife and his son had returned home. Police had asked him that they would search his room and other rooms of the premises to which he agreed. Police had also requested PW 5 to assist them at the time of the search to which PW 5 agreed.

43. PW 4 had stated that on December 14, 2008 at about 6:30 AM he had received a phone call from his wife on his mobile phone. His wife had rang him from an STD booth. His brother, the convict No. 2, had two mobile phones one of which was used by convict No. 2 and another by his wife, the convict No. 1. Police had seized various articles at the premises. Police had prepared a seizure list. He and PW 5 and a police officer had put their signatures on such seizure list. Police had also packed and labelled seized articles and took their signature on such labels. Police had interrogated him when he told the police that the convict No. 1 and 2 had murdered his youngest son and they also kept concealed the body of his wife after murdering her. Then police had gone to the room of PW 5 and left the premises. He had identified his signatures on the seizure list dated December 15, 2008 which was marked as Exhibit 8. He had been shown the seized

articles and identified his signature on such articles. He had identified the articles seized.

44. PW 4 had stated that on December 15, 2008, he was examined by the police. Police had gone to the room of PW 5 and interrogated him also. On December 16, 2008 he had gone to the Ultadanga police station from where he went with the police to Chanditala police station and then to R G Kar Hospital morgue to obtain the dead body of his son. He had buried the dead body of his son in a burial ground near Ultadanga police station. On arrival at Ultadanga police station he came to know that one dead body had been recovered by Chanditala police station and that such dead body had similarity with his wife. He had also come to learn that police had arrested both the convicts and seized 2 vehicles of convict No. 2. He had identified both the convicts in Court. He had stated about the police registration numbers of the 2 vehicles used by convict No. 2. He had stated that, convict No. 2 had a driving license and he could drive the vehicles and that the convict No. 2 was an employee of Coca-Cola company at Dankuni.

45. PW 4 had stated that on December 16, 2008 he went to Chanditala police station accompanied by the police of

Ultadanga police station. He had been shown various articles by such police and he was sure that they belong to his wife. He had identified those articles in Court and they were marked as material exhibits. He had been taken to a morgue where he identified the dead body of his wife. Police had interrogated him at the hospital and recorded a statement. On December 17, 2008 he had cremated dead body of his wife. He had stated that he had a business of potato and onion and that he used to get supply of potato from Jullundur for which there were impression of Jullundur on the gunny bag. He had also received supply of onion from Nasik and the gunny bags had impressions of Nasik. He had taken some gunny bags to his house for the purpose of using them as mats.

46. PW 4 had stated that his wife used to wake up at about 6/6:30 AM and after taking a bath she started the household chores. His mother used to wake up at about 630/7 AM and used to go out for her morning walk. The family members of his brother used to wake up at about 6:30 AM and the family members of the tenant used to wake up at about 7 AM. Convict No. 2 used to exercise in the morning by his instruments. He had identified such instruments in Court which were marked as material exhibits at the trial. He had

identified the gunny bags which he had kept in his home. They were also marked as material exhibits.

47. PW 4 had stated that both the brothers had purchased more or less 2 kathas of land with 4 rooms brick wall and asbestos roof from their fund. Document of such purchase had been kept with his brother the convict No. 2 as he was with little education and convict No. 2 was a graduate. He had stated that both the brothers were in joint mess but after the birth of his youngest son they separated. His youngest son was born on December 14, 2007. Convict No. 2 did not keep them in his mess as he had low income and had many family members while convict No. 2 had high income with lesser family members. He had requested convict No. 2 to make a partition of the home but he was not agreeable to do so. Convict No. 2 had told him that he would not show the documents of the home and would not give any share of the home. As and when PW 4 had demanded the document and share of the home, convict No. 2 and his wife started quarrelling with them. He had identified both the convicts in the Court. He had stated that the quarrels increased day by day and that his wife told him that both the convicts had

assaulted her when she raised the issue. He had informed the party club about the matter verbally.

48. PW 4 had stated that on December 10, 2008 there was an incident of assault between him and convict No. 2 over the issue of partition. On that day, convict No. 2 had threatened him that he would teach him such a lesson that he would never forget. He had verbally intimated such fact to the local police station. Convict No. 2, his mother and other relatives also went to the police station after he went there. On such date, convict No. 2 had given a written undertaking to the police that he would not create any disturbances over the issue of partition. Police had obtained his signature and the signature of other persons. He had identified the undertaking written by convict No. 2 and signed by him and convict No. 2 which was tendered in evidence and marked as Exhibit 31. He had described the neighbours' homes in the vicinity. He had stated that after returning from the police station both the convicts did not stop quarrelling over the issue. His wife had protested against it for which she along with his son were murdered.

49. The tenant who was residing at the premises concerned had deposed as PW 5. He had corroborated PW 4

with regard to the description of the premises and the rooms in occupation at such premises by different persons. He had identified both the convicts in Court. He had corroborated PW 4 with regard to the time when various persons living at the premises in question woke up in the morning. He had stated that there was a bitter relationship between PW 4 and his wife on one part and the convicts on the other, relating to the partition of the premises in question. He had stated that, they used to quarrel and also used to assault each other. He had stated that, both PW 4 and convict No. 2 had claimed the homestead land as an absolute owner.

50. PW 5 had stated that on December 14, 2008 which was a Sunday, his wife went out to fetch kerosene oil from the ration shop at about 7 AM. The mother of PW 4 had gone out for her morning walk. He had woken up at about 7:15 AM on that day when he found convict No. 1 and 2 to be quarrelling with the deceased wife of PW 4 in respect of the partition of the homestead land. PW 4 was not present at home at that time. When he was on his way to the toilet, he had found convict No. 2 was in an angry mood and telling the deceased wife of PW 4 that she would be taught a lesson otherwise he would not find peace. At that time convict No. 1 had stood

behind convict No. 1. The deceased wife of PW 4 had been cooking something at the verandah. Both the convicts were at the Courtyard and convict No. 2 was armed with the wooden ruler which he had used for his exercises. When PW 5 was in the toilet he had heard the screaming sound of the deceased wife of PW 4. He had also heard a male voice from a nearby home telling convict No. 1 to not assault a woman. When he had come out from the toilet, convict No. 2 had rushed to her mother-in-law's room. At that time convict No. 1 was drawing water from the tap. He saw that convict No. 1 had stood guard at the door of her mother-in-law and that convict No. 2 was doing something inside the room of his mother by sitting on his knees. He had also found the younger son of PW 4 in front of the door of the room of PW 4 and that he was crying at that time. Then he had entered into his room. After some time, he could not hear the cry of the younger son of PW 4. After some time, he had come out of his room to fetch tap water when he found convict No. 1 to go towards the room of her mother-in-law with some gunny jute bags from a room. When he had come to his room after fetching water, he had seen the door of the mother of PW 4 was closed and he could not see the younger son of PW 4. When he was at his room, convict No. 2

had entered into his room and threatened him that he had seen nothing and that if disclosed anything to anyone it would be fatal. He had made a phone call to his brother-in-law and informed him about the quarrel and narrated how convict No. 2 had threatened him. His brother-in-law advised him not to take part in any quarrel and asked him to go to his eldest daughter's home at Hooghlyghat. After some time, the mother of PW 4 had returned to her room. His wife had also returned and he disclosed everything to his wife including the advice of his brother-in-law. At about 10:45 AM, convict No. 1 and 2 their son, mother of convict No. 2 and PW 4 and eldest son of PW 4 went out. After their departure he and his family members went to Hooghlyghat.

51. PW 5 had stated that on December 15, 2008 he along with his wife and son returned to the room in the evening. When he was about to enter into the premises, he had found mob and police. On his query, the person present informed him that the younger son of PW 4 had been murdered. Police had asked about his identity and he disclosed his identity as a tenant. Police had requested him to go to the room of PW 4 for the purpose of seizure of some articles. He had accompanied the police to the room of PW 4. Police had seized various

articles. He had identified his signatures on the seizure list and the labels of the seized articles.

52. PW 5 had stated that on December 16, 2008 police came to their premises in the morning and told them that they would seize the black bike of convict No. 2. Police had prepared a seizure list and a label which he had signed.

53. PW 5 had stated that, on December 18, 2008 he found the entrance to the premises to be under lock and key and police personnel posted there. Police had opened the door of the mother of PW 4 in his presence. Police had collected bloodstains from the cot of the mother of PW 4. Police had prepared a seizure list which he had signed. Police had also gone to the room of PW 4 and collected blood stains from the floor. Police had gone to the room of convict No. 2 and collected blood stains from the wooden frame of the door. Police had prepared a seizure list which he had signed. Police had recorded his statement and his brother-in-law separately. Police had allowed him to take his articles from his room. He had described the user of the veranda by the various inmates of the premises. He had identified the various labels of the articles seized as well as his signatures on the seizure list.

54. The adjacent house owner of the premises in question had deposed as PW 6. He had corroborated PW 4 and 5 with regard to the persons in occupation of the premises in question. He had corroborated PW 4 and 5 as to the bitter relationship and incidents of assault between PW 4 and convict No. 2 with regard to the dispute over the premises in question. He had stated that on December 14, 2008, he had heard a howling sound from the premises in question at about 7.15/7:30 AM he had seen through the window that convict No. 2 was in an angry mood with convict No. 1 by his side. He had heard the voice of the deceased wife of PW 4 but could not see her. After some time, the howling sound had settled. He had heard the screaming sound of the wife of PW 4. He had then shouted that the convict No. 2 should not assault a woman. All of a sudden, the situation had become cool and calm. He did not take any interest thinking that it was the routine affair. On December 15, 2008 when he had returned from his office in the evening, he saw that a number of police personnel were at the narrow passage of the premises in question. He had come to learn from the local people that the dead body of the younger son of PW 4 had been recovered from the canal and that the wife of PW 4 was untraced. He

had also come to know that convict No. 2 was also untraced from the morning. On December 16, 2008 at about 11.45/12 at the night he had come to know from the television that the dead body of the wife of PW 4 had been recovered from Durgapur Expressway.

55. A former tenant of the premises in question had deposed as PW 7. He had stated that, he had visiting terms with the families of PW 4 and convict No. 2 after his departure from the tenancy. On December 14, 2008 at about 11 AM when he along with his wife and children were getting ready to go to the home of his elder sister convict No. 2 had arrived at their home. Convict No. 2 had requested him to go to the premises in question for some purpose. He had asked convict No. 2 to disclose the cause but convict No. 2 told him that he will disclose it at his home. He had gone with convict No. 2 to the premises in question by his motorcycle. He had seen the white Ambassador car of convict No. 2 to be parked on the road in front of their home. He did not find any member when he had arrived at the premises in question. On the request of convict No. 2, he had entered into the room of convict No. 2. He had seen a gunny bag containing something between the wall and the Court. Convict No. 2 had tried to lift the gunny

bag but he could not lift it. Convict No. 2 had requested him to help convict No. 2 for lifting the gunny bag. He had moved two steps and found that there were some brown stains on the gunny bag. He had suspected that there was a human body inside the gunny bag. He had become afraid and returned to his house by his motorcycle. He did not disclose it to anyone out of fear. Then he along with his family members had gone to the residence of his elder sister. On that day, he had stayed at the house of the elder sister. He had returned on the next day at about 11/11:30 PM and took to his bed and was sleepless. His wife had asked him the reason for his sleeplessness when he disclosed everything to her. His wife told him to disclose everything to the police on the next morning.

56. PW 7 had stated that, on the next morning he found a mob and came to know that the dead body of the younger son of PW 4 had been recovered from the side of the canal and that the wife of PW 4 was untraced. He had also come to know that convict No. 2 was also untraced. Then he had gone to Beliaghata police station who asked him to go to the Ultadanga police station. He had gone to such police station and narrated everything to the police officer at such police

station. He had identified the 2 convicts in Court. He had corroborated other prosecution witnesses with regard to the disputes between PW 4 and convict No. 2 with regard to the property and the assault that took place consequent upon such disputes.

57. The driver of the vehicle who frequently drove the Ambassador car in question had deposed as PW 8. He had stated that, the car used to be parked near the house of the convict No. 2 on Saturdays and Sundays. On December 15, 2008 he had collected the keys from convict No. 1. As he was going to take the car, he had received a phone call from convict No. 2 made from a STD booth. He had instructed PW 8 to clean the car and then report to the office. He acted in the car with water and found in the key there were stains which were like blood stains. He had washed the car and reported to the office. On the same very day at about 8 PM in the evening when he had gone to reach the Deputy Director at Gariahat he received a phone call from Ultadanga police station instructing him to immediately report to the police station after dropping the Deputy Director. He had done so. At the police station he had been asked by the police officials to deposit the papers of the vehicles and the keys. He had done so. He had witnessed

the seizure list. He had identified his signature on the seizure list and the label prepared with regard to the seizure of the car. He had identified the car during the trial.

58. The owner of groceries shop and a public call office, that is, STD booth had deposed as PW 9. He had stated that, on the morning of December 14, 2008, the wife of PW 4 had made a phone call from his STD booth. Thereafter at about 10:30 AM convict No. 2 had come to its shop and handed over a Rs. 20 note for a blade which cost Rs. 2. He had asked for change. Convict No. 2 had been looking tense. On December 15, 2008 he had heard a hue and cry in the locality and learnt that since December 14, 2008 the wife and child of PW 4 have gone missing. He had also heard that the dead body of the son of PW 4 had been recovered on December 15, 2008. He had come to learn that the dead body of the wife of PW 4 had been recovered on December 6, 2008. He had been examined by the police on December 17, 2008. He had identified the convict No. 2 in Court.

59. The owner of a tea stall on Canal East Road had deposed as PW 10. He had stated that on December 14, 2008 at about 8.30/8:45 AM in the morning he was at his tea stall and when to throw the vestige of a shop in the VAT across the

road by the side of the canal opposite to his tea stall. Then he had seen a dark complexion man on a black coloured motorcycle coming and stopping in front of premises No. 4 Canal East Road. There was a small child on his motorcycle, sitting on the front. He was also carrying a line on bag containing some heavy thing in sight. The nylon bag was covered by a bed sheet. The man carried the bag for a few steps towards the canal and then threw it into the canal. The man thereafter came back to the motorcycle, started the motorcycle turned around and went off along with the child. When he was taking a U-turn, Bittu and PW 11 had stopped him and asked him why he was taking such a turn rashly while carrying a child. The man had replied that he was in a hurry and went off. At around 1130 to 11:45 AM on that very day he had heard a hue and cry in the locality and came out of his house. On enquiry he had come to learn that a dead body of a child had been found by the canal side. As he had gone near the spot, he could see that it was the same nylon bag which was brought by the man on the motorcycle in the morning. He had informed the same to the police who arrived at the spot. He had told the police that he will be able to identify the man who came on the motorcycle to dump the

bag. He had identified the convict No. 2 as the person who had dumped the bag. He has said that he went to the correctional home for identification of the man. He had identified the nylon bag.

60. A small shop owner having a shop near the Kolkata railway terminal had deposed as PW 11. He had stated that, on December 14, 2008 he was bringing goods and materials for a shop from the market and was walking through the canal East Road. He had found that a man came from his back on a black coloured motorcycle with a small child seated in front of the bike. He had been riding fast. After crossing him, he had stopped the bike near a VAT in front of the house of premises No. 4. He had a nylon bag appearing to be quite heavy covered by a blue bedsheet. Such man had got down from the motorcycle, carried the bag towards the canal and threw it into the canal. After throwing the bag in the canal, the man had come back, started his motorcycle and taking a turn went away in high speed. At that point of time, PW 10, and Bittu had told such man that while he was carrying a child he was unnecessarily hurrying up and riding dangerously. The man had replied that he was in a hurry and he went away.

61. PW 11 at stated that on the same day he came to learn that dead body of a small child had been recovered from the side of the canal. Hearing about the same he had gone to the spot where some people had gathered. He had found a small child with yellow coloured sweater on with the napkin wrapped around his mouth lying on the ground on the nylon bag with blue bedsheet lying by the side. He had realised that the man on the black motorcycle had thrown the dead body of the child in the nylon bag. He had been interrogated by the police when he told the police that he had seen the man on the motorcycle who threw the nylon bag. He had identified the convict No. 2 as the person who came on the motorcycle. He had stated that, he had identified convict No. 2 in the test identification parade held at the correctional home which he had visited pursuant to the notice received by him.

62. A person who had witnessed the inquest of the dead body of the child had deposed as PW 12. He had identified his signature on the inquest report which was had tendered in evidence and marked as Exhibit 45/1 and 45/2.

63. The person who had witnessed the seizure of the articles made by the police on December 14, 2008 by the side of the canal had deposed as PW 13. He had identified his

signatures on the seizure list as well as on the labels of the articles seized by the police.

64. A relative of PW 5 had deposed as PW 14. He had stated that on December 14, 2008, PW 5 had called him at about 8/8:30 AM in the morning and told him that the convict No. 2 was quarrelling within his family. He had suggested PW 5 not to get involved in the family matters of convict No. 2 and told him to go to his daughter's house. 4 days after the phone call, PW 5 had met him and told him that some books are to be brought from the house of convict No. 2. He had gone with PW 5 to the house of the convict No. 2 and found the house to be under lock and key. It was about 1/1:30 PM and there were 2 police men posted as guard. During that time few men in civil dress had arrived and disclosed themselves to be from Lalbazar. They had gone inside the house by opening the gate. They had requested them to remain there as they wanted to check the house. Then such police personnel had collected dried up blood from the room of the mother of the convict No. 2, room of convict No. 2 and also from the room of the wife of PW 4. He had signed the seizure list.

65. The elder sister of the wife of PW 4 had deposed as PW 15. She had stated that, the relationship between the families

of PW 4 and convict No. 2 were not good and that there were disputes relating to the use of toilets, bathroom and water. There had been disputes regarding the share of the house property and the relationship became even more bitter with the matter being required to be reported to the police. She had tried to resolve the disputes amicably. There had been an incident of assault on December 10, 2008 between the 2 families when convict No. 2 was taken to the local police station.

66. PW 15 had stated that, the victim had told her that convict No. 2 threatened her with dire consequences and said that he will teach a lesson to her and family that they will never be able to forget. At the local police station there was a kind of settlement. On December 13, 2008 there was a telephonic conversation between her and the wife of PW 4. She had invited the wife of PW 4 to come to her house on December 14, 2008 for celebrating the birthday of her younger son. On December 14, 2008 wife of PW 4 did not come to her house. In the late evening PW 4 along with his elder son had come to her house in search of his wife. From PW 4, she had come to learn that on December 13, 2008 evening, PW 4 had gone to Koley market and did not return home that night. On

the morning of December 14, 2008, the wife of PW 4 had called PW 4 over phone and informed him that she would come to her house. She had narrated the subsequent steps taken upon discovery of the dead bodies of the 2 victims.

67. Another witness who was present during the inquest of the dead body of the son of PW 4 at the hospital morgue on December for 2008 had deposed as PW 16. He had identified his signature on such inquest report.

68. The person who had witnessed the seizure of articles made by the police on February 18, 2009 near Salt Lake VIP fairground had deposed as PW 17. He had identified his signature on the seizure list dated February 18, 2009 and his signatures on the label of articles seized on such date.

69. The wife of PW 7 had deposed as PW 18. She had corroborated PW 7 with regard to the visit of convict No. 2 at their residence and PW 7 confiding in her about the happenings at the residence of the convict No. 2. She had stated that, there were disputes between the families of convict No. 2 and PW 4 relating to the property in question.

70. The person who had witnessed the seizure made by the police on February 10, 2009 had deposed as PW 19. He had stated that, he was asked by the police to remain as a witness.

The police have searched certain articles, sees them by preparing a seizure list and packed those articles. He had identified the appellant in Court. He had identified his signature on the seizure list as well as on the labels. He identified the objects seized.

71. Another witness who had witnessed the seizure made by the police on February 18, 2009 had deposed as PW 20. He had stated that, the convict No. 2, whom he identified in Court, had taken the police and showed the police various articles whereupon, the police had made the seizures. He had identified his signature on the seizure list. He had identified his signatures on the labels as also identified the articles that had been seized by the police.

72. The police personnel who had identified the dead body of the child of PW 4 to the autopsy surgeon had deposed as PW 21.

73. The general manager of the company where the convict No. 2 had worked had deposed as PW 22. He had stated that, on December 15, 2008 convict No. 2 had come to their office at about 7 AM and left the office at about 10 AM. He had tendered various documents relating to the employment of the convict No. 2 at the trial.

74. A colleague of convict No. 2 who worked with him had deposed as PW 23. He had witnessed the seizures made by the police at the office on December 22, 2008. He had identified the signature thereon.

75. The shop owner where the police had printed the photos taken deposed as PW 24. He had described how he had taken the print out of the digital chip which the police constable had made over to him. He had identified the photographs which were marked as material exhibits. He had identified his signatures on the seizure list dated February 5, 2009.

76. A person having hotel business situated on the western side of Durgapur Expressway had deposed as PW 25. He had said that he could recollect one incident which took place on December 14, 2008. On that date at about 3 PM, he was proceeding towards Priyanka Plywood on his bicycle and at that time he had seen one bloodstained sack near culvert No. 643/2 and on seeing the same due to doubt he had called Chanditala police station and thereafter the police had come and cordoned the place. Police had taken photographs of the sack and thereafter opened the sack in his presence and on opening the same one female dead body was found therein

whose identity was unknown to him. He had seen one injury mark on the back of her head and one nylon rope tied on her neck. He had thereafter lodged the complaint with the police. He had identified the written complaint which was marked as Exhibit 57. He had identified the photographs taken. He had identified his signature on the seizure list. He had said that he made a statement under Section 161 of the Criminal Procedure Code to the police.

77. The person who had witnessed the inquest over the dead body of the wife of PW 4 had deposed as PW 26. He had identified his signature on the inquest report of the wife of PW 4.

78. Another person who had witnessed the seizure of the articles made on December 14, 2008 at Durgapur Expressway had deposed as PW 27. He had identified his signature on the seizure list.

79. PW 28 had stated that, his office had hired vehicles from different persons. He had stated that, the vehicle in question was taken on hire from convict No. 2 and that such vehicle had been used till December 15, 2008 by his office. He had tendered documents relating to the hire of such vehicle at the trial.

80. The police personnel who had held the inquest over the dead body of the child victim had deposed as PW 29. He had tendered the inquest report of the child victim which was marked as Exhibit 45/2. He had forwarded the dead body of the child victim for post-mortem examination to a police constable.

81. The doctor who had examined the child victim had deposed as PW 30. He had stated that on December 14, 2008 at about 11:35 AM, he had examined one unknown dead body of a male child aged about 1 ½ years brought by a constable of the Ultadanga police station. He had found that such child was brought dead with a wet piece of cloth tied twice around his neck and covering both mouth and nostril. He had tendered the medical examination report of the child victim in evidence and the same was marked as Exhibit 62. He had tendered the death certificate of the child victim which was marked as Exhibit 63.

82. The sub- inspector of police before whom PW 4 had lodged a complaint against convict No. 2 on December 10, 2008 had deposed as PW 31. He has stated that, on December 10, 2008 in the morning PW 4 had lodged a complaint against convict No. 2. Later the mother of PW 4 and convict No. 2 had

come to the police station and told him that her sons will not create any further trouble. He had reported the same to the officer in charge. Officer in charge of the police station had told him to inform the mother of PW 4 and her 2 sons for giving an undertaking. Thereafter PW 4 had drafted one undertaking as per the version of their mother and then PW 4, his mother and convict No. 2 had signed the same in his presence. He had tendered such undertaking which was marked as Exhibit 31/1. He had identified his signature on the seizure list relating to the seizure of such undertaking which was marked as Exhibit 64.

83. The judicial Magistrate before whom convict No. 1 had recorded a statement under Section 164 of the Criminal Procedure Code had deposed as PW 32. He had stated that he recorded the statement of convict No. 1 in his chamber in between 3 PM to 4:30 PM. He had tendered such statement bearing his signature and the signature of convict No. 1 in evidence which was marked as Exhibit 65.

84. The doctor who had performed the post-mortem on the dead body of the wife of PW 4 had deposed as PW 33. He had deposed as to the injuries he found on the dead body. He had tendered the post-mortem report in evidence which was

marked as Exhibit 66. On receipt of the forensic science laboratory report he had given further opinion on the cause of death of the deceased which was tendered in evidence and marked as Exhibit 67. He had stated that, the inside wound which was found in the body of the deceased may be caused with the help of the wooden rod which was preserved by him. Ligature mark which had been found on the body of the deceased may be caused with the help of the nylon rope. Thumb impression fingerprints may have been caused by pressing hands from the front side.

85. The doctor who conducted the post-mortem on the dead body of the child victim had deposed as PW 34. He had described the injuries he found on the dead body of the child victim. He had opined that the death was due to the effects of smothering, ante mortem and homicidal in nature. He had tendered the post-mortem report in evidence which was marked as Exhibit 68. He had tendered his final opinion given after receipt of the chemical examiner's report which was tendered in evidence and marked as Exhibit 69.

86. The police constable who had taken the dead body of the female victim to the hospital for post-mortem had deposed as PW 35. He had also witnessed the seizure of various

articles. He had identified his signatures on the seizure list and the labels on the articles.

87. The judicial magistrate in presence of whom the test identification parade at the Presidency Correctional Home had been held on March for 2009 at 4 PM deposed as PW 36. He had stated that, how the various witnesses had identified the 2 convicts. He had tendered the test identification report which was marked as Exhibit 71.

88. The police personnel who had recorded the general diary entry No. 1515 dated December 14, 2008 lodged by PW 4 had deposed as PW 37. The general diary entry had been tendered in evidence and marked as Exhibit 7.

89. The sub- inspector of police who had responded to the information of discovery of the dead body of the child victim had deposed as PW 38. He had narrated about the steps he had taken on visiting the spot.

90. The assistant sub- inspector of police who had first responded to the information regarding the discovery of the dead body of the female victim had deposed as PW 39. He had noted such information as a general diary which he had tendered in evidence and the same was marked as Exhibit 72.

91. The officer in charge of Chanditala police station at the relevant point of time had deposed as PW 40. He had stated that, he had received a complaint petition and started the formal first information report. The formal portion of the first information report was tendered in evidence and marked as Exhibit 73 while the written complaint was marked as Exhibit 57.

92. The handwriting expert of the Question Document Examination Bureau had deposed as PW 41. He had stated that he received some sealed documents for examination for comparison on March 2019. He had submitted his report with regard to the examination of such documents on March 13, 2009. He had tendered his report in evidence which was marked as Exhibit 74.

93. The forensic expert who had visited the place of occurrence being premises No. 63 Suren Sarkar Road and examined 2 vehicles kept at the Ultadanga police station on the same day within approximately 15:20 hours to 18:00 hours had deposed as PW 42. He had described how he found blood stains at 3 places at the place of occurrence. He had stated that, on examination of the 2 vehicles he did not find any bloodstains thereon. He had sent samples to the

serologist for examination and the letter to that effect was marked as Exhibit 78. Serologist report had been marked as Exhibit 79.

94. The police personnel who had witnessed the seizure on December 15, 2008 had deposed as PW 43. He had identified the seizure list which was marked as Exhibit 70.

95. The sub- inspector of police who had lodged the general diary entry on receipt of information of the discovery of the dead body of the child victim had deposed as PW 44. He had described the seizures effected at the place where the dead body of the child victim had been discovered. He had identified his signatures on the seizure list as also on the labels. He had identified the material exhibits. He had stated that, as the dead body of the child victim was identified at that time, the police give requisition to different police stations for identification of the child. They had returned to the police station and recorded a case against unknown persons. He had drawn up the formal first information report. The formal portion of the first information report had been tendered in evidence and marked as Exhibit 84. He had stated that on December 15, 2008, PW 4 had come to the police station and stated that since December 14, 2008, his wife and child were

missing and that he had lodged a missing diary at Belegkata police station. He had shown PW 4 the photograph of the child victim whereupon, PW 4 went to the morgue and identified the child victim as his son. He had thereafter made a requisition for handing over the dead body of the child victim to PW 4. He had narrated as to the steps police took subsequent thereto after visiting the place of occurrence being premises No. 63, Suren Sarkar Road. He had conducted investigations with regard to the subject police case up to a given point of time.

96. The 2nd investigating officer had deposed as PW 45. He had described the manner of his investigations. He has stated that, he arrested convict No. 2 on February 10, 2009 he had made seizures on February 10 2009/February 11, 2009 between 23:05 hours to 00 20 hours in presence of witnesses. Such seizure list had been tendered in evidence and marked as Exhibit 47.

97. The 3rd investigating officer had deposed as PW 46. He had taken over the investigations on December 17, 2008. He had interrogated convict No. one and recorded a statement under Section 161 of the Criminal Procedure Code. He had narrated about the course of investigations. He had narrated how forensic experts had visited the place of occurrence. A

photographer from the detective department had arrived at the place of occurrence. He has stated that convict No. one had recorded a statement under Section 164 of the Criminal Procedure Code on January 2, 2009. He had stated that on February 18, 2009, convict No. 2 made a revealing statement which led to the recovery of incriminating articles. He had recorded the statement of convict No. 2. A portion of such statement had been tendered in evidence and marked as Exhibit 88. He had stated that, incriminating articles had been seized pursuant to the leading statement made by convict No. 2 on February 18, 2009 and a seizure list in respect thereof was prepared. He had identified such seizure list as Exhibit 46. He had also identified the material exhibits seized. He had submitted the chargesheet No. 58/09 dated March 13, 2009 under Section 302/201/34 of the Indian Penal Code, 1860 against the convex. He had collected the viscera reports of the 2 victims which had been marked as Exhibit 90 and Exhibit 90/1. The forensic science laboratory (Physic Division) report had been tendered in evidence and marked as Exhibit 91.

98. On conclusion of the evidence of the prosecution, the convicts had been examined under Section 313 of the

Criminal Procedure Code where they claimed to be innocent and falsely implicated. They had declined to produce any defence witness.

99. Dead bodies of the child of PW 4 and his wife had been discovered on December 14, 2008. PW 3 had lodged a police complaint with Ultadanga police station with regard to his finding the dead body of the child of PW 4 on December 14, 2008 at about 9:30 AM. PW 25 had lodged a complaint with the Chanditala police station with regard to his discovery of the dead body of the wife of PW 4 near Durgapur expressway. These 2 dead bodies had been subsequently identified by PW 4 as his son and wife.

100. PW 33 had performed the post-mortem on the dead body of the wife of PW 4. He had stated that, the death of the wife of PW 4 was asphyxia due to throttling and strangulation which was antemortem and homicidal in nature. Post-mortem report being Exhibit 66 and his final report being Exhibit 67 along with his deposition at the trial had established that, wife of PW 4 was murdered.

101. PW 34 had performed the post-mortem on the dead body of the child of PW 4. Exhibit 68 being the post-mortem report of the child of PW 4 and Exhibit 69 being the final

report prepared by PW 34 along with his deposition at the trial had established that the son of PW 4 had been murdered. PW 34 had stated that, the death of the son of PW 4 was due to the effects of smothering antemortem and homicidal in nature.

102. As has been noted above, both the bodies had been discovered on December 14, 2008 with the body of the son of PW 4 been discovered at around 9:30 AM while his wife being discovered at about 3 PM.

103. The 2 victims had been at their residence in the morning of December 14, 2008. This has been established by PW 5 was a tenant in respect of a room and its attached Veranda at the premises where the 2 victims were residing.

104. PW 5 in his deposition had stated that, the mother of PW 4 had gone out for a morning walk when the convicts and the wife of PW 4 had been quarrelling with each other over the disputes relating to their home stead.

105. There had been disputes and differences between the convicts on one part and PW 4 and his wife on the other part relating to partition of the premises where they were living. There had been frequent altercations between the 2 families. There had been incidents of assault. These facts have been

stated by PW 4. This aspect had been corroborated by the PW 5 who was a tenant at the premises in question at the relevant point of time. The neighbour being PW 6 had corroborated that there were disputes and differences between the 2 families relating to the partition of the premises in question. PW 4 had lodged a complaint against the 2 convicts relating to an incident of assault with the local police station on December 10, 2008 which was tendered in evidence and marked as Exhibit 31. PW 31 had corroborated the claim of PW 4 with regard to the fact that, there was an incident of assault between the 2 families with regard to the partition of the premises in question and that there was a police complaint lodged to such effect.

106. There had been occasions when altercations took place between the 2 families and incidents of assault had also occurred. PW 5 and PW 6 had deposed that there were altercations between the 2 convicts on one part and the wife of PW 4 on December 14, 2008 in the morning. PW 6 had spoken about asking convict No. 2 not to assault a lady.

107. PW 5 had narrated about the altercation that was taking place between the convicts on one part and the wife of PW 4 on the other part in the morning of December 14, 2008.

Statements of PW 5 as to the altercations that had taken place between the convicts on one part and the wife of PW 4 on the other part on the morning of December 14, 2008 had been corroborated by PW 5, the neighbour as also PW 14 the relative of PW 5.

108. PW 15 had corroborated PW 4, PW 5 and PW 6 that there used to be altercations with regard to the property and that there were incidents of assault also between the convicts on one part and PW 4 and his wife on the other.

109. Exhibit 66 and 67 along with the deposition of the post-mortem doctor conducting the post-mortem on the dead body of the wife of PW 4 have established that there were marks of injuries on such victim. The wife of PW 4 had died due to asphyxia. PW 33, the post-mortem doctor, had stated that the incised wound which was found on the body of the wife of PW 4 may be caused with the help of the wooden rod.

110. PW 10, and PW 11 had seen convict No. 2 to throw away a nylon bag along with the bed sheet to the canal. Dead body of the son of PW 4 had been discovered from such a nylon bag along with the bed sheet which convict No. 2 had thrown at the canal in presence of PW 10 and PW 11.

111. PW 10 and PW 11 had corroborated each other so far as the activity of convict No. 2 in throwing the nylon bag containing the dead body of the child of PW 4 at the canal.

112. PW 25 had discovered the dead body of the wife of PW 4 and reported such fact to the police. Convict No. 2 had a motorcycle and an Ambassador car at his disposal at that relevant point of time. He had used the motorcycle to dispose of the dead body of the child of PW 4 at the canal and was seen by PW 10 and PW 11 in doing so. Prosecution could not bring forth any witness who saw convict No. 2 to dispose of the dead body of the wife of PW 4.

113. PW 15 who is the elder sister of PW 4 and convict No. 2 had deposed stating that the relationship between the families of the convict No. 2 and PW 4 were not good and that it was so bad that matter was required to be reported to the police. She had spoken about the incident of assault on December 10, 2008 between the 2 families. She had stated that the wife of PW 4 had told her that convict No. 2 threatened the wife of PW 4 with dire consequences and said that he would teach a lesson to her and her family that they will never be able to forget.

114. The prosecution had therefore been able to establish conclusively sufficient motive for the murder and the fact that the convicts had been last seen together with the 2 victims. The 2 convicts did not offer any explanation with regard to the death of the 2 victims in their examination under Section 313 of the Criminal Procedure Code.

115. We have not found any material discrepancies in the depositions of PW 5 and PW 6. deposition of PW 5 had been corroborated by PW 14. PW 5 and PW 6 had corroborated each other with regard to the incidents happening in the morning of December 14, 2008 at the residence of the convicts. PW 7 had spoken about the assistance requested by convict No. 2 in carrying one of the sacks to the Ambassador car. PW 7 had been corroborated by his wife in a deposition being PW 18. PW 7 had gone to the police station to narrate his experience contemporaneously. Therefore, we are unable to accept the contentions of the learned advocate appearing for the convicts that, there were material contradictions in the testimonies of the prosecution witnesses vitiating the charges brought against the convicts.

116. **Sk. Yusuf (supra)** has held that, where circumstantial evidence did not conclusively establish the guilt of the

accused, the benefit of doubt should be given to the accused. In the facts of that case, there was no evidence that the deceased and the appellant were seen together at the place of occurrence or nearby the same, in close proximity of time.

117. In *Vikramjit Singh (supra)* it has been held that where two views of the story appeared to be probable, the one that was contended by the accused should be accepted. It has also held that, burden of proving facts especially within the knowledge of the accused under section 106 of the Indian Evidence Act, 1872 does not relieve the prosecution to prove its case beyond all reasonable doubt. In the facts of the present case, 2 views with regard to the incidents happening at the residence of the convicts with the victims being present there do not emanate out of the facts established at the trial.

118. In *Mohd Jamiluddin Nasir (supra)*, the facts of that case has found that, confessional statement made by accused No. 1 and recorded under section 164 of the criminal procedure code was fully corroborated by ample oral and documentary evidence. Such confessional statement has been found to be a meticulous description of men, material, date, time and events. It has observed that, trial judge has to

carefully analyse the confession keeping in mind the prescriptions under section 164 read with section 281 of the criminal procedure code. While doing so, if the trial judge develops any iota of doubt he should reject the confession. In the facts of that case, it was found that, there was no such doubt to reject the confession and it was held that the learned trial judge rightly relied upon the confession of the accused No. 1 to convict accused No. 1 to accused No. 8.

119. *Subramania Goundan (supra)* has dealt with the question whether a retracted confession may form the basis of conviction is believed to be true and voluntarily made. It is observed that, for the purpose of arriving at this conclusion the court has to take into consideration not only the reasons given for making the confession or retracting it but the attending facts and circumstances surrounding the same. It is held that, there can be no absolute rule that a retracted confession cannot be acted upon unless the same is corroborated materially. It has observed that, in the case of the person confessing has resiled from his statement, general corroboration is sufficient while an accomplice's evidence should be corroborated in material particulars. In addition,

the court must feel that the reasons given for the retraction in the case of a confession are untrue.

120. In *Pyare Lal Bhargava (supra)* the Supreme Court has held that, whether a statement made by an authority within the meaning of section 24 of the Indian Evidence Act, 1872 appears to the court to be a threat with reference to the charge against the accused or not is a question of fact.

121. In the facts and circumstances of the present case, the prosecution had proved at the trial, beyond reasonable doubt that, the convicts had murdered the 2 victims and had thrown the dead bodies of the 2 victims at 2 different locations and tried to destroy the evidence with regard to the crime. Convict No. 1 had been sentenced to life for the crime of murder. Convict No. 2 however has been awarded the death penalty for the crime of murder.

122. Learned trial judge has taken into consideration the parameters for award of death penalty as enunciated in *Bachchan Singh (supra)* and *Machi Singh (supra)*. The learned trial judge has taken into consideration the mitigating and aggravating circumstances so far as convict No. 2 is concerned.

123. While deciding on the quantum of sentence to be awarded, the learned trial judge by the impugned order of sentence discussed the aggravating circumstances against convict No. 2 and found no mitigating circumstances in his favour. The learned trial that had taken into account the brutality of the crime, number of persons murdered, the murder of 1 year old child and an undefended female, the helplessness of the victims and arrived at the finding that capital punishment was the appropriate sentence so far as convict No. 2 was concerned. The learned trial judge however had failed to embark upon the exercise to find out as to whether convict No. 2 was beyond reformation or not. The learned trial judge did not arrive at the conclusion that award of life sentence was foreclosed so far as convict No. 2 was concerned.

124. The coordinate bench in ***Nemai Sasmal (supra)*** had commuted death penalty to one of life imprisonment in respect of the murder of a 14 year old girl. It has relied upon ***Bachchan Singh (supra)*** to observe that the extreme penalty of death ought not to be awarded unless the alternate option of life imprisonment is unquestionably foreclosed. It has taken note of at least 2 authorities of the Supreme Court where

death penalty in respect of murder of children were commuted to 1 of life imprisonment.

125. In the facts of the present case, the state has neither at the stage of the trial nor before us in appeal provided any materials to show that the convict was beyond reformation and rehabilitation. Failure of the state to provide such information has been held in **2011 volume 13 Supreme Court Cases 706 (Rajesh Kumar versus State)** to be a mitigating circumstance.

126. Applying such a ratio of **Rajesh Kumar (supra)** and in view of the failure of the state in providing material that convict No. 2 is beyond rehabilitation and reformation, we consider such failure of the state as a mitigating circumstance in favour of convict No. 2. Consequently, in our view, award of life imprisonment as a sentence for the crime committed by convict No. 2 was not foreclosed. While we are not confirming the death penalty for the convict No. 2 we are required to award a sentence commensurate with his crime.

127. The Supreme Court in **2008 Volume 13 Supreme Court Cases 767 (Swamy Sharddananda vs. State of Karnataka)** and in **2016 Volume 7 Supreme Court Cases 1 (Union of India vs. Sriharan @ Murugan)** has observed that,

a Constitutional Court can award a sentence of life imprisonment without remission for a specified period.

128. In the facts of the present case, a child of 1½ year had been murdered by the convict. Along with the child, the mother of the child had also been murdered. Both the mother and the child had been in a helpless position vis-a-vis the convicts. They had murdered the two victims for gains relating to property. The learned Trial Judge had noted such aspect while awarding death penalty to the convict No. 2.

129. In the facts of the present case, in our view interest of justice will be sub served by commuting the death penalty of the convict No. 2 to a life sentence without remission for a period of 40 years from the date of the commission of the offence. The other portions of the impugned order of sentence are upheld.

130. DR 3 of 2020 along with CRA 138 of 2020 are disposed of accordingly.

131. A copy of this judgement along with the Trial Court records be remitted to the appropriate Court forthwith. In view of the commutation of the death penalty of convict No. 2 Satya Saha, any warrant issued by the appropriate Court with regard thereto in respect of Satya Saha stands modified in

terms of this judgement and order. Department will inform the Correctional Home, where Satya Saha is lodged, as to this judgement and order. The Correctional Home will record the fact of commutation of death penalty to the sentence awarded by this judgement and order in respect of Satya Saha, in their records.

132. Urgent Photostat certified copy of this judgement and order, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

[DEBANGSU BASAK, J.]

133. I agree.

[MD. SHABBAR RASHIDI, J]