

ST 15(05)2025

SC 65/2025

CNR no.WBHG01- 001022-2025

J.O code no.WB00877

Order no.25 dated 27.04.2026

Accused persons namely Sambhu Saha @ Adu, Chaina Saha and Tumpa Majumdar Saha are produced from J/C physically.

Today is fixed for delivery of judgement.

Learned P.P, Hooghly and the learned Defence Counsel are present.

Judgement is ready and delivered in open court in presence of the accused persons and the learned Counsels of both the parties.

It is,

ORDERED

that the accused namely **Sambhu Saha** is found guilty for the offence punishable u/s 140(1) of BNS and accordingly he is convicted in terms of Section 261 (2) of BNSS.

the accused namely **Sambhu Saha** is found guilty for the offence punishable u/s 103(1) of BNS and accordingly he is convicted in terms of Section 261(2) of BNSS.

The accused namely **Sambhu Saha** is also found guilty for the offence punishable u/s 238(a) of BNS and accordingly he is convicted in terms of Section 261(2) of BNSS.

The accused Chaina Saha and Tumpa Mazumdar Saha are found not guilty for the offence punishable u/s 61(2)/140(1)/103(1)/238(a) of BNS and thus acquitted u/s 261(1) of BNSS.

The accused Chaina Saha and Tumpa Mazumdar Saha be released from the custody at once.

Superintendent, District Correctional Home, Hooghly be informed at once for compliance.

The convict Sambhu Saha be produced again at 2p.m for hearing on the point of sentence.

Ld. Public Prosecutor and Ld. Defense counsel are called upon to place relevant materials, if any for hearing on the quantum of sentence at 1:00 p.m today. The convict will be heard on the point of sentence on his production before this court today at 1:00 p.m.

The judgement is delivered in open court on this 27.04.2026 under my seal and signature.

Dictated & Corrected

Addl. Dist & Sessions Judge
1st Court, Chinsurah

Addl. Dist & sessions Judge
1st Court, Chinsurah

Later at 1:00 p.m

The record is placed before me today for hearing on the point of sentence.

The convict namely Sambhu Saha is produced before the court from J/C.

Vide judgement dt. 27.04.26 the above named convict was found guilty for the offence punishable u/s 140(1)/103(1)/238(a) of BNS and accordingly he was convicted in terms of Section 261 (2) BNSS.

I have heard the convict who submitted before the court that he is innocent and falsely implicated in this case out of grudge and prayed for mercy.

Ld. Special Public Prosecutor submitted before the court that the convict is the grandfather of the deceased child and as he could not accept the marriage of his son with the complainant, mother of the deceased child, he did not hesitate to remove her child from the world permanently just to give her pain of losing child . He used to threat the complainant that one day he would remove her child from the world to make her feel how the paid of losing child is by saying “ tui amar cheleke bhog korte dis ni, amio to ke tor cheleke bhog korte debo na”. The convict made a plan

accordingly and on the fateful day he took the opportunity when father of the child went out of the house, kidnapped the child and confined him in his room and brutally murdered him by smothering and in course of such evil acts he also injured child all over his body which is reflected from the Post Mortem Report. He wrapped the body inside a sack which he use for the purpose of his business, concealed the sack on the bunker where he used to keep blanket so that no one can suspect or find. Through out that day he did acting of search with the local people and on the next day morning when he realized that it would be impossible to remove the body to any other place because of police posting outside of his premises, he was compelled to put the dead body inside the bathroom when his other family members were busy in the room of the complainant to console her. He further submitted that entire operation was executed by the convict in such brutal manner which no civilized person could imagine. He further submitted that brutality of the offense and manner of execution of the crime upon a helpless child of only four years by his own grandfather clearly suggest that instant case falls in the category of '**rarest of rare cases**' and prayed for death sentence of the convict.

On the other hand Ld. Counsel appearing on behalf of the convicts submitted that the convict is an innocent law abiding citizen and falsely implicated in this case by the complainant out of grudge and only on the basis of mere apprehension. He also submitted that the convict is an aged person and there was no criminal antecedent against him and his rehabilitation and reformation is not foreclosed. He also submitted that the instant case is solely based upon circumstantial evidence and during trial serious infirmities ,defects and lapses in investigation came on the surface which caste a serious doubt on veracity of the prosecution case. Witnesses examined by the prosecution made contradictory statement during their examination. He further submitted that in the instant case there are several mitigating factors including the age of the convict which should be considered while deciding the quantum of sentence. Moreover in several judgments, Hon'ble Apex Court made it clear that death sentence is not warranted in the case bases on circumstantial evidence. He again submitted that there is every scope of reformation of the convict who is not a menace to the society and came from a very poor strata and has been in custody since inception of this case. He prayed for minimum sentence prescribed by the statute.

I have heard the submission advanced by the Ld. Counsels on the point of sentence.

While imposing sentence we must not forget that life imprisonment is the rule and death penalty is an exception. Therefore, the court must satisfy itself that death penalty would be the only punishment which can be meted out to a convict. The court has to consider whether any other punishment would be completely inadequate and what would be the mitigating and aggravating circumstances in the case. Rape with murder are always foul, however, the degree of brutality, depravity and diabolic nature differ in each case. In the instant case convict committed murder of his own grand child of only four years brutally. There can not be any straitjacket formula for deciding upon circumstances under which death penalty must be awarded. In such matters it is not only a nature of crime, but the background of criminal, his psychology, his social conditions, his mind set for committing offence and effect of imposing alternative punishment on the society are also the relevant factors.

The guidelines laid down by the Hon'ble Supreme Court for awarding death sentence in **Bachhan Singh Vs. State of Punjab** reported in **AIR 1980 SC 898** may be summarized as under:-

- a) The extreme penalty of death sentence should be inflicted in gravest cases of extreme culpability.
- b) While imposing death sentence circumstances of the offender also require to be taken into consideration along with the circumstances of the crime.
- c) Death sentence be imposed only when life imprisonment appears to be altogether inadequate punishment having regard to the relevant circumstances of the crime.
- d) Extreme penalty can be imposed after striking balance between aggravating and mitigating circumstances found in the case.

Following circumstances are to be considered as aggravating circumstances :-

- i) If the murder has been committed after previous planning and involves extreme brutality.
- ii) If the murder involves exceptional depravity.

Following circumstances are to be considered as Mitigating circumstances :-

i) that the offence was committed under the influence of extreme mental or emotional disturbance.

ii) If the accused is young or old in age.

iii) The probability that the accused would not commit criminal acts of violence as would constitute a continuing threat to society.

iv) the probability that the accused can be reformed and rehabilitated .

v) that in the facts and circumstances of the case the accused believed that he was morally justified in committing the offence .

vi) that the accused acted under duress or domination of another person.

In **Machhi Singh Vs. State of Punjab** reported in 1983 SC 957 , Hon'ble Supreme Court expanded the "**rarest of rare**" formulation beyond the aggravating factors listed in Bachhan Singh (Supra) and stated that in 'rarest of rare' cases death penalty should be inflicted after giving weightage and balance between aggravating and mitigating circumstances. It was further held that motive, the manner of commission of the crime and antisocial nature of crime should be considered.

In **Devender Pal Singh Vs. State of NCT of Delhi** reported in AIR 2002 SC 1661 , the Hon'ble Supreme Court further held that death sentence may be warranted when the murder is committed in an extremely brutal manner or cold blooded murder for gain. Death sentence may also be justified when the crime is enormous in proportion.

It was held by the Hon'ble Supreme Court in **Mahesh Vs. State of M.P** that taking lenient view and not imposing appropriate punishment amounts to mockery of justice to permit the accused to escape the extreme penalty of law when faced with such evidence and such cruel acts. It was also observed that "**to give a lesser punishment to the accused would be to render the justice system of this country suspects and the common man will lose faith in the courts. In such cases he understands and**

appreciates the language deterrence more than the reformatory jargon.”

In **Bantu Vs. State of U.P (2008) 11 SCC 113** it was held by the Hon’ble Supreme Court that **“therefore undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law and society could not long endure under such serious threats. It is therefore the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed etc.”**

The doctrine of **“rarest of rare”** confines two aspects and when both the aspects are satisfied only then the death penalty can be imposed. Firstly, the case must clearly fall within the ambit of ‘rarest of rare’ and secondly, when the alternative option is unquestionably foreclosed . When alternative punishment of life imprisonment will be futile and serves no purpose, death punishment is the last resort.

The **“rarest of the rare case”** comes when a convict would be a menace and threat to the harmonious and peaceful coexistence of the society where an accused does not act on any spur of the moment or provocation and he indulged himself in a deliberately planned crime and meticulously executed it. Death sentence may be the most appropriate punishment for such a ghastly crime. The doctrine of **“rarest of the rare”** suggests that the life imprisonment is the punishment in a case of murder and death punishment can be an exception if it fulfills the **“special reasons”** in the case . The term **“special reasons”** as stated in section 354 (3) of Cr.P.C means exceptional reasons owing to the grave nature of the crime. Section 354 (3) Cr.P.C mandates courts to provide specific justification when imposing the death penalty. This section emphasizes that court must provide reasons for any sentence that is awarded and offer special reasons when the convict is punished with the death penalty.

From the above proposition it is clear that for awarding the death sentence , there must be existence of aggravating circumstances and consequential absence of mitigating circumstances depending upon the factual scenario of the case in hand.

In the instant case nature of circumstantial evidence involved in this case, age of the convict, criminal antecedent and chance of reformation and rehabilitation are the mitigating factors in favour of the convict. When I cautiously and consciously weighed the aggravating circumstances with mitigating factors I found that mitigating

factors outweigh the aggravating factors available in the record. Therefore, I must

conclude without any hesitation that the instant case in no way falls in the category of the “**rarest of rare cases**” where life imprisonment appears to be altogether inadequate .

Accordingly, it is,

ORDERED

that the convict namely **Sambhu Saha @ Adu** is sentenced to undergo rigorous imprisonment for life and also to pay fine of Rs. 20,000/- i.d to suffer rigorous imprisonment for another 6 months for the offence punishable u/s 103(1) BNS.

the convict namely **Sambhu Saha @ Adu** is also sentenced to undergo rigorous imprisonment for ten years and also to pay fine of Rs. 5,000/- i.d to suffer rigorous imprisonment for another 02 months for the offence punishable u/s 140(1) BNS.

the convict namely **Sambhu Saha @ Adu** is further sentenced to undergo rigorous imprisonment for seven years and also to pay fine of Rs. 5,000/- i.d to suffer rigorous imprisonment for another 01 month for the offence punishable u/s 238(a) BNS.

All sentences shall run concurrently.

The accused is in custody since 24.11.2024. So the period of detention already undergone by the convict during investigation, inquiry and trial shall be set-off against the substantive sentence passed by this court in terms of section 468 of BNS.

At the time of pronouncing the judgement of conviction and sentence I have informed the convict in Bengali Language, which is understandable to him, about his right to prefer appeal against this judgement including his right to avail of legal aid in that regard from the District/ State Legal Services Authority under the Act of 1987. The convict expressed that he would prefer appeal at his own.

Thus, direction of the **Hon'ble High Court in MALATI SARDAR VS STATE OF WEST BENGAL in C.R.A 36 of 2011 as well as rules 192 A and 192 B of the Calcutta High Court Criminal (Sub-ordinate Courts) Rules, 1985, complied with.**

Copy of this judgment, be supplied to the convict free of cost at once. Certified copy, if applied for by the convict in the mean time , be also given free of cost at the earliest.

Seized alat be disposed off according to law after expiry of period of appeal.

Let a copy of this judgment be forwarded to the District Magistrate, Hooghly for his information in view of the provision of Section 406 of BNSS.

The sentence is delivered in open court on this 27th day of April, 2026 under my seal and signature.

Dict. & corrct. by me.

Addl. Sessions Judge
1st Court Chinsurah

Addl. Sessions Judge
1st Court, Chinsurah