

Form A

IN THE COURT OF ADDITIONAL DISTRICT AND SESSIONS JUDGE
1st Court, Chinsurah, Hooghly

Present : Sri Rintu Sur, (J.O WB 00877)
Addl. District & Sessions Judge,
1st Court, Chinsurah, Hooghly

Date of delivery of judgement : the 27th day of April, 2026

Sessions Case No. 65 of 2025
(CNR No. WBHG01-001022-2025)
S.T no. 15(05)2025

**(Arising out of Balagarh PS Case No: 544 of 2024, dt: 23.11.2024 U/s
140(1)/103(1)/238(a)/61(2) of BNS)
(GR case no. 3909/2024)**

Complainant	STATE OF WEST BENGAL
REPRESENTED BY	Sri Sankar Ganguly.....P.P, Hooghly
ACCUSED	1. Sambhu Saha @ Adu 2. Chaina Saha 3. Tumpa Majumdar Saha
REPRESENTED BY	Mr. Sanjoy Bandhopadhyay Defense Counsel

2
FORM B

Date of Offence	23.11.2024
Date of FIR	23.11.2024
Date of Charge Sheet	18.02.2025
Date of Framing of Charges	16.05.2025
Date of commencement of Evidence	26.06.2025
Date on which Judgement is reserved	27.04.2026
Date of Judgement	27.4.2026
Date of the Sentencing Order, if any	27.04.2026

Accused details :

Rank of the Accused	Name of Accused	Date of arrest	Date of release on Bail	Offences charged with	Whether acquitted or convicted	Sentence imposed	Period of Detention Undergone during Trial for purpose of Section 428, Cr.P.C
1.	Sambhu Saha @ Adu	24.11.2024	Custody	U/S 61(2)/140(1)/10 3(1)/238(a) BNS	Convicted		24.11.24
2.	Chaina Saha	24.11.2024	Custody	U/S 61(2)/140(1)/10 3(1)/238(a) BNS	Acquitted		
3.	Tumpa Majumdar Saha	24,11,2024	Custody	U/S 61(2)/140(1)/10 3(1)/238(a) BNS	Acquitted		

Form C**LIST OF PROSECUTION / DEFENCE/COURT WITNESSES****A. Prosecution :**

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
PW-1	Supriya Saha	Mother
PW-2	Yadav Saha	Father
P.W-3	Sushil Ghosh	Neighbour
PW- 4	Surajit Saha	Neighbour
PW- 5	Shibendu Das	Neighbour
PW- 6	Dipika Biswas	
PW- 7	Jitu Dey	
PW- 8	Kousik Sikdar	
PW- 9	Balaram Das	
PW- 10	Prabir Das	
PW- 11	Dr. Abhinaba Das Gupta	
PW-12	S.I Debasish Kar	Inquest officer
PW-13	ASI Priyabrata Pramanick	
PW-14	ASI Biswanath Dey	
PW-15	Abhijit Chakraborty	Director, Finger Print Bureau
PW-16	Dr. Jayanta Kumar Mishra	Autopsy Surgeon
PW-17	S.I Subrata Das	I.O

LIST OF PROSECUTION/ DEFENCE/COURT EXHIBITS**A. Prosecution :**

Sl. No.	Exhibit number.	Description
1	Exhibit - 1 , 1/1	Written Complaint and receiving endorsement of RO
2	Exhibit - 2	Statement of PW-1 u/s 183 BNSS
3	Exhibit 3	Statement of PW-2 u/s 183 BNSS
4	Exhibit. 4, 4/1, 4/2	Seizure list dated 23.11.2024 and signature of PW-2 and PW-4 on seizure list dated 23.11.2024

5	Exbt.5, 5/1, 5/2	Seizure list dated 24.11.2024 and signature of PW-2 and PW-4 on seizure list dated 24.11.2024
6	Exbt.6, 6/1, 6/2	Seizure list dated 24.11.2024 and signature of PW-2 and PW-4 on seizure list dated 24.11.2024
7	Exbt.7	Statement of PW-3 u/s 183 of BNSS
8	Exbt.8, 8/1, 8/2	Seizure list dated 27.11.2024 and signature of PW-4 and PW-5 on seizure list dated 27.11.2024
9	Exbt.9	Money receipt dt. 24.11.2024
10	Exbt.10 10/1, 10/2	Seizure list dt. 28.11.2024 and Memory card containing videography of P.M duly signed by PW-7 and signature of witness on seizure list
11	Exbt.11	Signature of the witness on the certificate u/s 63(4)(C) of BSA
12	Exbt.12	Money receipt dt. 24.11.2024 signed by PW-8
13	Exbt.13 13/1, 13/2	Seizure list dated 28.11.2024 and Memory card containing videography of P.M duly signed by PW-7 and signature of witness.
14	Exbt.14	Signature of the witness on the certificate u/s 63(4)(C) of BSA
15	Exbt. 15, 15/1	Sandisk Pen drive and Nikon Video camera, Signature of PW-9 on seizure list dated 26.11.2024
16	Exbt.16	Signature of the witness on the certificate u/s 63(4)(C) of BSA
17	Exbt.17	Cash memo no.1177 dt. 26.11.2024.
18	Exbt.18, 18/1	Sandisk Pen drive and Sony Video camera, Signature of PW-10 on seizure list dt. 27.11.2024
19	Exbt.19	Signature of the witness on the certificate u/s 63(4)(C) of BSA
20	Exbt.20	Money receipt dt. 27.11.2024 signed by PW-10
21	Exbt.21	Inquest report
22	Exbt.22 & 23	Two separate communication with hospital authority duly signed by PW-2
23	Exbt.24, 24/1, 24/2, 24/3	Seizure list dt. 24.11.2024 and signature of Anowar Ali, S.I Saidul Islam and constable Ajesh Kumar
24	Exbt.25 collectively	Specimen fingerprints, palm prints of the accused and also of the deceased and footprint of the deceased duly signed by the witness.
25	Exbt.26 collectively	Forwarding memo and report bearing signature of PW-15
26	Exbt.27	P.M report.
27	Exbt.28	Formal FIR
28	Exbt.29, 29/1, 30, 30/1, 30/2, 30/3	Rough sketch map and index of three different P.O.
29	Exbt.31	Report of Finger Print Bureau

30	Exbt.32	Report of FSL
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LIST OF MATERIAL OBJECTS

A. Prosecution :

1	M.O- I	Sweat Shirt and half jeans pant of the deceased
2	M.O- II	Plastic sack
3	M.O-III	Sandisk Micro chip of video camera of PW-8 in which videography of P.M examination was kept by PW-8.
4	M.O-IV	Sandisk Micro chip of video camera of PW-8.
5	M.O-V	Pen drive in which videography done by PW-9 was preserved
6	M.O-VI	Pen drive in which videography done by PW-10 was preserved

J U D G E M E N T

1. In this case the accused persons namely Sambhu Saha @ Adu Chaina Saha and Tumpa Majumdar Saha are facing trial for commission of offence punishable u/s 61(2)/140(1)/103(1)/238(a) of BNS.

: Factual Matrix :

2. The accusation which laid foundation of the prosecution case revealed through a missing complaint lodged by Supriya Saha, mother of the deceased child at Balagarh P.S to the effect that on 23.11.2024 I between 8:30 to 9:00am her five years son went out of the house to play but subsequently found missing since 8:30 to 9:30am on 23.11.2024. He was wearing blue colour jeans half pant and blue colour full sleeve sweater. She apprehended that her child was kidnapped by unknown miscreants.

3. On the basis of the missing complaint a specific case being Balagarh PS Case No: 544 of 2024, dt: 23.11.2024 U/s 137(2)/140(3) of BNS) was registered against unknown miscreants and formal FIR was prepared. Thereafter the

case was endorsed to S.I Subrata Das of Balagarh P.S for investigation. During investigation he visited the P.O, prepared rough sketch map with index and recorded the statement of the available witnesses u/s 161 of Cr.P.C . He caused search in the locality to find out the missing boy. He took the help of sniffer dog also but the child remained untraced. At night on 23.11.2024, he requested O/C Balagarh P.S for deployment of police personnel at the P.O to maintain law and order situation in the locality. Around 10:00pm, ASI Priyabrata Pramanick, L.C Madhabi Kisku and two male constable were posted at the P.O and after giving them necessary instructions, he left the P.O around 10:35pm. On 24.11.2024, at about 5:25 am dead body of the victim child was recovered from the common bathroom of the premises. He immediately rushed to the P.O but in the meantime the body was brought to Ahmedpur BPHC by RT Mobile officer, S.I Debasish Kar. The child was declared broad dead by the attending doctor of Ahmedpur BPHC and a death information was forwarded to Balagarh P.S on the basis of which Balagarh P.S UD case no.77/2024 dated 24.11.2024 was initiated and S.I Debasish Kar was entrusted as UD Officer. On 24.11.2024, he again examined the complainant Supriya Saha, her husband Yadav Saha and recorded their statements u/s 180 of BNSS and in their statement they made allegation against the accused persons regarding their involvement in the alleged incident. He arrested the accused persons on 24.11.2024 and forwarded them before the court on the next day. He seized some materials from the room of the accused under proper seizure list and prepared label. The accused persons were taken to police custody for reconstruction of crime but due to law and order problem in the locality over the incident, he failed to reconstruct the crime. On the basis of his requisition, fingerprint expert visited the P.O and collected chance fingerprint from the room of the accused. He collected the report from Finger Print Bureau. He also forwarded seized materials collected from the room of the accused to State Forensic Laboratory for examination and report. After completion of investigation and with the approval of his superior, he submitted charge-sheet against the accused persons u/s 140(1)/103(1)/238(1)/61(2) of BNS vide chargesheet no.34 dated 18.02.2025 with the provision to submit supplementary chargesheet. After getting report from FSL, he submitted supplementary charge-sheet on 19.04.2025.

4. Ld. C.J.M, Hooghly, after compliance of the statutory provision of law u/s 230 of BNSS committed the case record before the Ld. Sessions Judge, Hooghly, who in turn was pleased to transfer the case to this court for trial.

5. Pursuant to the charge sheet, as well as materials on record, this court was pleased to frame charge against all three accused persons u/s 61(2)/140(1)/103(1)/238(1) of BNS. Substance of accusation was read over the explained to the accused persons, who after understanding the same abjured their guilt and they were put on trial.

6. In the eventual trial altogether 17 witnesses were examined by the prosecution. The accused persons were confronted with the entire incriminating materials gathered from the evidence during their examination u/s 351 of BNSS and in response to the various questions put to them, they denied all the incriminating evidence as false and pleaded their innocence and false implication. None was examined from the side of the accused persons as defence witness.

: Points for consideration:

7. From the rival case of the respective parties following points have been cropped up for consideration and determination.

a) Whether the accused persons committed the offence punishable u/s 61(2)/140(1)/103(1)/238(1) of BNS.

b) Whether the prosecution has able to prove it's case beyond all reasonable doubt?

Argument from the side of the prosecution:-

8. In his argument, learned Public Prosecutor, Hooghly submitted before the court that the instant case was initiated on the basis of a missing complaint

lodged by the mother of the deceased on 23.11.2024 when her five years son went missing in the morning. Thereafter, local people and police personnel conducted extensive search in the locality and all possible places, but could not trace him . Assistance of dog squad was also taken, but due to huge gathering at the P.O, sniffer dog left the place without any effective search . On the next day morning at about 5:30am, suddenly all the family members heard shouting of the accused Sambhu Saha who was standing in front of the door of the common bathroom of the premises. Immediately parents of the child rushed there and found dead body of their child lying on the floor of the bathroom. Immediately child was brought to Ahmedpur BPHC where he was declared brought dead by the attending doctor. Postmortem was conducted at Imambara Sadar Hospital. The accused persons were arrested and produced before the court. I.O made a prayer for adding section 140(1)/103(1)/238/61(2) of BNS and also made a prayer for police custody of the accused persons for the purpose of investigation and reconstruction of crime. During investigation, some material objects were found and seized from the room of the accused Sambhu Saha and forwarded to State Forensic Science Laboratory for examination. Assistance of Fingerprint Expert was taken. Fingerprint expert visited the P.O specially the room possessed by the accused persons and collected chance print of the accused Sambhu Saha and the deceased child. On examination by the Fingerprint expert (Exbt.26), chance print of the deceased collected from the room and specimen fingerprint of the deceased were matched. Chance print of the accused Sambhu Saha, collected from his room and his specimen fingerprint and palm impression were also matched. Report of Forensic Science Laboratory(Exbt.32) also confirms the presence of the deceased child in the room of the accused Sambhu Saha. Learned P.P, Hooghly strongly argued that parents of the deceased child got married out of love affairs but unfortunately from the very beginning, the accused persons did not accept their marriage and compelled them to live separately in separate mess. The accused Sambhu Saha who is the father of PW-2 Yadav Saha always threatened the complainant/mother of the deceased child by saying “**tui amar chele ke bhog korte dis ni, amio tor chele ke bhog korte debo na**”. Accused Sambhu Saha always had a grudge against the mother of the child and he never allowed their child to enter into their room. On the date of missing of the child, conduct and behaviour of the accused persons were suspicious which was noticed not only

by the parents of the child but also their neighbours who searched the room of the accused Sambhu and suspected him that he could have been involved in the alleged incident. On 23.11.2024 between 8:30 to 9:30am when the deceased child was going to the house of their neighbour Sushil babu through the passage beside the room of the accused Sambhu Saha, he kidnapped the child, took him inside the room, brutally murdered him by smothering, put his dead body inside a sack which the accused used to keep for selling items, concealed the body on the bunker and on next day morning when all other family members were busy in the room of the complainant to console her, he took that opportunity and put the dead body inside the bathroom and tried to flee away, but he was apprehended by police personnel who were posted there to maintain law and order situation on that night. It is further argued that the entire case is based on circumstantial evidence and the prosecution by leading cogent, reliable and convincing evidence through the oral testimony duly corroborated by scientific evidence has able to establish unbroken chain of circumstances leading to the guilty of the accused persons beyond reasonable doubt.

Argument from the side of the defence:-

9. In his argument, learned defence counsel strongly challenged the veracity of the prosecution case and submitted before the court that the accused persons are absolutely innocent and falsely implicated out of grudge by the parents of the deceased child. It was further argued that there are series of serious material contradiction in the oral testimony of the material witnesses and also series of infirmities and lapses in investigation done by the I.O which suggest that entire investigation was perfunctory and concentrated only against these accused persons only to satisfy the parents of the child and the people of the locality. He also submitted that the I.O in his cross-examination admitted that he arrested the accused persons as the parents of the child made allegation against them on the basis of mere apprehension and during investigation he did not take any step to find out the possibility of involvement of any other persons in the alleged incident. He also argued that common bathroom was used by all the family members including the parents of the child and said bathroom always remained open but surprisingly after conclusion of evidence of PW-1 and PW-2, the prosecution brought a new story that said bathroom was kept under lock

and key and both the parties have the key to open the padlock. PW-4 in his evidence developed a new story of settlement of dispute in his intervention and stated for the first time that, on his advice, both the parties agreed to keep the bathroom under lock and key. However, no such statement was given to police by him during interrogation. So, the story of keeping the bathroom under lock and key was subsequently manufactured for the purpose of this case. He also pointed out the evidence of PW-2 who admitted in cross-examination that their house situates at the end of "dhalai rasta" and anyone can enter into their premises through that "dhalai rasta". He submitted before the court that local people and PW-4 caused search in the room of the accused persons but did not find the dead body. Sniffer dog also visited the place but failed to find out the body. So, it is very much clear that the dead body was not inside the P.O and there was every possibility of bringing the dead body from outside into the bathroom to falsely implicate the accused persons. He again argued that on the relevant morning, police personnel were present in the premises and relatives of PW-1 were also there. So, practically it was impossible for the accused persons to bring the dead body and keep the same inside the bathroom which situates beside the room of the complainant. He also challenged the process of seizure and seized materials collected from the P.O after three days of the incident and submitted that all seized materials were subsequently manufactured for the purpose of the case. In his first visit, the I.O did not find any sack inside the room of the accused, but after four days a sack was shown to have been recovered from the room of the accused and it is also surprising that the I.O seized white colour sack but the forensic expert stated in the report that it was multi coloured sack. He also argued that on the date of the incident, there was huge gathering of local people at the P.O and also inside the room of the accused. So, the fingerprint cannot remained intact or unaltered but he failed to understand how unaltered and untampered fingerprint was collected by the Fingerprint Expert from the P.O. Moreover, age of the chance print was not mentioned in the report and it is also not mentioned how the visible chance print was found. Time gap in between chance print of both the accused and the deceased was also not mentioned. He also challenged the report submitted by FSL and argued that there are several infirmities in the report which requires clarification. The I.O did not find any struggle marked in the bunker and the I.O admitted in cross-examination that he did not investigate

whether the dead body was kept on the bunker. He also argued that I.O himself collected hair sample from the P.O after three days and it is unfortunate that no assistance of forensic expert was taken to collect materials from the P.O for forensic examination and the I.O who has no expertise on that field, done that job in unprofessional manner. So, the report of the forensic expert is also not reliable in the instant case. He also challenged the report submitted by FSL and argued that there are several infirmities in the report which requires clarification. Finally it was argued by the Ld/ defence counsel that entire investigation done by I.O was perverse and conducted in unprofessional and perfunctory manner just to implicate three innocent persons without any cogent evidence based on mere apprehension of the complaint for which the accused persons are in custody since inception of this case unnecessarily. He prayed for acquittal of the accused persons on benefit of doubt.

DECISION WITH REASONS

10. Undoubtedly, the case in hand is a case purely based upon circumstantial evidence. From the rival contentions it is apparently clear that the prosecution heavily banked upon the following circumstances to establish the guilt of the accused persons:-

(a) that the relationship between the complainant and the accused persons was bitter since her marriage and the accused persons had grudge against the complainant as she married Jadav Saha, son of the the accused Sambhu and Chaina without their consent and they strongly believed that the complainant was the only person responsible for making relation bitter between Yadav and his parents. Out of said grudge Accused Sambhu always threatened the complainant that he would detach her son from her to give mental pain which she gave to them by marrying Yadav without their consent. This grudge insisted the accused Sambhu to kidnap and murder her child.

(b) that the passage through which the victim child had to go to the house of Sushil Dadu situates beside the room exclusively possessed by the accused Sambhu and on the relevant time when the victim child tried to go the house of Sushil Dadu by using that passage, the accused kidnapped him and confined

him in his room and murdered him brutally and thereafter concealed his dead body inside a sack which he used to store in his exclusive room for the purpose of his business.

(c) that body was discovered first by the accused sambhu in the early morning and prior to that other family members used that bathroom and they did not notice the dead body.

(d) that the accused Sambhu after seeing the dead body started shouting by uttering the words “ekhane kar baccha pore ache” which was very unnatural behavior of a grandfather who hesitated to utter the name of his only grandson out of grudge. He even did not think it necessary to lift the child from the floor of the bathroom on his lap which was the very normal course of action for every member of the family and instead he hurriedly tried to left the spot .

(e) that one sack was recovered from the room of the accused which was used by the accused to conceal the dead body.

f) that some hair was found inside the sack and both sack and hair including hair collected from the room of the accused were forwarded to FSL for forensic examination and DNA profiling and the result was positive and it was found that hair sample found inside the sack was of the deceased.

g) That chance print of both the accused and the deceased and specimen finger print and palm impression of the accused were forwarded to Finger Print Bureau and after examination it was found that the chance print collected from the room was of the deceased. It was further confirmed that chance print collected from the room of the accused and specimen finger print and palm impression of the accused was similar. Above findings of the finger Print Expert also confirms presence of the deceased in the room of the accused Sambhu on the relevant date.

h). Body was found inside the premises and the deceased was found missing from the premises while he was going to the house of Sushil Dadu by using the passages runs beside the room of the accused. Whole night on that day police

personnel were deployed outside of the premises to prevent any law and order problem, so bringing the dead body from outside was next to impossible.

I) Time gap between the victim found missing and recovery of his dead body was so small that intervention of any third party was practically impossible.

J). That the accused Sambhu Saha failed to give any plausible explanation how finger print and hair of the deceased were found from his room and why he did not take out the child from the floor of the bathroom immediately after seeing his dead body and what prevented him from uttering the name of his only grand son of 5 years and why he tried to left the spot immidiately.

11. From the rival contention it is very much clear that the instant case is completely based on circumstantial evidence. In a case of circumstantial evidence, all the circumstances from which the conclusion of the guilt is to be drawn, should be fully and cogently established. All the facts so established should be consistent only with the hypothesis of the guilt of the accused. The circumstances must be satisfactorily established and proved circumstances must bring home the the accused beyond all reasonable doubt. It is not necessary that each circumstance by itself be conclusive but cumulatively must form unbroken chain of events leading to the proof of the guilt of the accused. In other words when there is no direct evidence to the commission of murder and the case rests entirely on circumstantial evidence, the circumstances relied on must be fully established. The chain of events furnished by the circumstances should be so complete that there should be reasonable ground for conclusion consistent with the innocence of the accused. If any of the circumstances proved in a case is consistent with the innocence of the accused or the chain of the continuity of the circumstances is broken, the accused is entitled to the benefit of the doubt.

12. The Hon'ble Apex Court in **Sharad Birdhichand Sarda VS State of Maharashtra** laid down five golden principles which are also known as the "Panchsheel" for evaluating circumstantial evidence :-

a) the circumstances must be fully established.

b) the circumstances must be consistent with the guilt of the accused.

- c) the circumstances must exclude every other hypothesis except the one proposed to be proved.
- d) the circumstances must be of a conclusive nature and tendency.
- e) the chain of evidence must be complete, leaving no reasonable ground for a conclusion consistent with the innocence of the accused.

MOTIVE

13. In a case based on circumstantial evidence motive has a vital role to play and in absence of any motive behind the alleged crime, the accused can not be convicted. However absence of proving the motive cannot be a ground to reject the prosecution case. It is held by the **Hon'le Apex Court in the case of Suresh Chandra Bahri Vs State of Bihar, 1995 (1) SCC 80** that once motive is proved that would supply a link in the chain of circumstantial evidence but the absence thereof cannot be a ground to reject the prosecution case.

14. There can be no doubt that in a case of circumstantial evidence the motive assumes importance but at the same time, it is also well settled law that failure to establish the motive for the crime does not throw over-board the entire prosecution case. In a case where the prosecution succeeds in proving its case with cogent and convincing evidence, absence of establishing motive will not prove fatal to the case of the prosecution. Normally behind every criminal act, there is motive and it is imperative for an investigating agency to make all efforts in ascertaining the motive on the part of the accused but failure of the same in a case where the prosecution has otherwise proved its case beyond any shadow of doubt based on cogent, and convincing evidence, the accused cannot get the benefit of motive aspect not being proved by the prosecution. Motive can develop even at spur of moment and the motive on the part of the accused may not come to the knowledge of the family members and relatives of the victim or the accused and therefore, the theory of proving motive cannot be a rule of thumb . Sometimes the motive may be known only to the assailant in whose mind any evil thought occurs and he may react in that spur of a moment resulting to death of someone. In the instant case, it was argued by the learned Public Prosecutor that there was strained relationship between the parents of

the deceased with the accused persons since marriage of PW-1 and PW-2 which was the outcome of love affairs and the accused Sambhu Saha and China Saha who are the parents of PW-2, father of the deceased child never accepted their marriage. The accused Tumpa Saha joined with other accused persons and she also did not accept the marriage. Over that issue, there was frequent quarrel between the parties and on several occasions the accused Sambhu Saha threatened PW-1, mother of the deceased child by saying **“*aamar chele ke bhog korte dis ni, to keo tor chele ke bhog korte debo na*”**. It is further argued that due to such dispute parents of the deceased child started residing in a separate room in separate mess since their marriage and the accused persons never allowed their child to enter into their room on any occasion. The accused Sambhu and China used to reside with the family of their elder son separately. The accused Sambhu had so much of grudge in his mind that he did not hesitate to kidnap the minor child of PW-1 and killed her brutally after taking him inside of his room and kept her body inside a sack and concealed the dead body on the bunker of his room. When he realized that there was no chance of removing the dead body to any other place out of the premises due to constant vigilance by the police in front of his house, he silently kept the dead body inside the bathroom and to prove his innocence he started shouting, by saying **“*ekhane kar bachha pore achhe*”**. Learned P.P further argued that the accused Sambhu had so much of grudge against the victim child that he did not shout by uttering the name of the child. Conduct of the accused Sambhu clearly reflects his motive behind the alleged murder and other accused persons also helped him in executing the offence. On the other hand, learned Defence Counsel submitted that story of strained relationship between the parties was false and manufactured only to falsely implicate the accused persons in criminal proceeding. He also argued that the deceased child used to play with the daughter of the accused Tumpa Saha and he had visiting terms in the house of Tumpa Saha. He further submitted that there is no evidence to show that the accused Sambhu Saha or China Saha were present in the house and the relevant point of time and there is no cogent and acceptable or believable evidence against the accused persons to establish their involvement in the alleged incident. He also submitted that the I.O made perfunctory investigation just to implicate the accused persons and from the conduct of the I.O during investigation, it is very much clear that from the very beginning he was

determined and sure that it was the accused persons and none others were the culprits and entire investigation was concentrated against the accused persons only. He did not investigate whether there was any possibility of involvement of any other person in the alleged incident.

15. During trial mother and father of the deceased child were examined as PW-1 and PW-2. In their oral testimony, they made several allegations against the accused persons and disclosed strained relationship with the accused persons since their marriage. They also disclosed that the accused persons never accepted PW-1 and they had serious grudge against her and also her minor child. PW-1 further stated in her evidence that the accused Sambhu Saha used to threatened her by saying **“aamar chele ke bhog korte dis ni, to keo tor chele ke bhog korte debo na”**. She further stated that the accused Sambhu Saha never allowed her son to enter into his room due to such relationship and her minor son used to play in the house of their neighbour Sushil Ghosh most of the time and on the date of the incident, her child was kidnapped by the accused persons when her child was going to the house of Sushil Ghosh through the passage situated beside the room of the accused Sambhu Saha. During trial, prosecution examined PW-3, PW-4, PW-5 and PW-7 as independent witness who were the neighbours. In their evidence these witnesses fully corroborated the evidence of PW-1 and PW-2 as far as allegation of strained relationship between the parties are concerned. They further stated that there was also a dispute regarding use of the common bathroom in the premises where the parties reside. Their evidence was unshaken during cross-examination and the defence has failed to establish whether there was previous enmity between the accused persons with the above witnesses which prompted them to depose falsely in this case against the accused persons. In his examination u/s 351 of BNSS, the accused Sambhu Saha admitted in question no.42 that he did not allow Yadav Saha and his wife and their son to use the common bathroom. He also admitted in question no.29 that Supriya never allowed her son to visit his house. From his reply, it is very much clear that prior to the incident victim child never visited his room. Conduct of the accused Sambhu Saha and his behaviour towards the parents of the deceased child clearly suggest strong motive behind the alleged incident of murder. During investigation, I.O seized one sack from one of the rooms possessed by the accused Sambhu Saha. During argument, learned Defence

Counsel strongly challenged that no sack was found or seized from the room of the accused Sambhu Saha but the accused Sambhu Saha stated during his examination in reply to question no.70 that he locked his exclusive room where he used to store his hawking items, on the date of the incident when all the family members were in search of the child. He also admitted that PW-4 Surajit Saha took the key of his room from him and searched the room. Local people also searched his room and the bunker where he used to keep blanket inside some sacks. He admitted existence of sack inside his room which he denied earlier. From his statement, it is very much clear that even before recovery of the dead body of the child, local people suspected none other than the accused Sambhu Saha as the sole culprit. Finally dead body was found inside the bathroom situated beside the room of the accused Sambhu and surprisingly, the body was detected for the first time by the accused Sambhu. It is also shocking that when the dead body of the child was found for the first time inside the bathroom by the accused Sambhu, he uttered by saying “Ekhane kar bachha pore achhe”. His grudge towards the child clearly reflects in the words he uttered. He even hesitated to utter the name of the child who was his only grandson. Above facts clearly suggest strong motive of the accused Sambhu Saha behind the alleged incident of kidnapping and murder of the victim child.

: Last seen together :

16. In support of their case the prosecution has also banked upon the principle of '**last seen together**'. The last seen theory is applied where the time interval between the point when the accused and the deceased were last seen together, and when the victim is found dead, is so small that the possibility of any person other than the accused being the perpetrator of crime becomes impossible. According to this theory if a person was last seen with the deceased just before his death or within a reasonable period of his death that no other person could have intervened in between them then the presumption can be taken that he is the author of the crime. Once the fact of last seen is established, an adverse inference can be drawn against the accused if he fails to explain the circumstances in which he departed the company of the deceased.

17. Last seen doctrine has limited application where time gap between the accused last seen with the victim and the time when body of the victim was found was so small that there can not be any scope for any third party to intervened. In the instant case, victim child was last seen alive at 8:30am on 23.11.2024. The accused Sambhu Saha stated in his examination u/s 351 BNSS that in the morning on 23.11.2024 heard that his father calling the victim child to give him toothbrush but the accused did not see the victim child or did not hear any reply from the victim child. From his statement it is very much clear that the accused Sambhu Saha was present in his room at that point of time. Dead body was found inside the bathroom around 5:30am on 24.11.2024 and postmortem over the dead body commenced at 2:30pm by the autopsy surgeon Dr. Jayanta Kumar Mishra. Postmortem report was marked as Exbt.27. In the report, it was opined that cause of death was due to the effects of smothering, homicidal and ante mortem in nature. Several injuries all over the body of the deceased child including inner surface of upper lips, bite mark over tongue, bruises over right side of cheek, pressure abrasion and bruise over lower abdomen and hemorrhage over lung were found. During his examination as PW-16, he disclosed details of injuries found over the body of the deceased on examination and dessection. He also stated probable time of death within 24hrs to more or less 36hrs prior to commencement of autopsy. From the evidence of the autopsy surgeon, it can safely be concluded that the murder of the victim child took place on 23.11.2024 at anytime after 8:30/9.30 am when the victim child found missing.

18. During investigation sniffer dog brought to the premises to find out the missing child but the sniffer dog failed to detect. It is argued by the learned defence counsel that the body was not inside the premises when the sniffer dog came and subsequently, the body was brought from outside at night to falsely implicate them. During examination, the accused Sambhu Saha admitted that there was huge gathering of local people in his premises and his room also. Naturally sniffer dog failed to detect the body. During investigation, finger print experts visited the room of the accused Sambhu Saha and examined all probable places and articles said to have been handled by the accused Sambhu Saha during commission of crime and developed two chance prints on the mirror of a showcase (steel made) and also found 08 visible chance print on the

bunker and on the white colour sack. CID photographer Tanmoy Kundu took photographs of the chance print. The I.O also collected finger print and palm impression of the accused Sambhu Saha in presence of the learned Judicial Magistrate. Both the finger prints and palm impression collected by the I.O and finger print experts were examined at Finger Print Bureau, CID, West Bengal. On examination, chance prints of the accused Sambhu Saha collected from the white colour sack were found identical with the specimen right palm impression of the accused. Chance finger print collected from the bunker of the room of the accused was also found identical with the specimen right palm impression of the deceased. Finger print examination report has been marked as Exbt.26. This report clearly shows that the dead body of the deceased child was concealed inside a sack and kept on the bunker. In course of investigation, one white colour sack, one blue and yellow colour thread along with some black coloured hair were collected from inside the sack. Some black colour hair and yellow colour thread were collected and seized from the bunker of the room of the accused. Above seized materials was forwarded to State Forensic Science Laboratory for examination. Result of examination was forwarded to the court and marked as Exbt.32. From the report of DNA analysis I found that human blood for the DNA test was detected from the contents of Exhibit marked A, D, E, G, J, K, L and M and these exhibits were subjected to DNA analysis however DNA extracted from Exbt.A, L and M were found insufficient for profiling. Exbt.G was the white colour sack collected from the room of the accused Sambhu Saha. Exbt.I contains few strands of hair said to be some black coloured hair collected from the bunker of the room of Sambhu Saha. Exbt.H contents few strands of hair collected from inside the sack recovered from the room of the accused Sambhu Saha. Exbt.K contains strands of hair, bearing some dark brown stain said to be hair of the deceased. On DNA analysis source of Exbt.K was included as the contributor to the source of Exbt.I(hair sample of the deceased collected from the P.O) and Exbt.J (blood extracted from the gauge collected from the P.O). DNA profiling result obtained from Exbt.'H' (blood mixed hair sample collected from the P.O) are consistent with being a mixture of Exbt.K (blood sample of the deceased). Source of Exbt.K (hair of the deceased) was included as the contributor to the source of Exbt.H (blood mixed hair sample collected from the P.O). From the report of DNA analysis it has been established that hair sample collected from the room of the accused

Sambhu Saha and hair sample found inside the sack recovered from the room of the accused, were the hair sample of the deceased child. This report clearly suggest that prior to murder, deceased child was kidnapped by the accused Sambhu Saha and confined in his room. Thereafter, he killed the child brutally by smothering as reflected from the postmortem report, put the dead body inside a sack and hide it on the bunker. From the report of fingerprint experts it has also been established that the fingerprint of the deceased and chance print collected from the bunker were similar and the fingerprint collected from the bunker was the fingerprint of the deceased child. Though learned defence counsel argued that the deceased child might have visited the room of the accused on any other day prior to the incident and probably he left some fingerprint impression on the furniture which was subsequently collected by the fingerprint experts, but his argument found no leg to stand when the accused Sambhu Saha admitted in his examination that mother of the child never allowed the deceased to visit the room of the accused. So, presence of the victim child in the room of the accused Sambhu Saha has been established beyond doubt.

19. In the instant case, the prosecution, apart from oral testimony of the witnesses heavily relied upon forensic evidence in the form of DNA profiling and fingerprint report. Forensic evidence is scientific or technical evidence used to establish the real facts. Under section 45 of BSA, it falls under '**expert opinion**' and is corroborative in nature. The main function of scientific evidence is to link the accused, victim or weapon to the crime scene and also to corroborate or contradict oral testimony of the witnesses and can break or confirm the alibi and also confirms sequence of events. This also helps in reconstruction of crime, eliminate innocent suspect. However, expert opinion is not conclusive and it is used for the purpose of corroboration or contradiction. To made the scientific evidence believable, the prosecution has to establish intact chain of custody of the sample collected and forwarded for chemical examination. In course of investigation, fingerprint experts visited the place of occurrence, collected chance fingerprint of the accused Sambhu Saha and the deceased child from the room of the accused sambhu Saha where dead body was concealed as alleged, and also collected fingerprint and palm impression of the accused Sambhu Saha. After examination, it was found that chance

fingerprint of the accused Sambhu Saha marked as 'G' and 'I' were identical with the specimen right palm impression of the accused Sambhu Saha. On examination, it was also found that chance fingerprint of the deceased marked as 'C' was identical with the specimen right palm impression of the deceased. In course of trial, Director, Finger Print Bureau, CID, West Bengal was examined as PW-15 and in his evidence, he stated everything about the process and manner of collection of fingerprint from the P.O, examination of the same scientifically following proper procedure and result of examination. From his cross-examination, I do not find anything to disbelieve the report. During investigation, I.O also collected white colour sack, one blue and yellow colour thread along with some black coloured hair found inside the sack and some black coloured hair and yellow coloured thread from the room exclusively used by the accused Sambhu Saha and forwarded to FSL for chemical examination and DNA profiling after observing all required formalities. During cross-examination of I.O, learned Defence Counsel did not challenge chain of custody of seized materials forwarded to FSL which clearly suggest that chain of custody of seized materials since its collection from the room of the accused till submission of the materials to FSL was intact. From the report of State Forensic Science Laboratory, I found that the materials produced for examination and DNA profiling were found properly sealed, labelled and intact. From the report of DNA profile it has been established that the hair sample collected from the room of the accused Sambhu Saha and hair sample collected from the sack seized from the room of the accused were the hair sample of the deceased child. From the report of the Forensic Science Laboratory, it has been established beyond doubt that the deceased child was present in the room of the accused Sambhu Saha on the relevant day and the child was murdered inside the room and thereafter, his body was concealed inside the sack and kept on the bunker so that body could not be found by other family members and outsiders. In course of argument, learned defence counsel strongly denied existence and recovery of any sack from the room of the accused and submitted that the I.O for the purpose of this case implanted subsequently to falsely implicate the accused. Surprisingly, the accused Sambhu Saha during his examination u/s 351 of BNSS, categorically stated before the court that while other family members were busy in searching the child, he kept his room under lock and key. He also admitted that local people also caused search in his room including

bunker where few sacks were kept for wrapping blanket. So, the accused practically admitted existence of sack in his room. During his cross-examination of PW-2, learned defence counsel gave him suggestion that his child used to play inside the room of the accused persons with his cousin by touching all items inside the room which was denied by PW-2. By putting this suggestion, the defence tried to establish that chance print of the deceased collected from the room of the accused was not the fingerprint of the date of incident but it was the old fingerprint of the deceased. So, from this suggestion put by the learned defence counsel, it has been established that the chance fingerprint collected from the room of the accused was the fingerprint of the deceased which is corroborated by the report of the forensic experts.

20. From cross-examination of the prosecution witnesses, the defence tried to establish that the dead body was brought inside the bathroom by some other persons from outside to falsely implicate the accused. It is not disputed that the premises was under surveillance of police personnel deployed from 10:25pm on 23.11.2024 till the morning of 24.11.2024. From the evidence of the I.O as well as other witnesses, it has been established that four police personnel A.S.I Priyabrata Pramanick, lady constable Madhabi Kisku and two male constables Asish Kumar Ghosh and Jagannath Soren were posted in the premises of the accused persons to prevent any untoward incident and said police personnel were guarding the premises throughout that night. Though, the learned defence counsel highlighted the cross-examination of PW-2 wherein he admitted that any outsider can enter into the house property from dhalai rasta and argued before the court that there was every possibility to bring the dead body from outside and kept the same inside the bathroom. We cannot forget that the answer given by PW-2 was in respect of normal days but on the relevant day, police personnel were deployed in the premises and it was next to impossible for anyone to bring the dead body inside the bathroom from outside. So, the story of bringing the dead body from outside which the defence tried to establish is not at all believable and no common people would believe such story. It is admitted by the prosecution witnesses including the accused Sambhu Saha that there was huge gathering of local people inside the premises when sniffer dog was brought to the P.O and as a result, sniffer dog failed to detect or locate the dead body. The accused Sambhu Saha in his examination stated

before the court that on 24.11.2024 at 5:30am he heard cry of Supriya, mother of the deceased and hearing her cry, he and his family members woke up. His wife and daughter-in-law Tumpa went to the room of Supriya to console her. After sometime when he went to bathroom, he noticed the dead body lying inside the bathroom. From his statement, it is very much clear that his wife and other family members were present inside the room on the previous night and when on the next day morning, his wife and daughter-in-law went to the room of Supriya, he got the chance to remove the dead body from his room and he grabbed that opportunity, brought out the dead body from his room and silently kept the dead body inside the bathroom when other family members were busy in consoling the mother of the deceased in her room. From the evidence of the witnesses, it has been established that said bathroom was used for the last time at 4:00am and at that time, the dead body was not there. The dead body was brought inside the bathroom in the early morning. From the examination of the accused Chaina Saha and Tumpa Saha u/s 351 BNSS, it is very much clear that they did not use the bathroom at anytime after 4:00am. Surprisingly, it was the accused Sambhu who found the dead body inside the bathroom and his first reaction after seeing the dead body was the most vital part to establish his involvement in the alleged murder. From the very beginning, family members of the deceased suspected that he could have been involved in the alleged incident. Surprisingly, his neighbours with whom they had cordial relation, also suspected him. So, definitely they find something suspicious in the conduct and behaviour of the accused Sambhu Saha. He planned everything and after murdering 04 years child who was his only grandson, he kept the dead body inside a sack and concealed it on the bunker. He waited for favourable opportunity to remove the dead body but he never thought that police personnel would be deployed to guard the house. When he felt that he could have been apprehended, he hurriedly brought out the dead body and kept inside the bathroom when his family members were busy in consoling Supriya, mother of the deceased in her room. To prove his innocence he started shouting "*kar bachha ekhane pore achhe*". It should have the normal reaction of any family member to lift the child on the lap from the floor of the bathroom and to call his parents and other family members to come immediately but his guilty mind reflected in his conduct that he could not even uttered the name of his grandson and did not touch his body. Instead he tried to left the spot immediately after

shouting. From the entire evidence brought by the prosecution during trial, fingerprint report and report of DNA analysis, it has been established beyond doubt that the accused Sambhu Saha was the main and sole culprit of the alleged incident. He kidnapped the child when the child was going to the house of Sushil babu through the passage stretches beside the room of the accused Sambhu who thereafter, killed the child to fulfill his grudge against the mother of the child, put the dead body inside a sack during investigation said sack was seized along with hair sample collected from the sack and forwarded to FSL, and after examination, it was found that said hair sample was of the deceased. The accused concealed the dead body on the bunker and in the early morning of 24.11.2024, when all family members were busy in the room of Supriya, he took the opportunity to remove the dead body and kept the same inside the bathroom. During trial, the prosecution has failed to bring any incriminating materials against the accused Chaina Saha and Tumpa Mazumdar Saha regarding their involvement in the alleged incident through reliable and convincing evidence.

: Examination of the accused u/s 313 Cr.P.C :

21. In this case all the incriminating materials pointing to the guilt of the accused persons were put to them while recording their statement u/s 351 BNSS and it was obligatory on their part to furnish some explanation with respect to incriminating circumstances associated with them. Accused Chaina Saha and Tumpa Saha during their examination denied all the incrimination circumstances found against them by saying everything were false and pleaded their innocence and false implication but reply of the accused Sambhu Saha was very interesting to unfold the circumstances again which the prosecution tried to establish and agitated again and again during trial and in course of argument. From his statement given in reply to the question I find that on the relevant day and at the relevant time before the child went missing, he was present in the house and heard that his son Yadav calling the deceased to bring his toothbrush. At that time he was alone in his room. After getting information of missing of the child he also started searching in the locality keeping his room under lock and key. He admitted that and local people also searched his room after taking key from him. He was sleepless on that night. At 5:30am on the

next day, when his wife and his other family members went to the room of the complainant he started cleaning his room and suddenly noticed the deceased child lying on the floor of the bathroom and at that time the child was wearing blue colour pant and full sleeve sweater. He started shouting and his son immediately came to that place and took the body inside his room. Thereafter, police arrested him without any reason. In his examination, he admitted that the complainant never allowed her child to enter into his room. He also admitted that local people searched his room and the bunker where he kept some sacks to wrap blanket. So, existence of sack in his room was admitted by the accused. During investigation, one white colour sack was recovered and seized from his room and inside that sack, some hair was collected and forwarded to FSL and after DNA analysis, said hair sample found to be of the deceased child.

22. In State of Maharashtra Vs Suresh (2000) 1 SCC 471 it has been held that when the attention of the accused is drawn to such circumstances that inculpated him in the crime and he fails to offer appropriate explanation or gives a false answer, the same can be counted as providing a missing link for completing the chain of circumstances. In the instant case, chance fingerprint and hair sample were found in his room and forwarded to Finger Print Bureau and FSL to confirm whether it was of the deceased and fortunately of unfortunately chance print was found to be fingerprint of the deceased child found on the bunker and hair sample was found to be the hair of the deceased collected from inside the sack. So, from scientific examination, presence of the deceased child in the room of the accused on the relevant date has been established. Learned defence counsel during cross-examination of the witnesses tried to establish that the deceased child used to visit the room of the accused to play prior to the incident and left fingerprint on the furniture which was subsequently collected by the Fingerprint Expert. The accused Sambhu Saha strongly denied visiting terms of the deceased child in his room and categorically stated in his examination that mother of the child never allowed her child to enter into this room. The accused Sambhu Saha failed to give any satisfactory explanation how fingerprint and hair sample of the deceased child were found from his room which confirms his involvement in the alleged incident.

Discrepancies and defects in investigation:

23. Regarding discrepancies appearing during trial, as pointed out by the Ld. Defense counsel I would like to refer the judgment of **State Vs Krishna reported in (2011) 1 SCC (CRI) 381** wherein the Hon'ble Supreme Court laid down the ratio as under :-

“In a criminal case, the prosecution case may suffer from inconsistencies here and discrepancies there, but that is a short coming from which no criminal case is free. The main thing to be seen is whether those inconsistencies go to the root of the matter or pertain to insignificant aspects thereof. In the former case, the defence may be justified in seeking advantage of incongruities appearing in the evidence. In the latter, however no such benefit may be available to it. Therefore, it is the duty of the court to separate false from the truth as in the deposition of the witnesses there are always normal discrepancies, however, honest and truthful they may be and these discrepancies are due to normal errors of observation, normal errors of memory due to laps of time, due to mental disposition, shock and horror at the time of occurrence and threat to the life. In shifting the evidence, the court has to attempt to separate the chaff from the grains in every case and this attempt cannot be abundant on the ground that the case is baffling unless the evidence is really so confusing or conflicting that the process cannot reasonably be carried out.”

24. It is the settled law that normal discrepancies should be avoided because reproduction of the evidence after laps of period through human process is always run with the risk of forgetfulness or exaggeration. We must not forget that cross examination in a trial is an uneven tussle between a very learned person and an illiterate or common people. Prolonged and lengthy cross examination some times frustrate an witness who resides in the village and having no personal interest in the incident and it is always not possible for them to recollect every thing in details. It is to be kept in mind that the evidence has to be appreciated as a whole in view of the attending facts and circumstances. It is the settled law that evidence has to be consider with reference to the charge accusation and relevancy of the facts with reference to

the ingredients of the alleged offense. It is the settled position of law that the prosecution is required to establish the guilt of the accused beyond reasonable doubt by adducing evidence. Hence, if the prosecution in a given case adduce evidence to establish the guilt of the accused beyond reasonable doubt, the court cannot acquit the accused on the ground that there are some defects in the investigation, but if the defects in the investigation are such as to cast a reasonable doubt in the prosecution case, then of course the accused is entitled to acquittal because of such doubt. In a case based upon circumstantial evidence, the prosecution has to establish unbroken chain of circumstances through clinching evidence of the witnesses and the chain of circumstances should be so complete that there should not be any scope to draw any inference regarding genuineness of the allegation and involvement of the accused. It is now a settled position that the accused can not get the benefit of defects and lapses in investigation if oral testimony of the material witnesses is found reliable and convincing. In the case where the investigating agency has demonstrated negligence, made omissions or conducted a flawed investigation, it becomes the legal duty of the court to meticulously assess the prosecution's evidence independently. This scrutiny aims to determine the reliability of the evidence and the extent to which it can be trusted, while also evaluating whether these investigative lapses have had any impact on the overarching goal of ascertaining the truth of the matter. In the present case, the quality of evidence fully corroborated by strong medical evidence and forensic evidence clearly establish the guilt of the accused Sambhu Saha and hence these minor omissions on the part of the investigating agency needs to be ignored. In the present case evidence of the material witnesses, duly corroborated by strong medical evidence and forensic evidence establishes the prosecution case and other circumstantial evidence available in the record and the prosecution succeeded in fully establishing its case with the help of cogent and clinching evidence regarding involvement of the accused Sambhu Saha in the alleged murder.

Application of section 109 of BSA

25. Now the next question arises for consideration as to whether applicability of Section 109 of the BSA is there or whether the defense failed to explain how the death of deceased child was possible. It is the case

of the prosecution that on the relevant point of time the victim was kidnapped by the accused Sambhu Saha and murdered him and concealed his dead body on the bunker inside a sack. During investigation, fingerprint and hair of the deceased was collected from his room and after scientific examination, it was confirmed that fingerprint and hair sample were of the deceased child. In this circumstances the provision laid down u/s 109 of the BSA comes into play and the burden shifts upon the accused Sambhu Saha to explain his special knowledge about the cause of death.

26. Section 109 of the BSA reads as follows :-

“ when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.”

27. It is the settled principle of criminal trial that when an offence is committed, the initial burden to establish the case would undoubtedly be upon the prosecution, however, if the offence committed inside the four walls of the house Section 109 of the Evidence Act give a rider to the prosecution case, whereby there will be corresponding burden on the inmates of the house to give cogent explanation as to how the crime was committed. In the instant case it has been established that the victim child was kept in the room of the accused Sambhu Saha. If other circumstances as stated herein before firmly established and the circumstance of homicidal death is established, then, taking in conjunction with other circumstances particularly the undisputed fact that at the time of victim's death no third person excepting the accused person and the deceased, were present at the P.O, it will inescapably lead to the conclusion that within all human probability, it was the accused Sambhu Saha and none else, was the perpetrator of the crime . So the accused Sambhu Saha cannot keep mum and he had to offer plausible explanation as to how the victim died.

28. The Hon'ble Apex Court in Arvind Kumar Anupalal Poddar Vs State of Maharashtra reported in (2012) 11 SCC 172 held that “a fact which is especially in the knowledge of any person then burden of proving the fact is upon him and that it is impossible for the prosecution to prove certain facts which are practically within the knowledge of the accused”.

29. In **Trimukh Maroti Kirkan Vs State of Maharashtra reported in (2006) 10 SCC 681** the Hon'ble Supreme Court held as under :-

“if an offence takes place inside the privacy of a house and in such circumstances where the assailant have all the opportunity to plan and commit the offence at the time and in circumstances of their choice, it will be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of circumstantial evidence as notices above, is insisted upon by the courts. A judge does not preside over a criminal trial merely to see that no innocent man is punished. A judge also presides to see that a guilty man does not escape. Both are public duties. The law does not enjoin a duty on the prosecution to led evidence of such character which is almost impossible to be led or at any rate extremely difficult to be led. The duty on the prosecution is to lead such evidence which it is capable of leading, having regard to the facts and circumstances of the cases. Here it is necessary to keep in mind Section 109 of the BSA which says that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him”.

30. Having considered all the relevant pronouncement of the Hon'ble Apex Court regarding the subject it emerges that Section 109 of the BSA has to be read in conjunction with and not in derogation of Section 104 BSA. This Section in no case relieve prosecution of its primary and obligatory duty to establish the guilt of the accused beyond all reasonable doubt. In discharge of the duty the prosecution cannot use any weakness of the defence as its artillery. It is only when prosecution for well perceptible and acceptable reason, is unable to lead evidence because of circumstances beyond its control including the reason that the fact required to be proved was **‘within the special knowledge of an accused alone’** and prosecution could not have known it by due care and diligence, then Section 109 can be resorted to by shifting burden on the accused to divulge that fact which is ‘in his special knowledge’ and if the accused fails to offer any reasonable explanation to enchant judicial examination, he is liable to be punished.

31. It is settled law that once the prosecution establishes entire chain of circumstances together in a conjunctive whole unerringly pointing out that it was the accused Sambhu Saha alone who was the supposed perpetrator of the crime and the manner of happening of the incident could be known to him alone and within his special knowledge, recourse can be taken to Section 109 of the BSA.

32. In this case aid of Section 109 BSA can be invoked since the prosecution produced evidence regarding commission of crime to bring all other incriminating circumstances and there is sufficient materials on record to prima facie establish its case against the accused Sambhu Saha and no plausible explanation is forth coming from the accused person regarding the fact within his special knowledge about the incident.

:Conclusion:

33. On comprehensive appraisal of evidence lead on behalf of the prosecution, I am of the opinion that the prosecution has adduced inviolable, impregnable evidence through witnesses supported by medical evidence established unbroken chain of circumstances leading to the guilt of the accused Sambhu Saha @ Adu beyond all reasonable doubt and unerringly pointing towards the guilt of the accused Sambhu Saha and his conduct clearly proves his intention sufficient to attract the penal provision of section 103(1) of BNS and role played by him. Not only that, in order to cause disappearance of evidence and to screen him from legal punishment the accused concealed his dead body inside a sack and when other family members were busy in the room of the complainant, he silently brought out the dead body from his room and keep the same inside the common bathroom. Prior to that he kidnapped the victim child and took him inside his room. In the instant case, though charge was framed against the accused Chaina Saha and Tumpa Mazumdar Saha but during trial, I do not find any incriminating materials against them to establish their involvement in the alleged incident. Scientific evidence also not in favour of the prosecution as far as involvement of these two female accused are concerned. The evidence of the prosecution witnesses was consistent enough against the accused Sambhu Saha in narrating the account of the incident and

successfully formed a chain of circumstances so complete that there is no escape from the conclusion that during all probability the crime was committed by the accused Sambhu Saha and none else and the evidence is consistent enough with the guilt of the accused Sambhu Saha and inconsistent with the plea of innocence. The evidence however was consistent with the plea of innocence of the accused Chaina Saha and Tumpa Mazumdar Saha. The totality of the evidence leads me to come to an irresistible conclusion that the accused Sambhu Saha only is liable to be convicted in this case for the offence punishable u/s 140(1)/103(1)/238(a) of BNS.

Hence, 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 reformative 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 out weigh 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 BNSS.

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