



**HIGH COURT AT CALCUTTA, JALPAIGURI CIRCUIT BENCH**  
**CRIMINAL APPELLATE JURISDICTION**  
**APPELLATE SIDE**

RESERVED ON: 02.03.2026

DELIVERED ON: 17.04.2026

**PRESENT:**

**THE HON'BLE MR. JUSTICE RAJARSHI BHARADWAJ**

**AND**

**THE HON'BLE MR. JUSTICE REETOBROTO KUMAR MITRA**

**DEATH REFERENCE NO. 06 OF 2024**

**THE STATE OF WEST BENGAL**

**- VERSUS -**

**GOPAL DAS**

Appearance:

Mr. Aditi Shankar Chakraborty, Ld. APP.

Dr. Arjun Chowdhury, Adv.

..... for the Appellant/State

Mr. Sourav Ganguly, Adv.

Mr. Abhishek Sarkar, Adv.

..... for the Accused



**Reetobroto Kumar Mitra, J.:**

1. This is a death reference filed under Section 366 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "the Code"). The judgement was passed by the Additional Sessions Judge, 3rd Court, Jalpaiguri, on December 9, 2024.
2. The convict has been charged on three counts. First, under Section 498A of the Indian Penal Code (hereinafter referred to as "the IPC") for having subjected the deceased to physical and mental torture. Second, he has been charged under Section 302 of the IPC for committing murder by intentionally causing the death of the victim. Third, under Section 201 of the IPC for causing the disappearance of evidence with the intention of screening himself from legal punishment for the act of murder.
3. On these aforesaid three charges, he was found guilty and was sentenced to death by the said Court on December 10, 2024.
4. The relevant facts of the instant case are briefly set out hereunder:
  - a. A complaint was lodged by one Bimal Das before the Officer-in-Charge of the Ashighar Out Post, P.S. Bhaktiagar, Jalpaiguri, in the district of Jalpaiguri on April 21, 2019.



- b. In the said complaint, it was mentioned that Lata Das (hereinafter referred to as "the victim"), the sister of the de facto complainant, was married to one Gopal Das (hereinafter referred to as "the convict") approximately seven years prior to the date of the complaint, and they were residing in TejPata Colony.
- c. After their marriage, the said convict inflicted physical and mental torture on the victim.
- d. The complaint recorded that on April 18, 2019, the victim rushed to her paternal home at PurbaChayan Para upon being tortured by the convict. In fact, as the convict followed, the quarrel between the two continued in the paternal home of the victim as well. Thereafter, from 2:00 A.M. on April 19, 2019, the victim went missing.
- e. The complaint also recorded that upon being enquired, the convict admitted that the victim was missing and added that she had eloped with somebody.
- f. On the next day, that is, April 20, 2019, the convict had filed a missing diary report of his wife, the victim, being G.D. No. 366 dated April 20, 2019.



- g. Persons from the locality, along with the de facto complainant, started searching for the victim, and at approximately 5:00 P.M., the clothes of the victim were found lying adjacent to the well situated in the house adjacent to the victim's paternal home.
- h. This aroused suspicion in the mind of the de facto complainant, who then made several queries to the convict. Such queries were not satisfactorily answered.
- i. It was on the next day, that is, April 21, 2019, that the husband of the panchayat pradhan, who was himself a panchayat pradhan earlier, was called to the residence of the de facto complainant (also the victim's paternal home). In his presence, the convict, upon questioning, broke down and admitted that on the night of April 19, 2019 and the early morning of April 20, 2019, around 1:00 A.M., he had murdered the victim by asphyxiation and that he had disposed of the body by means of a rope into the septic tank of the residence of the de facto complainant.
- j. On these facts, the complaint was made by the de facto complainant on April 21, 2019, requesting the arrest and consequent punishment of the convict.



5. The convict was arrested, and the body of the victim was recovered on April 21, 2019.
6. Pursuant to the recovery of the body, an inquest was conducted, and the inquest report (Exhibit 2 series) was prepared.
7. An investigation report was also duly filed under Section 174 of the Code of Criminal Procedure, 1973 (hereinafter Code).
8. The post-mortem report was also filed on April 22, 2019.
9. The learned Court below, after hearing all applications and perusing the material on record, framed charges against the accused under Section 498A, Section 302, and Section 201 of the Indian Penal Code. The charges, as stated hereinbefore, comprised three separate accusations: under Section 498A of the IPC, Section 302 of the IPC, and Section 201 of the IPC. The contents of the charges were duly read over and explained to the convict, to which he pleaded not guilty and claimed to be tried. Thus, the trial commenced.
10. The prosecution, in order to buttress its case, produced as many as 18 witnesses and proved and exhibited several documents.



11. The learned Court, upon consideration of all evidence and arguments advanced by both parties, proceeded to pass a judgment on December 9, 2024 holding the convict to be guilty of all the charges against him.
12. On December 10, 2024, the Court proceeded to pass the sentence, directing the convict to be imprisoned for a term of two years for the charge under Section 498A of the IPC, a term of imprisonment for the offence under Section 201 of the IPC, and sentencing him to death for the commission of the offence punishable under Section 302 of the IPC.
13. The death sentence was made subject to confirmation by the Hon'ble High Court in terms of Section 366 of the Code. Hence, this reference.
14. We have also found from the order of this Hon'ble Court dated January 2, 2025, that the Secretary, High Court Legal Services Committee, had been directed to appoint an experienced senior advocate to represent the convict. In fact, on the returnable date, that is, January 27, 2025, the advocate who had been appointed on behalf of the convict sought time to prefer an appeal against the judgment and order of conviction as well as against the sentence.
15. However, we did not find any appeal filed on behalf of the convict, on record.



16. While dealing with a death reference, the Hon'ble High Court not only has the power to direct further enquiry to be made or additional evidence to be taken under Section 367 of the Code, but also the power to confirm the sentence or annul the conviction. In fact, to do any of the aforementioned, the High Court has to appreciate/reappreciate every factual element, including the evidence that has been placed before the court passing the judgment and order of conviction and sentence.
17. We have heard the submissions made by Mr. Sourav Ganguly, learned counsel appearing for the convict, and Mr. Aditi Shankar Chakraborty, learned Additional Public Prosecutor appearing for the State and considered the decisions relied upon by them. We have also perused and gone through records, evidence and exhibits placed before us and considered the same.
18. The submission of Mr. Sourav Ganguly appearing for the convict may be summarised as under:
- i. Insufficiency of evidence to hold the convict guilty of the charges as framed against him.
  - ii. The evidence led by the prosecution is contrary in nature and does not warrant a conviction let alone a sentencing.



- iii. There is no unbroken chain of circumstances leading to the inevitable and absolute conclusion that the convict alone could have committed the crime with which he has been charged and hence guilty of the same.
- iv. No motive has been established to come to the conclusion that the convict alone could have and indeed committed the murder of the victim.
- v. In support of the above submissions, reliance is placed on the following decisions:
- a. Bachan Singh v. State of Punjab, (1980) 2 SCC 684;
  - b. Machhi Singh v. State of Punjab, (1983) 3 SCC 470;
  - c. Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116;
  - d. Nikhil Chandra Mondal v. State of West Bengal, (2023) 6 SCC 605;
  - e. Raja Khan v. State of Chhattisgarh, (2025) 3 SCC 314;



- f. *Boby v. State of Kerala*, (2023) 15 SCC 760;
- g. *Shibu Barman @ Kubal v. State of West Bengal*, CRA 15 of 2021.
19. The submissions of Mr. Aditi Shankar Chakraborty, learned Additional Public Prosecutor for the State, may be summarised as under:
- a. The legal test for circumstantial evidence has been fully satisfied. See: *Hanumant Govind Nargundkar v. State of M.P.*, 1952 SCR 1091; *Gambhir v State of Maharashtra*, (1982) 2 SCC 351; *Sharad Birdhichand Sarda v. State of Maharashtra*, (1984) 4 SCC 116.
- b. The 'last seen' theory stands proved, as the victim was in the bedroom with the Convict immediately prior to her death.
- c. There is strong incriminating evidence regarding the recovery of the body and the articles used in the commission of the crime. See: *Ramreddy Rajeshkhanna Reddy v. State of A.P.*, (2006) 12 SCC 172.
- d. The conduct of the accused under Section 8 of the Evidence Act is a clear indication that accused/convict alone could have



committed the crime. See: State of U.P. v. Krishna Gopal, (1988) 4 SCC 302; Earabhadrapa v. State of Karnataka, (1983) 2 SCC 330; Machhi Singh v. State of Punjab, (1983) 3 SCC 470.

20. We have considered and scanned the evidence led by the parties. The evidence, as scanned by us, is set out hereunder:

20.1 There are no eyewitnesses to the crime which has been committed. Thus, the entire matter rests on circumstantial evidence.

20.1.1 The sine qua non for a matter to be decided on circumstantial evidence is the chain of circumstances. If the chain of circumstances is broken even by a fraction, it is sufficient to create a reasonable doubt in the mind of the Court. In such circumstances, the Court would not proceed to pass an order of conviction or sentence.

20.1.2 The chain of circumstances as relied upon by the learned Court below to establish that not once but on several occasions the chain of circumstances



has not only been broken, but shattered in its entirety, as will appear:

- 20.2 The learned Judge proceeded to connect the chain of circumstances, by proceeding entirely on the basis of the complaint filed by the de facto complainant, the brother of the deceased, who is also Prosecution Witness No. 1 (PW 1).
- 20.3 The learned Judge has proceeded on the basis that the entire complaint is the gospel truth and has also manipulated the facts to suit or implant what was stated in the complaint.
- 20.4 First and foremost, the complaint states that on April 18, 2019, the victim came to her father's house upon being tortured by the convict and that the convict followed the victim and came to his in-laws' house and started quarrelling with the victim. The learned Judge also records that the convict resided in his in-laws' house in a room which was Place of Occurrence No. 2 (P.O. 2) on April 18, 2019 and April 19, 2019. The learned Judge also proceeded to record, to maintain the chain of circumstances against the convict that the convict had dinner with PW 1 on the night of April 19, 2019.



20.4.1 With regard to these aforestated chain of events relied upon by the learned Judge, there is no evidence to prove any of these aforestated facts. In fact, the evidence led by several prosecution witnesses is quite to the contrary. The evidence of PW 14, who was the landlord of the residence taken by the convict and the victim on rent, sometime in 2019. He has specifically stated in his examination that the convict and the victim had come to his house as tenants. In fact, he went on to depose that four months prior to the death of the victim, she and her husband moved to the victim's paternal home after giving up the tenancy. During his cross-examination, he has unequivocally stated that his house is in the vicinity (40 to 50 houses apart) of the victim's paternal home. Thus, the landlord (PW 14) has clearly stated that the victim and the convict were residing in the same house as that of PW 1, which is the paternal house of both PW 1 and the victim. Thus, the question of the victim coming to her paternal house on April 18, 2019 and being followed by the convict is doubtful. The



prosecution has not made any attempt whatsoever, either by way of leading evidence or by way of producing any document, to assail this witness's statement. The prosecution has also not taken any steps to establish where the victim and the convict resided after they gave up the tenancy four months prior to the death of the victim. While deposing under Section 313 of the Code, the convict has stated in no uncertain terms that the victim used to stay at her paternal home and that he resided in his own house at Tejpata Nagar, Jalpaiguri.

20.5 The learned Judge has distorted the facts inasmuch as the interpretation of the missing diary lodged by the convict in respect of his wife, the victim, being Exhibit A, records that the victim was residing in the convict's father-in-law's house, PurbaChayan Para, Jalpaiguri. The interpretation by the learned Judge of this statement of the convict is that the victim went missing from his (the convict's) father's house.

20.5.1 The statement given by the convict is clear and unequivocal and leaves no room for confusion.



20.6 The learned Judge proceeded to construe that the accused/convict was found beside the well of the adjacent house (belonging to one Madhabi) from where the apparel of the victim was recovered.

20.6.1 There is no question of recovery of the convict from the vicinity of the well, as he was along with all others searching the area for the victim, who was missing.

20.7 PW 1 had called one UttamBarai (PW 4) and others on April 21, 2019, and on interrogation, the convict had given contradictory statements, creating suspicion about the disappearance of the victim from her own house.

20.7.1 No such other persons were produced as witnesses in terms of the finding of the learned Judge on this issue.

20.7.2 In fact, PW 4 had made certain extremely contradictory statements.

20.7.3 According to PW 4, he had gone to the house of PW 1 on April 20, 2019 and deposed that the



victim was "found missing since the last night", which means April 19, 2019, while the victim had been missing since April 18, 2019.

20.7.4 This clearly means that, according to PW 4, the victim was missing from April 19, 2019. Clearly this is incorrect, as the victim, according to PW 1 and the complaint, was missing since the night of April 18, 2019.

20.8 The learned Judge has proceeded to record, to create an unbroken chain of circumstances leading to the accused, that the convict had been arrested from the house of PW 1 and that he had admitted before the police that he had committed the murder of his wife and that the dead body had been concealed in the septic tank of his in-laws' house.

20.8.1 There is absolutely no such statement by the accused which was produced before the Court, nor any corroborative evidence to show that the convict had indeed informed the police or admitted before the police authority that he had disposed of the body by hiding the same in the



septic tank of the paternal home of PW 1 and the victim.

20.8.2 Any admission before a police authority in the absence of a magistrate is clearly nonest as provided under Section 27 of the Indian Evidence Act. The only exception provided in the said Section itself is that in the event the body or the instrument/weapon of crime is found in terms of the admission made by the accused, such confession limited to the extent of discovery shall be construed as admissible.

20.8.3 In this case, there is no such statement on record to show that the convict had informed the police authorities that he had hidden the body of the victim in the septic tank of her paternal house.

20.8.4 Thus, the learned Judge had no evidence before him to accept this proposition that the convict had admitted before the police or that he had made any statement regarding concealment of the dead body of the victim from which the police authorities recovered the body.



- 20.8.5 On the contrary, PW 11, 12 and 13 were sweepers who were engaged by the police authority to recover the body from the septic tank. They have all unequivocally admitted that they had gone to P.O. 1 (Septic Tank) on April 21, 2019 on the instruction of the police that they would have to take out a body from the septic tank.
- 20.8.6 In fact, PW 11 and 12 went on to depose that the convict was not present when they arrived to retrieve the body from the septic tank.
- 20.8.7 PW 11 further added to his deposition that there was a concrete slab on the septic tank, which the three sweepers had to remove together and that it was impossible for a single person to remove such a slab.
- 20.9 The learned Judge has proceeded on the basis that the alibi of the convict that he was at his father's residence at Tejpata Colony on the night of the incident could not be proved by any cogent evidence.



20.9.1 The burden or the onus to prove shifts only once a person asserting a particular fact has unequivocally proved such a fact. In the present case, the prosecution has been unable to prove that the convict was indeed guilty of the crimes with which he had been charged.

20.10 Even though the convict and the victim had been married for seven years and if the allegation leveled by PW 1 as reflected in the charge-sheet that the victim was subjected to mental and physical torture is taken to be true and correct, there is not a single word of complaint from any person or party prior to the instant incident. There are no police complaints, no reports, no complaint to any local body, nor has this case ever been made out in the course of deposition of the 18 witnesses that were produced by the prosecution. Clearly, this allegation of mental and physical torture has been foisted with an intention to corroborate the commission of the murder of the victim and fasten liability of the same on the accused. The learned Judge proceeded to accept such an allegation without there being any evidence of the same, nor any oral evidence having been led for such purpose. PW 1 has led contradictory evidence, stating that the victim was missing since the night of



April 19, 2019, while in his complaint he had specified that the victim was missing since April 18, 2019.

20.11 Further, from the sketch map relied upon, it is clear that the room of PW 1 is adjacent and close to the septic tank, and any movement or removal of the concrete slab should automatically awaken a person lying so close to the septic tank.

20.12 This especially since PW 1 deposed that he had woken up in the night, to attend to the call of nature, and found that his sister, the victim, was missing.

20.13 Contradictions regarding the confession of the convict. The testimonies of PW-1 and PW-2 reveal material inconsistencies which affect the reliability of the prosecution case.

20.13.1 PW-2 stated that at about 2:00 p.m., when her husband (PW-1), the brother of the deceased, heard a loud sound from the room where the accused and the deceased were present and enquired about it, the accused informed them that the deceased had gone towards Ashighar with someone. According to PW-2, PW-1 and others then went towards Ashighar in search of the



deceased and returned around 4:00 p.m. However, PW-1 does not depose that he went towards Ashihar in search of the deceased. This omission relates to a material circumstance and creates doubt regarding the veracity of PW 1 and PW-2's testimony. (Page 104).

20.13.2 A further contradiction arises regarding the alleged confession of the accused. PW-2 has stated that the accused did not confess before the panchayat and that the police were called only after the clothes of the deceased were recovered from the well. She further stated that the accused admitted throwing the clothes into the well after being beaten by the police, and thereafter he was taken into custody and allegedly confessed. (Page 105)

20.13.3 This version is inconsistent with the testimony of PW-1, who stated that the accused was apprehended after confessing his guilt before the village panchayat, admitting that he had killed the deceased and thrown her wearing apparels into the well, following which the FIR was lodged and the accused was arrested. (Page 100)



- 20.13.4 These two versions are mutually irreconcilable and strike at the root of the prosecution case. In a case resting entirely upon circumstantial evidence, such contradictions relating to a vital circumstance cannot be ignored.
- 20.13.5 The inconsistency also raises serious doubt regarding the voluntariness and authenticity of the alleged confession, particularly when one witness suggests that the accused made statements only after being subjected to police assault.
- 20.13.6 When the testimonies of PW-1 and PW-2 are considered together, it can be said that the prosecution has failed to present a consistent and coherent account of the events leading to the arrest of the accused. Such contradictions assume greater significance in a case where the prosecution relies entirely on circumstantial evidence.
- 20.13.7 The Supreme Court has consistently held that in cases based on circumstantial evidence the chain of circumstances must be complete and free from



reasonable doubt, as laid down in *Sharad Birdhichand Sarda* (supra).

20.13.8 The material inconsistencies between PW-1 and PW-2, particularly with regard to the alleged confession and the sequence of events leading to the arrest of the accused, create a serious dent in the prosecution case and render the evidence unsafe for sustaining a conviction.

20.13.9 PW-2 stated that at about 4:20 a.m. one Madhobi Das (PW-7) informed them that she had seen the accused opening the cover of the well. According to PW-2, upon searching the well they found a golden kurti and red leggings floating therein. However, this alleged information given by PW-7 and the subsequent discovery of the garments does not find mention in the testimony of PW-1, nor does PW-7 give the same version in identical terms. This appears to be a new circumstance introduced by PW-2.

20.13.10 During cross-examination, PW-2 admitted several important facts: she had not stated before the



police about the search towards Ashighar, nor about the kurti, leggings, rope of pandal, bricks, pillow, or other materials. She also admitted that she was not an eyewitness and could not state anything regarding the preparation of the seizure list on which she had signed. These omissions amount to material contradictions, thereby rendering her testimony doubtful.

20.14 Contradiction in the witnesses' statement regarding the relationship between the convict and the victim.

20.14.1 The testimony of PW-3 (Mamata Das), the mother of the deceased, also reveals material inconsistencies affecting the prosecution case. PW-3 stated that on 18.04.2019 the deceased came to her house along with the accused and both stayed there, and from the following day the deceased was missing. However, PW-3 does not support the version of PW-1 regarding any quarrel between the accused and the deceased, which the prosecution sought to rely upon as motive. Even PW-2 didn't depose anything about the existence



of any quarrel between the accused and the deceased on the previous day of the murder.

20.14.2 She also stated that Madhobi Das (PW-7) informed PW-2 that she had seen the accused removing the cover of the well. However, PW-7 herself does not support this version, thereby weakening the credibility of this circumstance.

20.15 Material contradiction in the FIR and the 164 statement by PW-1.

20.15.1 The sequence of events regarding the recovery of the wearing apparels and the alleged confession appears materially inconsistent when the FIR is compared with the statement under Section 164 CrPC.

20.15.2 In the FIR, PW-1 stated that on 20.04.2019 at about 6:00 p.m. the wearing apparels of the deceased were recovered from the well of Soma Das. It was after this recovery that suspicion arose against the accused. Thereafter, on the following day, the Panchayat members were called, and



during interrogation before them the accused allegedly confessed that he had killed the deceased and disposed of her body.

20.15.3 However, in the statement recorded under Section 164 CrPC, PW-1 stated that when the Panchayat members questioned the accused, he simultaneously confessed that he had killed Lata and had thrown her salwar-kameez into the well. Thus, in that version, the act of murder and the throwing of the garments were disclosed together during the alleged confession.

20.15.4 This creates a material inconsistency in the prosecution narrative. In the FIR, the recovery of the garments precedes the confession and forms the basis of suspicion, whereas in the Section 164 statement, the throwing of the garments into the well appears as part of the confession itself. The two versions therefore present different sequences of events regarding how the garments came to be discovered, thereby casting doubt on the reliability of the prosecution story concerning this important circumstance.



20.16 Conclusion. In view of the foregoing discussion, it can be safely concluded that the prosecution has failed to establish the guilt of the accused beyond reasonable doubt. The chain of circumstantial evidence is incomplete and does not exclude the possibility of any other hypothesis consistent with the innocence of the accused.

21 In view of the aforesaid facts and circumstances, there is absolutely no connection in the chain of circumstances to establish a clear imposition of liability on the accused for the crimes with which he has been charged. The learned Judge proceeded with a pre-determined mind and sought to "cross the t's" and "dot the i's" to ensure that the facts were made to fill up the gaps, and has thus construed, or rather misconstrued, the facts in his own way to create a chain of circumstances, which is factually unsubstantiated.

22 The Hon'ble Supreme Court of India on several occasions starting from 1952 and especially in the Case of SharadBirdhichandSarda v. State of Maharashtra has categorically laid down the five golden principles to be followed for conviction on a case based entirely on circumstantial evidence. These five golden principles as formulated by the Hon'ble Supreme Court of India are as under:



- i. The circumstances from which the conclusion of guilty is to be drawn should be fully established;
  - ii. The facts so established should be consistent only with the hypothesis of the guilt of the convict, in other words they should not be explainable by any other hypothesis except that the convict is guilty;
  - iii. They should be of a conclusive nature and tendency;
  - iv. They should exclude every possible hypothesis except the one to be proved; and
  - v. 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/convict and must show that in all human probability, the act must have been done by the accused.
23. It is not a matter of dispute that a crime has been committed. The crime being that of the murder of a young girl aged about 20 years. Painful and unfortunate as every death is, it is even more heart-wrenching that a young girl has been killed in such a brutal manner. At the same time, it has to be kept in mind that an innocent person should not be punished, merely



because the court thinks that he is morally responsible and thereby certain that the convict had committed the crime.

24. The cardinal principle of criminal jurisprudence that a case can be said to have been proved against a person when there is that amount of certainty supported by explicit evidence that no other person could have committed this crime. Conviction therefore has to be on the basis of actuals, oral evidence and material evidence and not on the basis of a moral conviction. In this case, which rests entirely on circumstantial evidence, it would be useful to consider the evidence led by the prosecution rather than taking up the defence of the convict. This would, at least, at the first instance do away with the tenets of a false defence or a false alibi that may be raised by the convict.
25. If the evidence of the prosecution is such that it leads to the inevitable conclusion that only the accused/convict could have committed the crime and no other person, we shall delve into the question of the defence raised by the convict or alibi given by him.
26. The first and foremost issue in this matter would be to see if the prosecution has been able to establish a chain of evidence, unbroken, leading to the inevitable conclusion that the convict alone could have committed the crime or as in this case the crimes.



27. As discussed while scanning the evidence, the first chink in the armour of the prosecution seems to be the evidence led by PW1 that the victim and the convict had both come to the victim's paternal house and that they were quarrelling. There is no evidence as to where the two persons victim and the convict came from to the paternal house. The evidence of PW 2 is rife with contradictions which create more than a reasonable doubt that the convict is indeed the culprit. The evidence of the landlord (PW-14) is that they were residing in a rented place, though they had left the same four months prior to the death of the victim. Clearly the victim and the convict were not residing in her matrimonial home as they were already staying in a rented place and certainly not residing in the rented place on the day the death of the victim took place.
28. Added to this is the lack of evidence to prove that the convict had dinner with PW 1 on April 18, 2019.
29. Even before PW 1 had lodged a complaint with the police authority that his sister, the victim, was missing, the convict had lodged a missing person report.
30. There is quite a discrepancy in the evidence of PW 1 the defacto complainant, that his sister the victim girl had been tortured and killed on the night of April 18, 2019 as it was found that the victim girl had been killed on the night of April 19, 2019.



31. PW 1 has also in his evidence stated that the convict had confessed before the panchayat members that he had killed the victim by pressing a pillow on her face on the night of April 19/20, 2019. This issue finds no mention in the statement given to the police authority by PW 1.
32. It is also to be noted that there is no statement of the convict before the police authority, admitting to the crime of murdering his wife or that he had concealed the body of his wife in the septic tank of his in-laws' house.
33. Sweepers who had been engaged by the police authority ( three in number), have in no uncertain terms and unequivocally stated that when they were asked to come to the place of occurrence on April 21, 2019, they had been instructed by the police authority that they were to take out a dead body from the septic tank. Thus, it cannot be said with absolute certainty that the convict had admitted to the police authority or given the information pursuant to such admission that he had hidden the body of the wife in the septic tank.
34. The clothes of the victim which were recovered from a well of the adjacent house were found tied to bricks and were evidently not floating in the well but were submerged. It defies logic as to why and how PW 1 was aware that the clothes of the victim would be found in the well, as he had himself gone into the well and recovered them.



35. PW 1 and PW 2, whose room in the place of occurrence was adjacent to the septic tank, were unaware of the murder of the victim—a fact not suspicious by itself. However, if the convict had indeed thrust the body of the victim into the septic tank and PW 1 and PW 2 were unaware of it, a doubt arises. This doubt is reinforced by the fact that the bedroom of PW 1 and PW 2 was adjacent to the septic tank, and additionally, PW 1 has stated in his evidence that he had woken up at about 1 A.M. to answer the call of nature. Thus, thrusting a body into the septic tank after removing the slab which, according to the sweepers who had removed it, was so heavy that it could not have been moved by a single person must have caused sufficient disturbance at that hour to draw the attention of anyone close to the septic tank. In this case, however, PW 1 and PW 2, despite being fairly close to the septic tank, were completely unaware of the incident
36. Thus, from the aforesaid facts, the chain of circumstances cannot be said to have satisfied the five golden principles with absolute certainty, so as to constitute the "Panchsheel" of proof in a case based on circumstantial evidence.
37. The evidence led by the prosecution is not such that it can be construed as a chain of circumstances that is complete enough not to leave any reasonable doubt for a conclusion that the crimes must have been committed by the convict and by none else but the convict alone.



38. The chain of circumstances could have been strengthened had there been an admission by the convict as to the information regarding the recovery of the dead body of the victim girl from the septic tank. This would have been in consonance with Section 27 of the Indian Evidence Act in so far as the proviso is concerned. However, in the present case there is no such evidence nor has any such evidence been exhibited that the dead body was recovered from the information given by the convict. On the contrary, this recovery of the dead body as deposed by the three sweepers was made on the inspection of the police authority. There is no statement on record to show that the recovery of the body was pursuant to a statement given by the convict.
39. The conduct of the accused, as contemplated under Section 8 of the Evidence Act, is essential in cases of circumstantial evidence. However, in the present case, we are unable to find any such conduct of the convict which would lead to even an ex facie conclusion of guilt, whether based on the recovery of articles or other materials connected with the crime, so as to constitute an important piece of evidence to foist a conviction.
40. In so far as the decisions relied upon by parties are concerned, it is no more res integra that death sentence is to be looked into on parameters specifically set forth for such purpose. These conditions have been well set forth by the Hon'ble Supreme court of India in the decision of Bachan Singh (supra) that an offence of murder shall be punished with sentence of



life imprisonment and the death penalty, which is a deviation from the normal rule, can be done only if there are special reasons for doing so. Thus, the decision of *Machhi Singh V State Of Punjab* has specified that the death penalty is to be reserved for the rarest of rare cases.

41. Both decisions aforesaid have been followed unequivocally not just by the high courts of this country but also by the Hon'ble Supreme Court in *Nikhil Chandra Mondal (supra)*, *Raja Khan (supra)* and *Boby (supra)*.
42. The prosecution has to prove its case beyond all reasonable doubt and even a minimal doubt regarding the guilt of the accused would result in such person not being granted the death penalty but life imprisonment.
43. In view of the discussion aforesaid, we hold that the charges against the convict have not been sufficiently proved for the reasons aforesaid, which are summarised as under:
  - i. There is no proof or evidence that the convict had caused any torture or indulged in any domestic violence against the victim during her lifetime and the charges levelled against him under Section 498A of the Indian Penal Code are found to be not proved.



- ii. The chain of circumstances as presented by the prosecution is based on evidence which is not just insufficient and inadequate but is grossly contradictory and cannot under any circumstances lead to a conclusion that the perpetrator of the crime is inevitably the convict and must be the convict alone.
- iii. Question of causing disappearance of evidence by the convict with the intention of screening himself from legal punishment for such act of disappearance of evidence was not proved in any manner whatsoever and such a charge cannot be foisted on the convict.
44. The death reference is, accordingly, discharged. The judgment of conviction dated December 9, 2024, and the sentence dated December 10, 2024, passed by the learned Additional Sessions Judge, 3rd Court, Jalpaiguri, are set aside. The convict is acquitted of all charges and shall be released forthwith unless his detention is required in connection with any other case.
45. Let a copy of this judgment along with the lower court records be transmitted to the learned trial court immediately for information and compliance.



REPORTABLE



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46. An urgent photostat-certified copy of this judgment, if applied for, be made available to the parties upon compliance with all requisite formalities.

(Reetobroto Kumar Mitra, J.)

(Rajarshi Bharadwaj, J.)