IN THE HIGH COURT AT CALCUTTA

Criminal Appellate Jurisdiction

Appellate Side

Present:
The Hon'ble Justice DebangsuBasak
And
The Hon'ble Justice Prasenjit Biswas

C.R.A. 696 of 2019
Rasan @ RaisanHansda @ Raison Hansda
-Versus-
The State of West Bengal

For the Appellants	: Ms. Suchismita Dutta, Adv.
For the State	:Mr. Suman De, Adv.
Hearing Concluded on	: July 02, 2025
Judgement on	: July 10, 2025

Prasenjit Biswas, J.:-

1. This appeal has been preferred assailing the correctness of the impugned judgment and order of conviction passed by the learned Additional Sessions Judge, Fast Track 2nd Court, PaschimMedinipur dated 27.03.2019 and 29.03.2019 in connection with Sessions Trial No. 01.04.04.

2. By passing the impugned judgment and order of conviction the learned Trial Court found this appellant guilty for commission of offence punishable under Section 364/302/201 of the Indian Penal Code and sentenced him to suffer imprisonment for life without remission and to pay fine

of Rs. 10,000/- and in default of payment to fine to undergo simple imprisonment for two years for the offence punishable under Section 364 and Section 302 of the Indian Penal Code.

3. Being aggrieved and dissatisfied with the said impugned judgment and order of conviction the present appeal has been preferred at the behest of the appellant.

4. The instant case was started on the basis of a complaint lodged by the de-facto complainant stating interalia, that on 31.12.2002 at about 10 A.M. his eldest son namely, Biswajit Soren who was aged about 13 years at that point of time and was a student of class-VII of Nekurmeni High School, went to school but he did not return home as usual after the school hours for the day. The de-facto complainant and his family members started looking for his son and lodged a missing diary at Belda Police Station. Afterwards the de-facto complainant came to know from some persons as well as classmates of his son that on the very date of the incident after the school hours of the day, in the afternoon this appellant Raison Hansda of village Manikadagor kidnapped the victim from the front of the school with intention to kill him due to his previous grudge. Over the complaint a case was started being Belda P.S. Case No. 02/03

dated 04.01.2003 under Section 364/302 of Indian Penal Code.

5. Thus, the criminal law was set in motion. After completion of investigation police submitted charge-sheet against the accused persons under Sections 364/302 of the Indian Penal Code. The charge was framed by the Trial Court against these accused persons under Sections 364/302/201 of the Indian Penal Code.

6. In this case, prosecution examined 15 (fifteen) witnesses to establish the charge against this accused appellant. Documentary as well as seized articles have been marked as exhibits on behalf of the prosecution.

7. Ms. Suchismita Dutta, learned Advocate for the appellant said that there are apparent contradictions and omissions in the statements of the witnesses and as such, the testimony of the prosecution witnesses cannot be relied upon. It is said by the learned Advocate that the whole case was based upon circumstantial evidence and there was no ocular evidence on record to show that this appellant is the actual person who kidnapped and murdered the victim and none else. It is said by the learned Advocate that PW6, Phulmoni Mandi is the only witness who stated before the Magistrate at

the time of recording of her statement under Section 164 Cr.P.C. that she found this appellant was carrying the victim Biswajit Soren on his cycle but at the time of giving deposition she did not state the name of the victim and only said that he found the appellant was carrying one male student of that school. The learned Advocate further assailed that the prosecution failed to establish three links of chain which is essential in the case of circumstantial evidence i.e. motive, last seen, and recovery of weapon of assault. As per submissions of the learned Advocate the prosecution has failed to bring on record about any enmity prevailed in between the appellant and the de-facto complainant and his family members.

8. Ms. Dutta, learned Advocate further said that whole case rests upon the sketchy evidence adduced by the prosecution and moreover the offending “katari” was recovered from an open space that is the bed of Subarnarekha River after a considerable period and there is no other link of evidence in between the commission of offence and the appellant. So, it is said by the learned Advocate that the impugned judgment and order of conviction and sentence is bad in law and the same may be set aside.

9. Mr. Suman De, learned Advocate for the State said that the instant case is based on circumstantial evidence which unerringly pointed to the guilt of the appellant and if all circumstances are taken cumulatively formed a complete chain and there is no escape from the conclusion that the crime was committed by the appellant and none else. It is said by the learned Advocate that the post mortem report (exhibit C) indicates that the death of the deceased was due to cardio respiratory failure due to shock and haemorrhage, due to cut injury over the neck and ear and the dead body was identified by his father/de-facto complainant. The attention of this Court is drawn by the learned Advocate to the deposition of PW6 and her statement recorded under Section 164 of the Cr.P.C. where this witness stated that the deceased was last seen with the company of this accused appellant who lifted away the deceased on his cycle on the fateful date. Moreover, the offending weapon i.e. “katari” was seized on the basis of the leading statement of the accused and the seizure has been made under the provision of law. It is said by the learned Advocate that the school bag of the deceased was also seized by the investigating agency as per the leading statement of the accused and the seizure list was prepared which is marked as

exhibit 4 in this case. The attention of this Court is drawn to the evidence of PW11, the autopsy surgeon who deposed that the offence can be caused by the seized offending weapon i.e. “katari”. The school uniform which was seized from the body of the deceased was marked as Material Exhibit in this case. As per submission of the learned Advocate the motive behind the crime has been established as it appears from the deposition of PW1 which was corroborated by the deposition of PW3. The learned Advocate assailed that the evidences of the witnesses as well as the exhibits unerringly point guilt of the appellant and therefore, the conviction and sentence of the appellant may be upheld and the appeal may be dismissed.

10. We have considered the rival submissions advanced by both the parties.

11. It is settled law that circumstances play very important role in the appreciation of evidence. The conduct of the witnesses is a very important facet to determine their creditworthiness. Admittedly, in this case there were no eye witnesses and on the basis of circumstantial evidence, the Trial Court had found the appellant guilty which is challenged before this Court. In the cases of circumstantial evidence, the circumstances from which the conclusion of guilty is to be

drawn should in the first instance be fully established and all the facts so establish should be consistent only with the hypothesis of guilt of the accused. The circumstances should be a conclusive nature and should be stated as to exclude every hypothesis but the one propose to be proved. There must be a complete chain of evidence as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused. It must be stated as to show that within all human probability the act must have been done by the accused and none else.

12. It is trite law that in a case of circumstantial evidence, the prosecution is bound to establish the circumstances from which the conclusion is drawn must be fully proved; the circumstances should be conclusive in nature; all the circumstances so established should be consistent only with the hypothesis of guilt and inconsistent with the innocence. The circumstances should exclude the possibility of guilt of any person other than the accused, so that, the accused can be convicted of the offences charged. The court must satisfy itself that the circumstances from which inference of guilt could be drawn have been established by unimpeachable evidence and the circumstances unerringly point to the guilt

of the accused and further, all the circumstances taken together are incapable of any explanation on any reasonable hypothesis save the guilt of the accused.

13. So, in case of conviction based on circumstantial evidence, the prosecution must led evidence to establish three links of the chain (i) motive, (ii) last seen, and (iii) recovery of weapon of assault. Admittedly, in the case at hand there is no witness to the occurrence and the case of the prosecution rests on circumstantial evidence. There cannot be any dispute as the well settled principles of law that the circumstances from which the conclusion of guilty is to be drawn "must or should be" and not "may be" established. The facts so establish should be consistent only with the guilty of the accused that is to say, they should not be explicable through any other hypothesis except that the accused was guilty. Moreover, the circumstances should be conclusive in nature. There must be a chain of evidence so complete so as to no leave any reasonable ground for a conclusion consistent with the innocence of the accused, and must so that in our human probability, the offence was committed by the accused.

14. PW1, Malati Hasda in her evidence has stated that PW6 Fulmoni of Kakrajit stated that Fulmoni had seen the

accused Raison was lifting away the victim on his cycle on the relevant date and after that 'mesomosai' of PW1 informed the matter before the police station and thereafter body of the victim was recovered from a sandy place of the river. So, this witness did not see that the appellant lifted the victim on his cycle. PW2/de-facto complainant and the father of the victim also stated in the same line of PW1 that he came to know from PW6 Fulmoni Mandi of village Kakrajit that the accused Raisen had lifted away the victim on his cycle. On cross-examination, this PW2 reiterated the same statement stating that Fulmoni of Kakrajit stated him that the victim was lifted away by the accused.

15. PW3, Biswajit Hasda also echoed the same voice of PW1 and PW2 stating that PW6, Fulmoni Mandi stated to the de-facto complainant in his presence that the accused Raisen had lifted the victim. On cross-examination, this PW3 stated that the de-facto complainant heard about lifting of his son by the accused as was seen by PW6, Fulmoni Mandi and PW6 is the person who saw the present accused had taken away the victim on his cycle.

16. PW4, Sasanka Jana only said that the victim left the school with one unknown person in a bicycle. This witness

failed to tell the name of the person who lifted the victim of the school. Save and expect this witness stated nothing impleading the accused with the alleged offence.

17. PW6, Phulmoni Mandi is the star witness of the prosecution. In her evidence, this witness stated that after the school hours for the day was over, she found that the accused raison was carrying one male student of Nekursini School who was aged about 10/12 years on his cycle and on asking the accused told her that the said student was one of his relatives and he would return the boy back to the school on the following day. It is further stated by this witness that she accompanied the accused and that student towards Hariabati more, as her residence is also on that direction. This PW6 further stated in her evidence that the accused purchased some sweet meats for the said student and fed him the same and thereafter she returned to her house. It is further said by this witness that after 5/6 days since that day, she heard that the boy was murdered and the dead body was found on the bank of the river. This witness at the time of examination-in-chief did not mention the name of the victim and only stated that the accused was carrying one male student of that school whereas in the statement recorded by the Magistrate under

Section 164 of Cr.P.C., this PW6 named the victim and stated that the accused was carrying the victim Raison on his cycle. It is very much difficult to understand that when the witness specifically stated the name of the victim at the time of recording her statement before the Magistrate what prevented her for naming the victim at the time of giving deposition.

18. PW8, Balaram Das, PW9, Ananta Kumar Bera and PW10, Monaranjan Giri, the witnesses to the seizure turned hostile and nothing has been elicited from their statements in cross-examination made by the prosecution which may help the prosecution to prove its story. PW8 and PW9 virtually stated that they put their signatures on the seizure list as police asked them to do so. PW10 stated that the police did not read over and explain the contents of the seizure list to him when it was prepared on the bank of Subarnarekha. As such, seizure made by the police personnel is doubtful.

19. PW15, the Investigating Officer had stated in his cross-examination that there was no level found affixed with the offending weapon “katari” and the “bag”. It is said by this witness that he did not send the “katari” for its chemical examination by State FSL, Kolkata. Failure to get the weapon of offence chemically examined may not be always fatal, if

there is other evidence to substantiate the charge. But when the case is based on circumstantial evidence and more particularly when the seizure of weapon is a vital circumstance, relied by the prosecution, such failure is fatal, as, without chemical examination, it may not be possible to connect weapon with the commission of offence.

20. In a case, based on circumstantial evidence, the inference of guilt can be drawn only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused. In the case at hand it is apparent that the motive which has been tried to be established by the prosecution is very weak in nature and which does not justify the prosecution story. It is further settled position of law that suspension however, grave it is, it cannot take in place of evidence. It is trite to state that in a criminal trial, suspicion, howsoever grave, cannot substitute proof.

21. We have already mentioned hereinabove that that the circumstances concerned “must or should” and not “may be” established. The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis

except that the accused is guilty. Moreover, the circumstances should be of a conclusive nature and they should exclude every possible hypothesis except the one to be proved. The circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of guilt of the Accused. The weapon of the crime was said to have been recovered after some days of incident on the pointing out of the appellant. I have already said that PW15 the I.O. did not take any step to send it for obtaining forensic report. Merely for the reason that the doctor opined injuries on the deceased may have been caused by the similar weapon would not conclude that the recovery "katari" was the weapon of the crime. Moreover, the private individuals who are cited as a witness to the recovery and seizure turned hostile and did not state anything which leads to the prosecution story becoming doubtful and it is also not certain that it was actually the weapon of crime.

22. The prosecution led evidence to establish three links of the chain: (i) motive, (ii) last seen, and (iii) recovery of weapon of assault, at the pointing out of the appellant. The Trial Court after dealing with the evidence on record and looking to the

entire gamut and other clinching evidence convicted the appellant. We do not find such conclusion of the Trial Court to be strictly in accordance with law. In a case of circumstantial evidence, the chain has to be completed in all respects so as to indicate the guilt of the accused and also exclude any other theory of the crime.

23. The deceased was found missing on 31.12.2002, FIR was registered on 04.01.2003 and the dead body was recovered on 04.01.2003. PW15 stated that on 07.02.2003 he held raid at the residential house of the accused but he could not arrest him and thereafter he received one RT message to the effect that the accused had already been detained by some persons of village Kanpur under P.S. Keshiary as he had already made confession before some people of Kanpur village that he had committed murder to the victim. The last seen circumstance did not conclusively point towards the guilt of the accused by excluding all hypotheses consistent with his innocence, inasmuch as there was a time gap between the date and time when the deceased was last seen in the company of the accused and discovery of deceased's dead body. Section 106 of the Evidence Act does not absolve the prosecution of discharging its primary burden of proving the

prosecution case beyond reasonable doubt. It is only when the prosecution has led evidence which, if believed, will sustain a conviction, or which makes out a prima facie case, the question arises of considering facts of which the burden of proof would lie upon the accused. In this case the incriminating circumstances were not proved beyond reasonable doubt and they do not form a chain so complete from which it could be inferred with a degree of certainty that it is the accused and no one else who, within all human probability, committed the crime.

24. In the aforesaid facts and circumstances raising finger upon the appellant are not of a conclusive nature to prove beyond the reasonable shadow of doubt that the appellant was the person responsible for the commission of the crime. The possibility of innocence of the appellant does not stand exclude as per chain of events. In our considered view, in the present case the prosecution has not been able to prove his case beyond all reasonable doubt. The evidence of last seen only leads up to a point and no further. It fails to link in further to make a complete chain. The evidence of PW6 which as we have seen looses much of his weight under the circumstances of the case. In the present case, needle of

suspension definitely cast against the accused person but it does not pinpoint the appellant. The prosecution has miserably failed to prove the entire chain of the circumstances which would unerringly conclude that alleged act was committed by the accused only and none else.

25. The evidence adduced by the prosecution is not clinching and conclusive and therefore, we find it difficult to uphold the judgment of the Trial Court.

26. The appeal, therefore, succeeds.

27. The judgement and order of the Trial Court dated 27.03.2019 and 29.03.2019 passed in connection with Sessions Trial No. 01.04.2004 arising out of Belda Police Case No. 2/03 dated 4.01.2003 under Sections 364/302 of the Indian Penal Code are hereby set aside.

28. The conviction of the appellant, namely, Rasan @ Raisan Hansda @ Raison Hansda is hereby set aside. If he is in correctional home shall now be released forthwith unless his presence is required in any other case.

29. Appellant to take bail for six months under Section 437A of Cr.P.C.

30. Trial Court Record along with the copy of this judgement be transmitted to the appropriate Court for taking appropriate steps.

31. Urgent Photostat certified copy of this order, if applied for, be given to the parties on payment of requisite fees.

[PRASENJIT BISWAS, J.]

32. I agree.

[DEBANGSU BASAK, J.]