

(2005) 08 CAL CK 0008
In the Calcutta High Court
Case No : C.R.A. No. 34 of 1998

Sridhar Ruidas

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 23-08-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154, 164, 313

Evidence Act, 1872 — Section 27, 8

Penal Code, 1860 (IPC) — Section 201, 302, 379, 406, 411

Citation : (2006) 1 CALLT 379 : (2006) 1 CLT 379

Hon'ble Judges : Debiprasad Sengupta, J;Arun Kumar Bhattacharya, J

Bench : Division Bench

Advocate : Partha Sarathi Bhattacharya, for the Appellant;H.K. Ghosal and Minati Gomes, for the Respondent

Final Decision : Dismissed

Judgement

Arun Kumar Bhattacharya, J.—The present appeal is directed against the Judgment and order of conviction and sentence passed by the learned Additional Sessions Judge, Durgapur in Sessions Case No. 21 of 1993 (S.T. No.20 of 1995) on 20.12.1996.

2. The miniaturised version of the Prosecution is that on 27.10.1991, Sunday, at about 1.00 p.m. finding that his third daughter Jayanti Ruidas, aged about ten years, who went to Saraika pond for washing clothes at about 9.00 a.m., did not yet turn up, the defacto complainant Sudhakar Ruidas (P.W. 1) went to the said pond in search of her but could not find her. He informed the matter to his neighbourers. Arun Ruidas (P.W. 3} informed him that he saw Jayanti to wash clothes at the said pond and a number of drenched currency notes kept on the grass near the bank of pond for drying up, and on his query Jayanti reported that at the time of washing clothes, those currency notes kept in the pocket of shirt became, drenched, for which she kept those notes there for drying up in sun, that at that time accused Sridhar Ruidas came there, enquired from Jayanti as to

the reason for keeping the said currency notes there and asking her to take back the money from him from his house, he went away towards his house, that Jayanti after washing clothes and keeping the same in the basket entered into the house of Sridhar, and he left for grazing goats in the field. On receipt of this information, complainant after vigorous search found Sridhar, enquired from him the whereabouts of Jayanti and asked him to show his room, but he informed that he would show his room after return from collecting his wages. As he did not turn up, it gave rise to a suspicion and he being accompanied by his neighbourers and father of Sridhar went to the house of Sridhar on the bank of pond and found the same under lock and key. The members of the family of Sridhar were not there. The neighbourers on breaking open the padlock entered into the room with the complainant and father of Sridhar at about 7.00 p.m. and found with the help of hajack light Jayanti lying dead with ligature mark around her neck, saliva corning out of nose and mouth, the basket containing washed clothes near her head and goldnose-ring and silver ear-rings were not in her person. Accused Sridhar, who was unsuccessfully searched at different places, committed murder of Jayanti by strangulation and misappropriated the money and ornaments. Hence, the accused was charged under Sections 302/379/411 IPC.

3. The defence case, as suggested to PWs., as deposed by D.Ws and as contended by the accused during his examination u/s 313 Cr PC, is that as he had a difference of opinion with the party-men of CPI(M), he left the village for his in-law's house at Kumardi and stays there. He never resided at the P.O. Jayanti died of suffocation due to sudden fall in the pond at the time of washing. Defacto complainant Sudhakar himself kept her dead body in the house of the accused taking advantage of his absence on that date. He has been falsely implicated in this case.

4. 13 witnesses were examined on behalf of the defence and after considering the facts, circumstances and materials on record the learned Court below while acquitted the accused of the charges under Sections 379/411 IPC found him guilty u/s 302 IPC, convicted him thereunder and sentenced him to suffer imprisonment for life and to pay fine of Rs. 2.000/- i.d. to R.I. for three months.

5. Being aggrieved by and dissatisfied with the said order of conviction and sentence, the accused has preferred the present appeal.

6. All that now requires to be considered is whether the learned Court below was justified in passing the abvoe order of conviction and sentence.

7. P.Ws. 1 to 8, 11 and 13 are important witnesses, others being formal.

8. According to the evidence of P.W. 1 Sudhakar Ruidas (defacto complainant), on 27.10.1991, Sunday, at about 9.30 a.m. his third daughter Jayanti Ruidas went to Saraika pond at a distance of 600/ 700 ft. from his residence for washing his clothes including his duty uniform in a basket. As she did not return till 1.00 p.m., he went to the said pond in search of her but could not find her there. On

his way back at about 4/4.30 p.m. he met Sridhar who on query about Jayanti could not throw any light. He went towards the house of Sridhar and made vigorous search for Jayanti and met with Arun Ruidas (P.W. 3) who on being asked about Jayanti reported that he had seen Jayanti while she was washing clothes and saw her to enter into the house of Sridhar. He disclosed the above information to villagers and being accompanied by his brother-in-law Sepai Ruidas (P.W. 2), Kazi Musaraff Hossain (P.W. 4), Abdul Barik (P.W. 6), Gaju Master and many others including Labu, father of Sridhar he had been to the tile-shed hut of Sridhar and after opening the said hut they found to their astonishment the dead body of Jayanti lying on the left side of attached floor of the said hut. Sepai (P.W. 2) and others remained inside and he along with Barik (P.W. 6) went to Pandaveswar P.S. and reported the entire incident which was recorded by O.C. (Ext. 1/1) and he signed the same. Police visited the said hut at about 12.00 at night, saw the dead body, held inquest, removed the dead body to hospital in the next morning, seized the clothes including one Chinese full sleeve in the pocket of which currencies notes were kept (Mat Ext. VI series) and the basket (Mat Ext. VIII) therefrom. The above evidence in material particulars is corroborated by P.Ws. 2 to 8, 11 & 13. P.W. 3 Arun Ruidas stated that on 27.10.1991 he found Jayanti Ruidas was washing clothes in the Saraika pond and she put certain pebbles on the drenched currency notes which were soaked with water at the time of washing and Sridhar Ruidas to pick up the said notes and to put the same in his pocket. He also saw Jayanti to enter into the hut of the accused at about 11.00 a.m. and at that time he was tending goats on the bank of the said pond. He returned to his house which is near to the said pond at about 2.00 p.m., and at that time on query from Sudhakar (P.W. 1) regarding the whereabouts of his daughter, he disclosed to him that he had seen Jayanti entering into the hut of Sridhar at about 3.00 p.m. Sudhakar and Sridhar took him to natsala of the village, Sridhar then intimidated him not to divulge what he had seen and so saying he slapped on his back and fled away through a lane. The dead body of Jayanti was found on the attached floor of Sridhar Ruidas where they tried to enter. Later his statement was recorded by a magistrate. It is his further evidence that on that date the wife of accused Sridhar along with children had been to her father's house at Birbhum. P.W.2 Sepal Ruidas, Pradhan of Syamla Gram Panchayat, saw Jayanti washing clothes at Saraika pond on 27.10.1991 at about 9.00/9.30 a.m. Arun Ruidas (P.W. 3) tending goats on the bank of the said pond and Sridhar Ruidas roaming there as his house is just in front of the pond and on seeing so he left towards the village. At about 2/2.30 p.m. he came to learn from his wife (aunt of Jayanti) that Jayanti was missing. He vigorously searched for his brother-in-law S. Ruidas (P.W. 1). On seeing Arun he went there and on his query as to whether he saw anything as he was tending goats there, he disclosed that he also saw Jayanti washing clothes, that some currency notes inside the clothes got drenched and accused Sridhar forcibly dragged Jayanti with the clothes meant for washing together with money. They started searching for Sridhar in his house as also in the village but could not find him even in his father's house. On the basis of information given by Arun,

Sudhakar (P.W. 1) wanted to check the house of the accused. They unlocked the door of the house of accused with the help of others and found Jayanti lying dead decumbently with oozing of saliva and liquid, blood from both ear-lobes due to snatching of her gold ear-rings, on the western side of the attached floor of the house and the basket near her head. Many people gathered and Sudhakar was weeping. He along with others remained at the P.O., Sudhakar and Kazi Atadul Barik (P.W. 6) were sent to the P.S. at 7.00 p.m. Police came at about 11.30 p.m. on the same date, did the needful, held inquest in his presence and removed the dead body to the hospital for P.M. examination. P.W. 4 Kazi Musaraff Hossain on hearing from Arun (P.W. 3) on 27.10.1991 at 4.00 p.m. that when the third daughter of Sudhakar viz. Jayanti had been to Saraika pond for washing clothes and exposed certain currency notes which got drenched due to unmindful washing of the shirt of her father, in the sun by placing certain pebbles thereon for preventing flight, Sridhar appeared, called and look away Jayanti with him to his hut, he along with villagers started vigorous search for Jayanti. He along with Sepai (P.W. 2} and Sudhakar (P.W. 1) opened the lock put on the entrance door of Sridhar's hut and found to their surprise the dead body of Jayanti lying on the floor of the said hut. Abdul Barik and Sudhakar were sent to the P.S. at about 7/7.30 p.m. to inform, and he along with others remained in guard of the dead body there. Police arrived at about 11.00 p.m., held inquest over the dead body of the victim in his presence and removed the dead body for PM examination. P.W. 5 Rekha Ruidas while taking bath in the said pond at about 9/9.30 a.m. found Jayanti washing some clothes in the said pond and she exposed some drenched currency notes kept inside the pocket of her father's dress, on the bank for drying up, and she left for home. At about 2/2.30 p.m. she heard from the villagers that Jayanti was missing. She further came to learn about recovery of the dead body of Jayanti from the hut of the accused at night. P.W. 6 Kazi Abdul Barik came to learn from Sudhakar on 27.10.1991 at about 2/2.30 p.m. about missing at Jayanti. During vigorous search for her many people gathered and at about 6.00 p.m. when Arun, a teenager informed that when Jayanti was drying up drenched currency notes on the bank of Saraika pond, Sridhar came there, snatched away the money from her possession when Jayanti had to follow him weeping. Bijoy Ruidas (P.W. 8) collected the key from the father of Sridhar, unlocked the door of the hut of the accused Sridhar and found Jayanti lying dead with blood oozing out from her ears and saliva, lyrnpth, liquid exuding out from her mouth, on the left attached floor of the hut and a basket with certain clothes near the body. He along with Sudhakar (P.W. 1) left for Pandaveswar P.S. at about 8/8.30 p.m. leaving Sepai (P.W. 2), Musaraff Hossain (P.W. 4) and others at the P.O., for guarding the dead body. They came back riding motorcycle and the police reached at the spot at about 10/11.00 p.m. in a police jeep, did the needful, held inquest over the dead body of the victim, seized certain alamats viz. basket with clothes, money, gold ear-rings etc. under seizure lists in his presence. P.W. 7 Kazi Md. Muslim on hearing that search for Jayanti who had been to Saraika pond for washing clothes was being made by P.W. 1, joined the search with others at about 12.00 p.m. When Arun (P.W. 3) divulged that

accused Sridhar snatched away money which being drenched was being dried on the bank of pond and that Jayanti followed him weeping upto his house, on taking the key by Bijoy (P.W. 8) from the father of accused they opened the lock of the door of the hut of Sridhar and found to their utter surprise the dead body of Jayanti on the left side of the floor and a basket with clothes there. They locked the door, kept the key with Bijoy and stayed there to guard the hut, and P.Ws. 1 & 6 left for Pandaveswar P.S. at about 6.00 p.m. Police visited the P.O. at about 10/11.00 p.m., did the needful and removed the dead body. After about 3/4 days police re-visited the P.O. with accused Sridhar under arrest, opened the lock, found one foam basket inside the room, opened the same and found Rs. 300/- (Mat Ext. IV series), one pair of gold earrings (Mat Ext. V) and one silver made nose ring (Mat Ext. VI) which were seized under a seizure list in their presence. P.W. 8 Bijoy Ruidas joined P.W. 1 at about 12.30 p.m. in search of Jayanti who did not return from pond, and in course of such search he came to learn from his nephew Arun (P.W. 3) that while he was tending goats on the bank of Saraika pond he found Jayanti drying the currency notes which got drenched during washing of clothes in the sun, that Sridhar came there all on a sudden, swooped upon the currency notes exposed in the sun, and left for his hut and Jayanti after taking bath followed him upto his hut and entered into the hut with the clothes in a basket. He further stated that as the house of Sridhar was found under lock and key, it was decided to open the same for finding out whether Jayanti was there or not and accordingly he obtained the key from the father of the accused, opened the lock conjointly, entered into the hut of Sridhar at about 6/6.30 p.m. and found Jayanti lying decumbently on the left hand side of the attached floor of the room and a basket with clothes and soap there. They also noticed marks of forcible snatching of earrings from ear-lobes of Jayanti. He relocked and stood outside the house, and P.Ws. 1 & 6 left for Pandaveswar P.S. at about 10/10.30 p.m. Police visited the P.O. at about 11.00/ 11.30 p.m., held inquest over the dead body and removed the dead body. P.W. 9 Abdul Chandra Jhariat who accompanied O.C. and second officer of Pandaveswar P.S. to the P.O., took the dead body of the victim to Bidhannagar Hospital for post mortem examination and after completion of the same took the dead body back along with garments etc. which were seized by P.W. 10 A.S.I. S.K. Saraf Ali under a seizure list. P.W. 11 on holding PM examination over the dead body of the victim on 28.10.1991 at about 14.10 hrs, found (1) bilateral conjunctival congestion, (2) multiple abrasions and bruises over the front of neck, chin, upper part of front of chest, and after dissection, bruising of all the subcutaneous tissues and of all the abrasions of the skin, and opined that the death was due to asphyxia from throttling, ante mortem and homicidal in nature. P.W. 12 Suranjan Kundu, learned Judicial Magistrate recorded the statement of P.W. 3 (Ext. 3/1) u/s 164 Cr. PC on 31.10.1991. P.W. 13 S.I. Sahadev Sarkar stated that on 27.10.1991 (wrongly typed as 27.10.1995) while S.I. A.Mukherjee, O.C.-in-charge of Pandaveswar P.S. with force arrived near Daspara i.e. P.O. on evening petrol duty, P.W. 1 apprised them that his daughter Jayanti who went to wash dirty clothes in a pond, was found going to the house of accused Sridhar Ruidas with a

basket full of washed clothes and thereafter she was found murdered there, committed by Sridhar Ruidas. Mr. Mukherjee recorded the FIR (Ext. 1/1) u/s 154 Cr. PC, endorsed the case to him for investigation and sent the FIR to the P.S. They all went to the P.O. i.e. house of the accused Sridhar, found the dead body of Jayanti lying on the floor on the left hand side of the room. He held inquest (Ext. 2/4) and sent the original to the hospital in connection with PM examination. He recorded the statements of some witnesses with the help of a hajack light provided by the villagers. He seized the wearing apparels, garments of the deceased under a Section list (Ext. 7). On the basis of the secret information on 30.10.1991 about stay of the accused in the house of one Dulal Ruidas at Suri, he went there with force, held a raid at night and was successful in apprehending the accused therefrom and brought him under arrest. He interrogated the accused, recorded his statement and pursuant to the information furnished by the accused orally they went straight to his house and on being indicated the place by the accused where he concealed a foam bag contained Rs. 300/- in currency notes, gold nose-ring and one pair of silver ear-rings, recovered and seized the same (Ext. 4/2) in presence of witnesses. He next took the accused to the P.S. and after search of his person found Rs. 37/- which was seized by him under another section list (Ext. 9). He prepared a sketch map of the P.O. with index (Ext. 10) and forwarded the accused to the Court with a prayer for recording his confessional statement u/s 164 Cr. PC but the accused declined to confess before the learned Magistrate. He also sent a vital witness Arun Ruidas to Court for recording his statement by the learned Magistrate. He recorded the statements of other witnesses, collected PM report and after completion of investigation submitted charge sheet under Sections 302/201/379/406/411 IPC against the accused.

9. A glance to the above will reveal that the present case hangs upon circumstantial evidence alone, circumstance being broadly three-fold viz. (i) last seen together coupled with recovery of the dead body of the victim and basket with clothes from the hut of the accused, (ii) recovery of money and ornaments on being led and pointed out by the accused and (iii) abscondance of the accused soon after the occurrence. When a case entirely rests on circumstantial evidence, such evidence must satisfy the following tests viz. (1) the circumstance from which an inference of guilt is to be drawn must be cogently and firmly established, (2) the circumstance should be of a conclusive nature and definite tendency unerringly pointing towards the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty, and they should exclude every possible hypothesis except the one to be proved, and (3) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused, as was held in the case of Sharad Birdhichand Sarda Vs. State of Maharashtra, .

10. As regards the first circumstance above, p.W. 5 while taking bath in Saraika

pond at about 9.00/9.30 a.m. found Jayanti washing some clothes in the said pond and she exposed some drenched currency notes which were kept inside the pocket of her father's dress, on the bank for drying up. Similar is the evidence of P.W. 2 who saw Jayanti washing clothes on the said pond at about 9/9.30 a.m., Arun (P.W. 3) tending goats on the bank of the said pond and accused Sridhar roaming there. P.W. 1 on his way back at about 4/ 4.30 p.m. after searching Jayanti, met Sridhar who on query Jayanti could not throw any light and thereafter he went towards the house of Sridhar, made vigorous search for Jayanti and met with Arun (P.W. 3) who on being asked about Jayanti informed that he had seen Jayanti while she was washing clothes, he spent sometimes with her and he had seen her to enter into the house of Sridhar. It is the specific evidence of P.W. 3 that on 27.10.1991 he found Jayanti washing clothes in the Saraika pond, she put certain pebbles on the drenched currency notes which were soaked with water at the time of washing and Sridhar to pick up the said notes and to put the same in his pocket. He also saw Jayanti to enter into the hut of the accused at about 11.00 a.m. when he was tending goats on the bank of the said pond, and he returned to his house which is situated near the said pond at about 2.00 p.m. He further stated that on that date the wife of accused Sridhar along with children had been to her father's house at Birbhum, and there is not denial of all the above evidence in his cross examination. The gist of his statement u/s 164 Cr. PC is that he found accused Sridhar to come once to the bank of pond and to ask Jayanti to collect the money from his house and Jayanti to enter into his house with clothes. His aforesaid evidence appears to be quite in consonance with the substance of the above statement u/s 164 Cr. PC. That he left the pond at about 12.00 hrs.. as deposed in cross-examination, is self-contradictory and his subsequent evidence that at about that time i.e. 2.00 p.m. on query of P.W. 1 regarding whereabouts of his daughter he informed him that he had seen Jayanti entering into the hut of Sridhar at about 3.00 p.m. is inconsistent with the above testimony of his seeing the victim to enter into the hut of the accused at about 11.00 a.m. It is the evidence of P.W. 1 that since Jayanti did not return till 1.00 p.m., he went to the said pond in search of her but could not find her there and he continued such search till 4/ 4.30 p.m. Similarly P.W. 2 on coming to learn about missing of Jayanti from his wife at about 2/2.30 p.m., he vigorously searched for P.W. 1 and at that time he met Arun who on query disclosed about his seeing Jayanti to wash clothes in the said pond, exposure of some drenched currency notes etc. Therefore, considering the evidence of P.Ws. 1 & 2 who despite vigorous search for Jayanti at different places including the bank of the pond could not find her, the evidence of P.W. 3 of his finding the victim to enter into the house of accused at about 11.00 a.m. being consistent with the circumstances is acceptable and his said subsequent evidence about his seeing Jayanti to enter into the house of accused at about 3.00 p.m. being a mistaken one may be ignored. The incident took place on 27.10.1991 and the witnesses are deposing after a lapse of about more than 4 years 3 months. P.W.3 - at the time of deposition was aged about 12 years. Memory is apt to be blurred in the passed of time and so the errors due to lapse

of memory may be given due allowance and the discrepancies which do not shake the basic version of the prosecution case and which are due to normal errors of perception or observation should not be given much importance. No animus of the said witnesses against the accused having been made out, it improbabilises the hypothesis of their false implication of the accused. As there is no evidence on the part of P.W. 3 that he informed the incident to P.W. 2, P.W. 4, P.W. 6, P.W. 7 & P.W. 8, their evidence regarding narration of the incident by P.W. 3 to them, as discussed above, cannot be taken into consideration.

11. The defence contention is that the accused never resided at the P.O. and he had a difference of opinion with the party-men of CPI(M), he left the village for his in-law's house at Kumardi and stays there.

12. Onus to prove alibi is on the accused as it is a matter within his special knowledge, and such plea of alibi when taken by an accused must be proved by him and he is to substantiate and make it reasonably probable. He must lead evidence to show that he was so far off at the moment of the crime from the place when the offence was committed and that he could not have committed the offence. Here, as per evidence of D.W. 1 Sarbani Ruidas. mother-in-law of the accused, the accused has been living in her house since the time of his marriage about 14/15 years back as a domesticated son-in-law which is contradicted by D.W. 2 Mahintar Gara, priest, who found the accused to reside at Kumardi with his wife and four children for 10/ 12 years separately and not in his in-law's house. No document e.g. ration card or voters' list or school fees books of the children if they are school-going have been produced in support of the above contention regarding residing of the accused at Kumardi. Moreover, it is the specific evidence of P.W. 1 that on the date of incident after unsuccessful searching his daughter when he was returning, he met the accused who on query regarding the whereabouts of Jayanti could not throw any light which remains uncontroverted in his cross examination. Similarly, P.W. 3 while tending goats on the bank of Saraika pond on that date found the accused to pick up the currency notes drenched during washing of clothes by Jayanti and kept under some pebbles, and to kept the same in his pocket. He has categorically denied the suggestion that he did not see the accused on that date. Furthermore the very suggestion put to P.W. 7 in cross-examination that Sudhakar himself pushed the dead body of his daughter in the house of the accused taking advantage of his absence on that date (which has been denied by him), totally falsifies the defence story of residing of the accused with his family in his in-law's house at Kumardi.

13. Mr. Partha Sarathi Bhattacharya, learned Counsel for the appellant, on referring to the case of Arbind Singh and Krishna Nandan Singh and Others Vs. State of Bihar, contended that since P.W. 3 was a teenager at the relevant time, his evidence should not be taken as a gospel truth. The evidence of a child witness and credibility thereof would depend upon the circumstance of each case. The only precaution which the Court should bear in mind while assessing

the evidence of a child witness is that the witness must be a reliable one and his/her demeanour must be like any other competent witness and there is not likelihood of being tutored. There is no rule or practice that in every case the evidence of such a witness be corroborated before a conviction can be allowed to stand but, however, as a rule of prudence the Court always finds it desirable to have the corroboration to such evidence from other dependable evidence on record, as was observed in *Dattu Ramrao Sakhare and Others Vs. State of Maharashtra*, . Here, though there are some minor discrepancies in his testimony which is due to long lapse of time, as discussed above, P.W. 3 is undoubtedly reliable and trustworthy and the question of his being tutored is out of the way. So, merely because P.W. 3 was a teenager, it is no ground for discarding his testimony.

14. Mr. Bhattacharya, on referring to the said statement u/s 164 Cr. PC adversely criticized for non-examination of aunt Shibani to whom P.W. 3 after return to house at about 2.00 p.m. informed of his witnessing Jayanti to enter into the hut of the accused. It is not as if every person who has something to do with some part of the Prosecution story should pass through the witness-box. If the said Shibani was essential to unfold the Prosecution story and was suspiciously suppressed, the question of adverse presumption would have arisen. Duplicating of evidence is not necessary. Witnesses have to be weighed and not counted since quality matters more than quantity in human affairs.

15. It is the further evidence of P.Ws. 1, 2, 4, 6 to 8 that after opening the door of the hut of the accused on taking key from the father of the accused they found Jayanti lying dead with oozing of saliva and liquid, blood from both earlobes due to snatching of earrings, and the basket containing clothes on the floor, and P.Ws. 1 & 6 were sent to the P.S, There are minor discrepancies regarding time of starting of P.Ws. 1 & 6 for P.S. and time of arrival of police, as evidence of P.W. 13 and the endorsement on FIR reveal that the S.I. A. Mukherjee, O.C.-in-charge who had been to Daspara with force on evening petrol duty recorded the FIR (Ext. 1/1), received the same at about 21.30 hrs. and forwarded it to P.S. for starting a case. Nevertheless, the said basket. (Mat Ext. VIII) containing washed clothes [Mat Ext. VII (coll.)] was seized by the police under a seizure list (Ext. 7) in presence of P.Ws. 1 & 2. P.W. 11 on holding PM examination over the dead body of the victim on 28.10.1991 at about 14.10 hrs. found (1) bilateral conjunctival congestion, (2) multiple abrasions and bruises over the front of neck, chin, upper part of front of chest, and after dissection, bruising of all the subcutaneous tissues and of all the abrasions of the skin, and opined that the death was due to asphyxia from throttling, ante mortem and homicidal in nature.

16. The defence plea in this regard is that the victim died of suffocation due to sudden fall in the pond at the time of washing clothes which is negated by the above opinion of P.W. 11 who did not find extra-vassated clotten blood as mentioned in buising, and stated that extra-vassated clotted blood is expected to

be in existence on the neck side if death is caused by forcible strangulation by compression, and suffocation may arise from various reasons other than strangulation. Moreover, there is no evidence that any person saw the victim to fall in the pond resulting in her death due to alleged suffocation. Again, if death occurred due to alleged suffocation, her dead body would have been found in the water of the pond and not in the room of the accused. The defence contention, as suggested to P.W. 7 is that Sudhakar (P.W. 1) himself pushed the dead body of his daughter in the house of the accused taking advantage of his absence on that date. No such suggestion was put to P.W. 1 nor any explanation has been offered as to why a father who with the help of neighbours was trying to search out his daughter will push the dead body of his daughter into the house of the accused whom he calls "Mama" and his father "Dada" by village courtesy and there was no enmity between them.

17. The falsity of defence case undoubtedly cannot establish the Prosecution case but it may be taken into consideration in deciding if the charge has been brought home against the accused and when other circumstances point unflinchingly to the guilt of the accused it can be considered as an additional link in the chain of circumstantial evidence to make it complete, as a false plea put forward by the accused rebounds on him and the Prosecution case gets strengthened. In this connection, reference may be made to the cases of Mohan Lal Pangasa Vs. The State of U.P., and Shankarlal Gyarsilal Dixit Vs. State of Maharashtra, .

18. Therefore, considering all the above aspects, it can safely be concluded that the very fact of stay of the accused alone at his hut, entering of the victim Jayanti there with the basket containing washed clothes and thereafter death of the victim by throttling leads to suggest that none but the accused committed the crime followed by his fleeing away from the scene of occurrence. In this connection, the case of State of U.P. v. Satish reported in (2005) 1 G Cr LR 366 may well be referred to.

19. In regard to the second circumstance above, it is the evidence of P.W. 13 that he interrogated the accused, recorded his statement and acting upon the information furnished by the accused they went to this house and on being indicated the place i.e. an oven by the accused he recovered a foam bag containing Rs. 300/- in currency notes of Rs. 50/- five numbers, Rs. 20/- - two numbers and Rs. 10/- one number [Mat Ext. IV (coll.)], gold nose-ring (Mat Ext. VI) and one pair of silver ear-rings [Mat Ext. V (coll.)] which on being identified by P.W. 1 were seized by him under a seizure list (Ext. 4/2) in presence of P.Ws. 6 & 7, and the above evidence is buttressed by P.Ws. 2, 6 & 7. It is the further evidence of P.W. 13 that after arrest of the accused he took him to the P.S., and on search of his person he recovered Rs. 37/- which was seized by him under another section list (Ext. 9).

20. Mr. Bhattacharya contended that since no contemporaneous statement was recorded prior to the said recovery of money and ornaments, the recovery itself is inadmissible in evidence. Section 27 of the Evidence Act prescribes two

limitations for determining how much of the information received from the accused is provable against him viz. (1) the information must be such as has caused discovery of the fact i.e. the fact must be the consequence and the information the cause of its discovery, and (2) the information must relate distinctly to the fact discovered. Section 27 allows proof of such part of the information as relates distinctly to the fact discovered. If the police officer wants to prove the information the Court would have to consider whether it relates distinctly to the fact discovered. Here, P.W. 13 acting upon information furnished by the accused orally went straight to the house of the accused and on being pointed out by the accused he recovered a foam bag containing the said amount of Rs.300/-, gold nose-ring and silver ear-rings. Such evidence is admissible without attracting operation of Section 27. The case of Ramkishan Mithanlal Sharma Vs. The State of Bombay, may be relied on. Furthermore, the evidence simpliciter that an accused led a police officer and pointed out the place where the incriminating articles were hidden is admissible as conduct u/s 8 of the Evidence Act irrespective of whether any statement of the accused was contemporaneously with or antecedent to such conduct falls within the purview of Section 27. The case of Prakash Chand Vs. State (Delhi Administration), may be referred to.

21. Inferences which may arise leading to discovery are: (i) the informant accused is connected with the fact so discovered and if the fact is incriminatory the connection of the accused therewith is established, (ii) the fact so discovered was within the exclusive knowledge of the informant, (iii) the fact is referable to the culpable possession of it by the informant, (iv) the informant has secreted away the fact with the culpable motive, and (v) the informant was a person who was responsible for the culpable act by reason of which the resultant fact is traced and available, and all these inferences may be circumstantial bringing the accused nearer the offence. If the authorship of the concealment, is part of the information given by the accused that is an additional circumstance to fix criminality on him in the absence of any acceptable explanation leading to the innocence. Therefore, the above fact of discovery of the money and ornaments on being pointed out by the accused is an additional link in the chain of circumstantial evidence in proving the guilt of the accused.

22. As regards third circumstance above, mere abscondance or disappearance of the accused by itself cannot form the basis of conviction. Even innocent person may when suspected on grave crime be tempted to evade arrest, such being the instinct of self-preservation. When a finger of false accusation is raised, an innocent person may behave like a guilty one to avoid a false charge or harassment. But when there are other evidence to connect the accused with the crime, abscondance itself is a useful piece of corroborative evidence and may lend weight to other evidence. In this connection, the case of Raghav Prapanna Tripathi Vs. The State of Uttar Pradesh, may be referred to. Here, it will appear from the evidence of P.Ws, 1, 2, 4 to 8 that they unsuccessfully searched for the accused throughout the day at different places including the house of the father

of the accused on the date of incident. It is the evidence of P.W. 13 that on 30.10.1991 on receipt of a secret Information about stay of the accused in the house of one Dulal Ruidas at Suri, he along with others held a raid at night and was successful in apprehending the accused therefrom followed by his bringing him under arrest. So, the said fact of abscondance of the accused soon after crime is an important link of corroborative evidence lending support to the Prosecution story of commission of murder of the victim by the accused and none else.

23. Mr. Bhattacharya on referring to the formal FIR contended that though the FIR was lodged by P.W. 1 on 27.10.91 at about 21.30 hrs. (as will be evident from the endorsement thereon), the same was forwarded to the Court on 31.10.1991, and in the absence of any explanation for such delayed despatch of the FIR, it gives rise to a reasonable suspicion about the Prosecution story. Mere delay in despatching FIR is not fatal when it was recorded immediately, no suspicion is attached to its recording and investigation was also taken up immediately. In this connection, cases of State of U.P. Vs. Gokaran and Others, and Pala Singh and Another Vs. State of Punjab, may be relied on.

24. Lastly, Mr. Bhattacharya contended that since no caution was given to his client before examination of the accused u/s 313 Cr. PC it has caused prejudice to his client. It is well recognized that a Judgment is not to be set aside on account of inadequate compliance with Section 313 Cr. PC. Clear prejudice to the accused must be shown and not a possibility of prejudice, as was held in the case of Moseb Kaka Chowdhry alias Moseb Chowdhry and Another Vs. The State of West Bengal, . When the accused knew the substance of accusation, elaborate argument was advanced on his behalf and there was substantial compliance of the provision of Section 313 Cr. PC, the question of prejudice, which the accused failed to show, does not arise. The case of Labhchand Dhanpat Singh Jain Vs. The State of Maharashtra, may be referred to.

25. Men do not act wholly without motive and failure to discover the motive of the offence does not signify the non-existence of the crime nor proof of motive is ever an indispensable factor for conviction, as was held in the case of Ashok Kumar Vs. The State (Delhi Administration), . Though the Prosecution is not to prove the motive for it is known only to the accused, in a case where only circumstantial evidence is available, the Courts normally try to find out motive behind the crime. In the case on hand, such motive is not too far to be traced out. Greed for the said money and ornaments and to silence the mouth of the victim, who was very much known, forever prompted the accused to commit the crime.

26. In the premises, there being no material to interfere with the decision of the learned Court below, the appeal be dismissed. The impugned order of conviction and sentence passed by the learned Court below is hereby confirmed.

27. Alamats be disposed of in accordance with the order of the learned Court

below after the period of appeal is over.

Let a copy of this Judgment along with the LCR be sent down at once to the learned Court below.

Debiprasad Sengupta, J.

28. I agree.