
(2009) 09 CAL CK 0080
In the Calcutta High Court
Case No : C.R.A. No. 156 of 1998

Smt. Sujata Dutta and Another	Vs	APPELLANT
The State of West Bengal		RESPONDENT

Date of Decision : 17-09-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 164, 313
Penal Code, 1860 (IPC) — Section 201, 302, 34

Citation : (2009) 09 CAL CK 0080

Hon'ble Judges : Syamal Kanti Chakrabarti, J; Debiprasad Sengupta, J

Bench : Division Bench

Advocate : Milon Mukherjee and Biswajit Manna, for the Appellant; Asimesh Goswami, Public Prosecutor, Rita Dutta and Kalyan Mitra, for the Respondent

Final Decision : Dismissed

Judgement

Debiprasad Sengupta, J.—This appeal is directed against the judgment and order of conviction and sentence passed by the learned Sessions Judge, Howrah dated 27.04.1998 and 29.04.1998 in Sessions Trial No. VII (4) of 1993 thereby convicting the accused appellants under Sections 302/201/34 of the Indian Penal Code and sentencing both of them to suffer rigorous imprisonment for life and to pay a fine of Rs. 5,000/- each, in default to suffer further rigorous imprisonment for three months.

2. The prosecution case, in short, is that victim Arun Dutta and his wife Sujata (appellant No. 1) used to live in their ancestral house with other brothers at 12/1, Acharya Para Lane, P.S. Shibpur, District - Howrah. During this period one Swapan Sarkar (appellant No. 2) came to be acquainted with Arun Dutta and his wife Sujata in their ancestral house. Swapan Sarkar developed an intimacy with Arun Dutta and they decided to start a business. After sometime Sujata Dutta and Swapan Sarkar (appellants herein) both started behaving in such a fashion that could not be accepted by the other members of the joint family and trouble started over such issue. The eldest brother Rabilal Dutta protested and over such

incident their fourth brother Arun Dutta (the victim) misunderstood them and thought that they were creating trouble. So, Arun Dutta left the house and started living at a rented accommodation at 8, Umesh Chatterjee Lane, Howrah with his wife Sujata, two daughters and also Swapan Sarkar. This induction of Swapan Sarkar in the family of Arun and his stay in the rented house made the other members of the joint family annoyed and none of the members of the joint family used to visit the rented flat of Arun though his mother Binapani Dutta visited the flat of Arun and Arun in turn also often used to visit the joint family house, used to talk with his mother for sometime and then used to leave the ancestral house.

3. On 31st December, 1992 after receiving salary Arun informed his mother that he was going to his rented house to give money to Sujata and on the following day when he returned to his ancestral house, he reported to his mother that his wife Sujata told him that she had no need of money and he also disclosed to his mother that his relation with his wife Sujata became strained.

4. On 2.1.1993 and 3.1.1993 Arun was at his joint family. On 4.1.1993 he left for his office after taking lunch in the joint family and returned to the same house in the evening. After taking his dinner Arun left for his rented flat at 8, Umesh Chatterjee Lane, Howrah.

5. Arun (the victim) was an employee of A.G. Bengal and his other two brothers, namely, Shyamal and Surjakanta were also employees of A. G. Bengal. It was noticed by Shyamal and Surjakanta that Arun did not attend his office on Tuesday and Wednesday and this was reported to the members of the joint family. The wife of the youngest brother with her children went to the flat of Arun and found the door locked. On the same day third brother Shyamal Dutta went to the flat of Arun to enquire as to why Arun was absent in his office and he also found the door locked. On further enquiry from the landlord he came to know that the door of the flat was locked since Tuesday last.

6. On 7.1.1993 the informant Banshi Dutta, his younger brother Asit, Sulekha (wife of Asit), parents of Sulekha all together went to the flat of Arun and they also found the door of the flat was still locked. After contacting the landlord Prasun Chatterjee (P.W.4) they all tried to look inside the flat by pushing the doors and windows and they also smelt a stench. This created a suspicion in their mind and they all had been to Chatterjeehat Police Outpost and narrated the incident. Having received such information the Officer in Charge of police outpost accompanied the informant and others to 8, Umesh Chatterjee Lane and after calling some neighbours the police broke open the lock of south facing door of the flat, entered into the flat and switched on the light. They noticed that a man was laid covered on a sofa-cum-bed and there was none inside the flat.

7. After observing all formalities the Police Officer removed the covering cloth from the sofa-cum-bed and they all noticed that the cushion materials and springs of sofa-cum-bed were removed and the dead body of informant's brother

Arun Dutta was laid on its chest within the cavity of the sofa. They also noticed that there were marks of bleeding injuries on the face and eyes of Arun and a rope was firmly tied around the neck of the dead body.

8. The informant and other persons present met one Ashima Polley, a maidservant in Arun Dutta's flat, who disclosed that on Tuesday last when she was working in a neighbouring house she met Sujata and her two daughters. Sujata told her that she (Ashima) need not go to Arun's flat that day as they were going out on a tour. It was further learnt from Ashima Polley that Sujata with her two daughters had gone to Juli's private tutor and stayed there for the whole day.

9. In the first information report it was alleged that Sujata Dutta (wife of Arun) and Swapan Sarkar had murdered Arun Dutta, concealed the dead body of Arun within the cavity of sofa-cum-bed and fled away from the house leaving the door of the flat locked from outside.

10. To prove its case prosecution examined as many as 19 witnesses, including the Investigating Officer and the Autopsy Surgeon and none was examined on behalf of the defence. The defence was a plea of innocence and denial of charge framed against them.

11. In the present case there is no eyewitness to prove the case of the prosecution regarding charge of murder and the prosecution has mainly based on the circumstantial evidence.

12. P.W. 1 Banshi Dutta is the brother of Arun (victim) and is the informant in the present case. He fully corroborated his statement made in the first information report. P.W. 2 is Juli Dutta, daughter of victim Arun and Sujata (appellant). She stated in her evidence that her father used to sleep in the room where he died and she herself along with her mother and Swapan uncle used to sleep in the other room. She also deposed that her mother did not like her father and used to ill-treat him. On the fateful day her father wanted a piece of paper from her and her mother scolded her father for which her father did not take any meal on that night. After her father went to bed she also went to her bed. On the following morning she saw Swapan uncle. After preparing tea when she looked at the room of her father she noticed that somebody was standing inside the room of her father. She was scared and did not say anything to anybody. At that time her mother called Swapan uncle and told him something in low voice. She further deposed that her mother then took her and her sister to the house of her teacher Asit Pal. From the house of her teacher she again went to her home as she suspected that something had happened to her father. After reaching home she opened the window a little, as the window-leaves were not bolted from inside, and found that Swapan uncle was sitting in front of the sofa and was doing something, which she could not mark exactly. She again came back to her teacher's house. Then as per direction of Swapan uncle she again had to go to their flat and then she found that sofa was covered with a chaddar and she also

noticed that the sofa had become swollen. She had a feeling that her father was laid inside the sofa. She became confirmed that they (the appellants) must have done something to her father. They all came out of the flat and Swapan uncle bolted the door from outside and locked it. She further deposed that they went to the factory of Swapan uncle and from there they were taken to Dakshineswar by one Bengalida, an employee in the factory of Swapan uncle. Then as per advice of Swapan uncle they had been to Nataraj Hotel at Howrah and spent one night there. One room was taken and they all shared the said room and on the following day also they stayed at Nataraj Hotel. On Friday one man went there and told them that they were being searched by the police and they should leave the hotel. So, in the evening they went to Babughat and boarded a bus for Ranchi. At Ranchi they stayed in "Bengali Hotel". In the hotel she heard her mother conversing with Swapan uncle saying that they had not acted properly by inserting inside the sofa. After spending three days at Ranchi they boarded a train at Ranchi in the evening and arrived at Kharagpur Station in the morning. From Kharagpur they boarded another train and arrived at Howrah Station and after taking an auto rickshaw they all reached Howrah Court. An old man came there and her mother told that man that they had committed a blunder by bringing down the body of her father by cutting rope. This witness (P.W.2) then stated that her mother made a false statement in the court as her father did not hang himself. She was then sent to Liluah Home and her mother and Swapan uncle were sent to jail. This witness also made a statement before the Magistrate, which was recorded u/s 164 Cr. P.C. when she deposed in court that she was residing with her grandmother.

13. P.W. 3 Sulekha Dutta was the wife of Asit Dutta, younger brother of victim Arun. She also corroborated the evidence of P.W. 1 in all vital aspects. P.W. 4 Prasun Chatterjee, the landlord of Arun Dutta, also corroborated the evidence of P.W. 1. P.W. 5 Asit Pal was the teacher, in whose house the appellant No. 1 took shelter with her daughters immediately after leaving the flat (P.O.) under lock and key. He also corroborated the evidence of P.W. 2 in that regard. P.W. 7 was Ashima Polley, a maid-servant in the flat of Arun Dutta and she also corroborated the evidence of P.W. 1 and P.W. 3 by saying that she was told by Sujata Dutta (appellant No. 1) that she need not come to her flat for work as they were going out on tour for few days. P.W. 8 Ashok Biswas was an employee of A.G. Bengal and a colleague of the victim. P.W. 9 Krishna was the wife of eldest brother of victim. P.W. 10 Panchugopal Roy was another colleague of the victim. P.W. 11 Madhusudan Ghosh was a neighbouring house owner of Premises No. 8, Umesh Chatterjee Lane. P.W. 12 Rabilal Dutta was eldest brother of the victim. P.W. 13 Mitali Banerjee was the learned Magistrate who recorded the statement of Juli Dutta (P.W. 2) u/s 164 Cr. P.C. P.W. 14 Sushama Pal was the wife of Asit Pal, private tutor of Juli (P.W. 2). P.W. 15 was a professional photographer. P.W. 16 was a known person to the victim Arun. P.W. 17 was Dr. Suprakash Mukherjee who held post mortem on the dead body of Arun. P.W. 18 was the Examiner of Questioned Documents, who could not arrive at a definite conclusion regarding

the authorship of the question writings for want of sufficient standard materials. P.W. 19 was the Investigating Officer of the case.

14. Mr. Mukherjee, learned Advocate appearing for the appellants argued that this was a case of suicide and not a case of homicide. The victim Arun Dutta had left a suicidal note, which was marked as exhibit and the handwriting of the victim was proved by his daughter (P.W. 2). It was the contention of the learned Advocate of the appellants that to prove its case, the prosecution had only relied upon the evidence of P.W. 17, the Autopsy Surgeon, and save and except the evidence of P.W. 17, there was no evidence to prove the charge u/s 302 I.P.C. According to the learned Advocate, medical evidence itself cannot prove the prosecution case and the value of medical evidence is only corroborative. Mr. Mukherjee points out that P.W. 17 in his evidence opined that the death was homicidal in nature and if it was a case of suicide, the hyoid bone of the deceased would have been broken. This, according to Mr. Mukherjee, was nothing but an opinion of the doctor and the learned Trial Judge should not have relied upon this opinion of the doctor in convicting the appellants. The doctor never said that hyoid bone was found broken.

15. Let us have a look at the evidence of P.W. 17. On dissection he found the following:

Abdomen is greatly swelling, tongue-protruded, lips everted, eye-balls protruded from the sockets. Heirs and soft tissues of different parts of the body are missing due to absence of maggots. Foul smells from the body.

16. Injuries-one transverse continuous ligature mark at the middle part of neck, surrounding whole circumference of the neck.

17. Skin over the ligature mark dried, contest, parchmented and on putting V. shaped incision - extraversion of blood and fluid and tear off and fibres of the neck-muscles on the body, right and left sides with fracture of trachea were noticed.

i. Scalp, skull and vertebrae as described -

a. Membrane, brain and spinal cord decomposed.

ii. walls, ribs and cartilage as described -

a. congested on both sides with evidence of petechial haemorrhage of sub plural surface in inter lobar spaces.

b. Plura -decomposed.

c. Larynx and trachea as described before ; in tense congestion with evidences of petechial haemorrhage posteriorly.

d. Right lung and left lung congested on both sides with evidences of petechial hemorrhage of sub plural surface in inter lobar spaces.

e. Pericardium, heart and vessel decomposed.

a. Walls peritoneum, mouth, pharynx and esesvagus all decomposed.

b. Stomach and its contents small intestine and its contents, large intestine and contents : Decomposed.

c. Liver, spleen, kidney, bladder, organs of generation, external and internal - all were decomposed and bladder was found empty.

d. Viscera, sample of heirs, nails scrapping, wearing apparatus were preserved and handed over to constable for chemical examination.

e. Time of death - the death of the deceased might have occurred between 40 and 72 hours prior to Autopsy Examination that is, 2.30 P.M. of 8.1.1993.

18. It is significant to note that the doctor while giving his opinion regarding nature of death, dispelling the cause of death by suicide, clearly stated that if it was a case of suicide then the hyoid bone of the victim would have been fractured. It was also stated by the doctor (P.W. 17) that had it been a case of suicide by hanging by rope the ligature mark round the neck could not be continuous, but there must be an opening at any point round the neck. It is significant to note that the ligature mark found on the neck was continuous without any break or opening, which also suggests that it cannot be a case of suicide. In the cross examination the doctor had denied the suggestion that congestion in larynx and trachea would occur in case of strangulation as well as hanging and it was his positive evidence that congestion with evidence of petechial haemorrhage would occur in larynx and trachea in case of strangulation only.

19. Mr. Mukherjee, learned Advocate relied upon the judgment reported in Sunil Chandra Roy and Another Vs. The State, in support of his contention that medical evidence cannot itself prove the prosecution case and the value of medical evidence is only corroborative. The principle laid down in the said judgment is settled principle. But in our considered view this judgment is not applicable in the present case, where the facts and circumstances are totally different. That apart, conviction in the present case was not only on the basis of medical evidence but also on other circumstantial evidence.

20. Next judgment relied upon by the learned Advocate of the appellants reported in Mayur Panabhai Shah Vs. State of Gujarat, is also not applicable in the present case. An appeal was summarily dismissed by the High Court, which was challenged in the Hon"ble Apex Court. While allowing the appeal the Hon"ble Supreme Court held that the evidence of the doctor has to be appreciated like that of other witnesses and there cannot be any presumption that doctor is always a witness of truth.

21. The learned Advocate of the appellants also relies upon a judgment of the Hon"ble Apex Court reported in Darshan Singh and others Vs. State of Haryana, .

In paragraph 10 of the said judgment it was held by the Hon''ble Supreme Court that the opinion of the doctor as to whom an injury was caused cannot override unimpeachable testimony of eyewitnesses in case there is inconsistency between them. This judgment is also not applicable in the present case, where there is no eyewitness to the incident and the present case is based on circumstantial evidence and we are to examine whether chain of circumstances is complete to prove the guilt of the accused.

22. The judgment of the Hon''ble Apex Court reported in 2002 SCC (Cri) 744 (Babu Ram v. State of M.P.) was delivered in completely different facts and circumstances. In that case the doctor was not sure what exactly was the effect of so- called ligature marks which were found on the body of the deceased. His evidence was rather uncertain in terms since it indicated more than one possible circumstance. It was held that strangulation of the deceased by the accused appellants was not established on the basis of the evidence of the doctor.

23. In the judgment reported in Ramakant Rai Vs. Madan Rai and Others, it was held by the Hon''ble Apex Court that evidence of an eyewitness is to be tested for its inherent consistency and inherent probability of the prosecution story. Where the account of eyewitness is found credible and trustworthy, medical evidence pointing to the alternative possibility cannot be accepted as conclusive. This judgment also, in our considered view, is not applicable in the present case, where the facts and circumstances are totally different.

24. Mr. Mukherjee also relied upon a judgment reported in State of Punjab Vs. Hakam Singh, . Learned Advocate relies upon paragraph 8 of the said judgment wherein it was held that whenever there is conflict between medical evidence and ocular testimony, normally ocular testimony should be preferred unless it belies fundamental facts. This is a settled principle of law laid down by the Hon''ble Supreme Court. But the judgment referred to above does not have any manner of application in the present case, where the facts and circumstances are totally different.

25. It is argued by Mr. Mukherjee, learned Advocate of the appellants that from the evidence of P.W. 19 (the Investigating Officer) it appears that a rope was found tied around the neck of the dead body. But the Autopsy Surgeon in his evidence has clearly stated that the dead body produced before him was bare and naked. So, the rope was not produced before the Autopsy Surgeon for seeking his opinion regarding the cause of death. This was no doubt a lacuna on the part of the prosecution. But only for this reason the entire prosecution case should not be disbelieved. This cannot be regarded as fatal with regard to the opinion formed by the Post Mortem Doctor about the cause of death.

26. It is submitted by Mr. Mukherjee that the Investigating Officer never visited those places where the accused person allegedly stayed for five days after the incident. In this context it may be mentioned that the P.W. 2 Juli in her evidence clearly stated how she visited different places along with her mother and

appellant No. 2 during that period of five days after the incident. It is true that the Investigating Officer did not visit those places, but this, in our considered view, cannot be regarded as fatal, because a detailed description of those five days has been given by the P.W. 2 who is none but the daughter of the appellant No. 1.

27. It is argued by the learned Advocate of the appellants that the injuries found on the face of the dead body was not explained by the prosecution, which should be treated as fatal. But we are unable to accept such contention. Some injuries were found on the face of the victim Arun and in our view this falsifies the claim of the defence that the death was suicidal. In a case of manual forcible strangulation there must be some resistance from the side of the victim. Had it been a case of suicide, such injuries would not have been there on the face of victim Arun Dutta.

28. Mr. Mukherjee, learned Advocate of the appellants also argued that as regards the time of death of victim there is a serious discrepancy. According to prosecution death occurred on the night of 3rd / 4th January, 1993. Post mortem was held on 8th January, 1993 and the Autopsy Surgeon opined that the death of the victim might have occurred between 40 - 70 hours prior to autopsy examination. So time of death cannot be the night of 3rd / 4th January, 1993. But we do not find any merit in such submission. In the first information report it was stated that on 4th January, 1993 victim Arun took his meal at his ancestral house at about 10.00 A.M. and started for his office and he returned from his office to the same ancestral house in the evening and then he left for his flat at 8, Umesh Chatterjee Lane. So, till the evening of 4th January he was at his ancestral house and it is clear that the death of the victim Arun must have occurred on the night of 4th / 5th January, 1993 and not on the night of 3rd / 4th January, 1993. So, this point as regards the time of death of the victim is also answered in the negative.

29. Mr. Goswami, learned Public Prosecutor appearing for State submits that this was not a case of suicide and it was a clear case of murder. According to Mr. Goswami if it was a case of suicide then normal conduct of a person would have been otherwise. After committing the murder the accused persons absconded keeping the dead body concealed inside the cavity of the sofa-cum-bed. The accused persons did not inform the police or any of their relatives or neighbours, which is not normally expected from a person in whose family a death is caused by suicide. This unnatural, abnormal or unusual conduct of the accused person after commission of the offence is relevant circumstance against the accused and this is to be regarded as an additional link to the chain of circumstances.

30. The learned Public Prosecutor relies upon a judgment of the Hon'ble Supreme Court reported in 2009(4) Supreme 783 (Joydeep Neogi @ Bubai v. State of West Bengal). It was held by the Hon'ble Apex Court in the said judgment that unnatural, abnormal and unusual conduct or behaviour destroys the presumption of innocence of the accused and is relevant and material.

31. The learned Public Prosecutor further submits that no explanation was given by the accused persons in their examination u/s 313 Cr. P.C. as to how the death was caused and how the dead body was placed in the cavity of sofa-cum-bed. It is the contention of the learned Public Prosecutor that when an offence is committed inside a dwelling house, where the victim and the appellants resided, immediately before the commission of the crime, it has been consistently held by the Hon''ble Apex Court that if accused does not offer any explanation regarding cause of death or offers an explanation, which is found to be false, it should be regarded as a strong circumstance against the accused.

32. Mr. Goswami relies upon a judgment of the Hon''ble Supreme Court reported in (2007) 1 SCC (Cri) 80 (Trimukh Maroti Kirkan v. State of Maharashtra, Mr. Goswami refers to paragraph 21 of the said judgment, which is quoted below:

21. In a case based on circumstantial evidence where no eyewitness account is available, there is another principle of law which must be kept in mind. The principle is that when an incriminating circumstance is put to the accused and the said accused either offers no explanation or offers an explanation which is found to be untrue, then the same becomes an additional link in the chain of circumstances to make it complete. This view has been taken in a catena of decisions of this Court.

33. It is submitted by Mr. Goswami that in the present case, as it appears from the evidence on record, the victim and the appellants were inside the same house on the night of occurrence. So there is a burden on the inmates of the house to give a cogent explanation as to how the death was caused and how the dead body was placed inside sofa-cum-bed. They cannot get away by keeping quiet on the premise that the prosecution must discharge its burden of proving the case.

34. Mr. Goswami further submits, referring to the evidence on record, that in the present case conviction was based not only on the medical evidence of P.W. 17 but also on other circumstantial evidence. From the evidence on record it becomes clear how the relationship between the husband (victim) and wife became strained. This is also reflected in the evidence of the brothers and daughter (P.W. 2) of the victim. P.W. 2 is none but the daughter of the victim and appellant No. 1. She deposed against her mother (appellant No. 1) by saying that her father was ill-treated by her mother. She also stated that her mother made a false statement in Howrah Court when her mother said that they committed a mistake by bringing down the body by cutting rope. But she was sure that her father did not hang himself and her mother made a false statement in Court. Mr. Goswami further points out how the P.W. 2 (daughter of the victim) gave a vivid description of sequence of events - how her mother and Swapan uncle left the flat after putting lock on the main door, how they visited different places for five days to evade arrest by the police and ultimately how they came back to Howrah Court.

35. It is submitted by Mr. Goswami that the circumstances enumerated above unerringly point to the guilt of the accused, who was rightly convicted u/s 302 of the Indian Penal Code.

36. We have heard the learned Advocates of the respective parties. We have carefully scrutinized the entire evidence on record. We have already stated that in the present case there is no eyewitness and the case of the prosecution rests on circumstantial evidence. The normal principle in a case based on circumstantial evidence is that the circumstances, from which an inference of guilt is sought to be drawn, must be cogently and firmly established. Those circumstances must point towards the guilt of the accused and such circumstances should form a chain so complete that there is no escape from the conclusion that the crime was committed by the accused.

37. It becomes clear from the evidence adduced by the prosecution that victim Arun Dutta and his wife Sujata Dutta (appellant No. 1) used to live in their ancestral house at 12/1, Acharya Para Lane, Howrah. Appellant No. 2 developed an intimacy with Sujata (wife of the victim) and they started behaving in such a fashion, which was not liked by other members of the joint family. Because of the behaviour of Swapan Sarkar and Sujata Dutta (appellants herein) trouble started in the family. It was protested by the brothers of Arun, who misunderstood them and decided to shift to a rented accommodation. Arun started living at the rented flat with his wife Sujata and their daughter. Swapan Sarkar also started living in the said flat. Arun Dutta used to sleep in one room and in another room Sujata used to sleep with her daughter and Swapan Sarkar. This was also corroborated by Juli (P.W. 2), the daughter of the victim. In the evidence of P.W. 2, which we have already discussed, it becomes evident how Arun was ill-treated by his wife. P.Ws. 1, 2, 3 and 12 deposed about the intimacy between Swapan and Sujata, which was also not liked by victim Arun. On the fateful night Arun, Sujata and Swapan were in the flat. P.W. 2 Juli was also with their parents. On the following morning they all left the flat by keeping the flat under lock and key. They took shelter in house of the teacher of Juli. From there they went to Nataraj Hotel, Howrah and then Ranchi by boarding a bus from Babughat, stayed there for three days and then came back to Howrah Court. In Howrah Court, as it was deposed by P.W. 2, Sujata made a false statement that they committed a mistake by bringing down the dead body by cutting the rope. P.W. 2 Juli clearly started in her evidence that this was a false statement made by her mother and she was sure that her father did not hang himself.

38. In his argument Mr. Mukherjee laid much stress on Exhibit "A" which was admitted into evidence. This, according to Mr. Mukherjee, is a suicidal note left by the victim, which clearly suggests that it was a case of suicide. Although writing in the said document could not be proved by the handwriting expert, it is submitted by Mr. Mukherjee, such handwriting was proved by P.W. 2, who admitted that this was the handwriting of his father. But we are unable to accept such contention. This document clearly indicates how the victim was ill-treated

by both the appellants which may also be regarded to be ground for causing death of the victim. The learned Advocate, referring to the evidence of Juli Dutta (P.W. 2) submits that she (P.W. 2) stated in her evidence that it seemed to her that somebody was standing inside the room of her father and she did not state this incident to anybody. But when we consider the evidence of Juli Dutta (P.W. 2) as a whole, we find that save and except this sentence there is nothing to suggest that it is a case of suicide. This particular sentence in the evidence of P.W. 2 also cannot suggest in clear term that this was a case of suicide. Rather she stated that her father did not hang himself and her mother told lies in Howrah Court and tried to establish that it was a case of suicide. We have gone through the evidence of P.W. 2 very carefully and we find that if her evidence is read as a whole, it clearly suggests that the death of victim Arun was not suicidal but homicidal.

39. Then comes the unusual conduct of the accused persons after commission of the offence. They absconded for five days, visited different places and ultimately came back to Howrah. The accused persons placed the dead body inside the cavity of a sofa-cum-bed, covered the body with a chaddar and then in the morning left the flat after putting it under lock and key. This cannot be the normal conduct of a person, in whose family a death occurs by suicide. They did not inform the police or their relatives or neighbours. This unnatural and unusual behaviour of the accused persons also destroys the presumption of innocence of the accused.

40. Accused appellants were inside the house where the offence was committed. So it is for them to explain how the death was caused. But no explanation has been given by the accused appellants in their examination u/s 313 Cr. P.C. as to how death was caused and how the dead body of the victim was found inside the cavity of sofa-cum-bed. This, in our considered view, must be treated as an additional link to the chain of circumstances.

41. As regards the motive, as it appears from the evidence on record, we find that it is due to developing intimacy between Sujata Dutta and Swapan Sarkar, that both of them wanted to get rid of Arun by eliminating him from this world. Even if there is no motive or there is no proof of motive, it does not break the link in the chain of circumstances.

42. Although it is the main argument of Mr. Mukherjee, learned Advocate of the appellants that this is a case of suicide and not homicide, we cannot accept such argument in the facts and circumstances as also the evidence on record, which we have already discussed above.

43. After hearing the learned Advocates of the parties and after scrutinizing the entire evidence on record, we find sufficient merit in the submission made by the learned Public Prosecutor. Considering the totality of evidence coupled with the medical evidence of P.W. 17 we are of the view that the chain of circumstances is complete which is sufficient to prove the guilt of the accused appellants.

44. We do not find anything wrong with the judgment and order of conviction and sentence and we do not find any reason to interfere with the same.

45. The appeal, accordingly, fails and the same is dismissed. The judgement and order of conviction and sentence is accordingly affirmed.

46. A copy of this judgement along with LCR may be sent down to the court below immediately.

47. I agree