



IN THE COURT OF ADDITIONAL DISTRICT & SESSIONS
JUDGE,
FTC-II, ALIPURDUAR
JO No. WB 01097

For the convenience of exposition, this judgment is
divided in the following parts:-

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Presented on : 27-06-2023
Registered on : 27-06-2023
Decided on : 12-03-2026
Duration : 2 years, 8 months, 15 days

FORM - A

**IN THE COURT OF ADDITIONAL DISTRICT & SESSIONS JUDGE,
FTC-II, ALIPURDUAR**

*Present: Pukar Pradhan,
Addl. District & Sessions Judge, FTC-II,
Alipurduar.*

[12th day of March, 2026]

[SC No. 166/2023] (GR 851/2023)

ST No.73/2023 dtd.14.12.2023

CNR No. WBJP05-001200-2023

(Details of FIR/Crime and Police Station)

Complainant	Smt. Samita Rai
Represented By	Ld. P.P. Mr. Suhrid Majumdar
ACCUSED	Bhupal @ Puna Chhetri
Represented By	Ld. Advocate Mr. Avik Saha

FORM - B

Date of Offence	11.04.2023
Date of First Information Report	11.04.2023
Date of Charge sheet	10.06.2023
Date of Framing of Charge/Plea	14.12.2023
Date of Commencement of Evidence	31.01.2024
Date on which Judgment is reserved	NA
Date of Judgment	12.03.2026
Date of Sentencing Order, if any,	12.03.2026



Sessions Case No: 166/2023 (GR 851/2023)
State Vs. Bhupal @ Puna Chhetri

Accused Details:

Rank of Accused	Name of Accused	Date of arrest	Date of release on Bail	Offence charged with	Whether acquitted or convicted	Sentence imposed	Period of detention undergone during trial for the purpose of Section 428 Cr.PC
A-1	Bhupal @ Puna Chhetri	12.04.2023	In custody	302 of IPC	Convicted	sentenced to imprisonment for life (till its full natural span) and to pay fine of Rs. 50,000/-	3 years 11 months

Form - C

List of Prosecution / Defense / Court Witness:

A. Prosecution Witness

Rank	Name	Nature of Evidence (Eye Witness, Police Witness, Expert Witness, Medical Witness, Panch Witness, Other Witness)
P.W.-01	Samita Rai	Defacto-complainant
P.W.-02	Madhukar Rai	Eye witness
P.W.-03	Rajani Thatal	Other witness
P.W.-04	Dip Kumari Rai	Eye witness
P.W.-05	Suman Rai	Other witness
P.W.-06	Milan Manger	Other witness
P.W.-07	Dr. Debarshi Sengupta	Medical witness
P.W.-08	Dulal Rava	Police witness
P.W.-9	Balai Ch. Sarkar	Investigating Officer
P.W.-10	Dr. Tanay Mohanta	Medical witness

List of Prosecution / Defense / Court Exhibits:

A. Prosecution:

Srl. No.	Exhibit Number	Description
1.	Exbt.1	Written complaint
2.	Exbt.P1(1)	Endorsement over the formal complaint
3.	Exbt.1A	Signature of PW1 over the inquest report
4.	Exbt.2	Signature of PW 1 over the seizure list dtd.11.04.2023
5.	Exbt.2/1	Signature of PW3 over the seizure list dtd.11.04.2023



6.	Exbt.3	Signature of PW 1 over the statement U/S 164 Cr.PC
7.	Exbt. 4	Signature of PW 4 over the seizure list
8.	Exbt.5 (series)	Signature of PW4 over the statement U/S 164 Cr.PC
9.	Exbt.6 (series)	Signature of PW 5 over the statement U/S 164 Cr.PC
10.	Exbt.P7	Dead body challan
11.	Exbt.P7(1)	Signature of PW 8 over the dead body challan
12.	Exbt.P8	Seizure list (carbon copy) dtd.12.04.2023
13.	Exbt.P9	Formal FIR
14.	Exbt.P10	Rough Sketch map
15.	Exbt.P11	Seizure list dtd.11.04.2023
16.	Exbt.P12	Leading statement
17.	Exbt.P13	Seizure list dtd.15.04.2023
18.	Exbt.14	Statement of Madhukar Rai
19.	Exbt.15	Statement of Dip Kumari Rai
20.	Exbt.16	Statement of Suman Rai
21.	Exbt.P17	Postmortem report
22.	Exbt.P17(1)	Signature of PW 10 over the PM report
23.	Exbt.P18	RFSL report
24.	Exbt.19	Serological report

MAT Exhibit:

Srl. No.	Exhibit Number	Description
Nil	Nil	Nil

n.b. * In view of the amendment made in the Calcutta High Court Criminal (Subordinate Courts) Rules, 1985 vide **Notification No. 2301-G dated 14th July, 2022**. Above prescribed table is incorporated in the judgment.



Form no. M-34

**IN THE COURT OF ADDITIONAL DISTRICT & SESSIONS
JUDGE, FTC-II, ALIPURDUAR**

*Present : Sri Pukar Pradhan.
Additional District & Sessions Judge
FTC-II, Alipurduar*

Session Case No.166/2023
CNR No:WBJP05001200-2023

Arising out of Birpara PS Case No.43 of 2023 dated 11.04.2023
u/s 302 of IPC being GR Case No. 650 of 2023

STATE

Vs

Bhupal @ Puna Chhetri

..... Accused No.1

For the Prosecution : Ld. PP Mr. Suhrid Majumdar
For the Defence : Ld. Advocate Mr. Avik Saha
Final Order : Convicted
Judgment delivered on : 12th day of March, 2026

J U D G M E N T

The legal system fundamentally depends on evidence to ascertain facts, support claims and ensure fair and equitable outcomes in judicial proceedings. Within this framework, the distinction between primary and secondary evidence is critically important. Witnesses play a vital role in the judicial system. They are the eyes and ear of the criminal justice system.

A] Prologue:

Present case started on the basis of a written complaint lodged by one, Smt. Samita Rai, wife of Lt. Lok Bahadur Rai of 1 No. Paglikhas, P.O. Lankapara, P.S. Birpara to the effect that on 11.04.2023 at around 5.00 p.m. that her husband namely Lok Bahadur Rai was murdered by the accused Puna Chhetri. Thereafter, the local villagers and relatives took the victim to Birpara



S.G. Hospital and the attending medical officer declared him death. Hence, she lodged a complaint before Officer-in-Charge, Birpara Police Station.

B] The offence complained of:

The germination of the lis happened with the registration of the written complaint as First Information Report (in short F.I.R) as per Section 154 of the Code of Criminal Procedure, 1973 (in short Cr.PC.). The factual matrix as unveiled from the FIR is adumbrated herein-bellow:

- a) On 11.04.2023 at around 5.00 p.m. accused Puna Chhetri murdered the husband of the de-facto complainant namely Lok Bahadur Rai.

C] The Investigation:

Consequent to lodging of the FIR with the aforementioned allegations, **Birpara police station Case No. 43/2023** dated 11.04.2023 was initiated **under Section 302** of the IPC and the investigation started upon endorsing the case to SI Balai Chandra Sarkar by the then OC, Palzer Tshering Bhutia. On conclusion of the investigation, the investigating officer submitted report as per Section **173** of the Cr.PC (Charge-sheet no. 76/2023 dated 10.06.2023) indicting the sole accused namely Bhupal @ Puna Chhetri for committing offence punishable under section 302 of Indian Penal Code, 1860.



Cognizance of the Charge-sheet was taken on 14.06.2023 by the then learned Additional Chief Judicial Magistrate, Alipurduar. After exhausting all the prescribed procedures such as supplying copies of the documentary evidences relied upon by the investigating agency to the accused, so on and so forth, Ld. Additional Chief Judicial Magistrate, Alipurduar committed the case to the Learned District & Sessions Judge Alipurduar in compliance of provision laid down in **section 209 of the Cr.PC**. Subsequently it was transferred to this Court for its Trial and it was accordingly numbered as Sessions Case No: 166 of 2023.

D] The charge:

Learned Public Prosecutor-in-charge opened the case of the prosecution and after considering the materials available on record and the C.D, this court my predecessor in chair framed charge under Section **302** of IPC on 14.12.2023. The content of the charge as framed by the Court was read over and explained for proper understanding of the accused following the modalities as set forth in the **Section 228 of the Cr.PC** to which the accused pleaded to be not guilty of committing the offence and sought for a fair trial. Ultimately the trial of this case was initiated and the testimonials of witnesses of the prosecution were recorded and documents etc.



proved by them were admitted into evidence as per

Section 230 read with Section 231 of the Cr.PC.

Hence, this trial.

E] Evidence Adduced :-

To prove the prosecution case prosecution has been able to examined as many as **ten (10)** witnesses arrayed in charge sheet, as follows:-

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6.	Exbt.3	Signature of PW 1 over the statement U/S 164 Cr.PC
7.	Exbt. 4	Signature of PW 4 over the seizure list
8.	Exbt.5 (series)	Signature of PW4 over the statement U/S 164 Cr.PC
9.	Exbt.6 (series)	Signature of PW 5 over the statement U/S 164 Cr.PC
10.	Exbt.P7	Dead body challan
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12.	Exbt.P8	Seizure list (carbon copy) dtd.12.04.2023
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14.	Exbt.P10	Rough Sketch map
15.	Exbt.P11	Seizure list dtd.11.04.2023
16.	Exbt.P12	Leading statement
17.	Exbt.P13	Seizure list dtd.15.04.2023
18.	Exbt.14	Statement of Madhukar Rai
19.	Exbt.15	Statement of Dip Kumari Rai
20.	Exbt.16	Statement of Suman Rai
21.	Exbt.P17	Postmortem report
22.	Exbt.P17(1)	Signature of PW 10 over the PM report
23.	Exbt.P18	RFSL report
24.	Exbt.19	Serological report



During the evidence of the prosecution witnesses,
the following documents are marked as exhibits:-

Srl. No.	Exhibit Number	Description
1.	Exbt.1	Written complaint
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MAT Exhibit:

Srl. No.	Exhibit Number	Description
Nil	Nil	Nil



F] Defence Case

After conclusion of prosecution evidence, the accused person was examined u/s.313 of Cr.PC and on being asked he declined to adduce any defence witness on his behalf. Upon perusal of the trend of cross-examination of the prosecution witness, the defence is of complete denial.

G] The provision of law:

Particulars of the invoked provisions are required to be read and reread for better appreciation.

Section 302 IPC:- Whoever commits murder shall be punished with death, or imprisonment for life, and shall also be liable to fine.

Section 300 IPC:- Defines murder as except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or—

2ndly— If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or—

3rdly— If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or—

4thly— If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

Therefore, the ingredients of the section has the following essentials:

- 1) *Causing of death of human being.*
- 2) *Such death must have been caused by doing an act,*
 - i) *with the intention of causing death; or*



- ii) with the intention of causing such bodily injury as is likely to cause death; or*
- iii) with the knowledge that the doer is likely by such act to cause death.*

H] Points for determination:

At this stage, it is the incumbent duty of this court to formulate the points for determination as per requirement of **Section 354 of the Cr.PC** and those are as follows:

- 1) Whether the prosecution successfully proved its case beyond all reasonable doubt?*
- 2) Whether the accused is liable to be punished under section u/s.302 of IPC?*

I] Arguments put forward by the Ld. Advocate for

Defence:

Learned Defence Counsel namely **Mr. Avik Saha** contended that the accused is presumed to be innocent until the guilt is proved by the prosecution by producing impeccable evidence. Rather, the parameter of proving beyond all reasonable doubt is the strictest, when the allegation of culpable homicide / manslaughter is leveled against the accused.

It is further contended that three different facts are forthcoming from the statement of the prosecution witnesses who allegedly seen the incident in different angle. Ld. Advocate also challenged the fact that the de-



facto complainant is not the eye witness of the incident but her testimonies were contradicted by the evidence of Dip Kumari Rai and Rajani Thatal, despite the above facts, she was not declared hostile by the prosecution.

The extra judicial confession made by the accused before witness Dip Kumari Rai PW 4 is not admissible evidence. So, as leading to recovery statement of the accused is not signed by the accused, therefore, it is violative of principle of law as laid down U/S 27 of Evidence Act.

The oral dying declaration of the deceased before the de-facto complainant is also not admissible evidence as none of the medical officer ascertained the fit state of mind of the deceased. Rather the deceased was admitted at Birpara S.G. Hospital for 2-3 hours but the attending medical officer or the I.O. of this case bothered to record the dying declaration of the deceased. Hence, there are several lacuna in the prosecution version which should be favourable to the accused person.

Ld. Advocate relied up the judgment of Hon'ble Apex Court in the case **Tahsildar Singh Vs. State of Uttar Pradesh** reported in **AIR 1959 SC 1012** and contended that contradiction should be brought out in cross-examination of the witness by bringing the evidence of the witness so recorded U/S 161 of Cr.PC with the statement so made before the Court on oath.



Similarly, Ld. Advocate also relied upon the Judgment of Hon'ble Apex Court in the case of **Jayamma Vs. State of Karnataka** and contended that the dying declaration has to be recorded in accordance with law and if that be so it will give a cogent and plausible explanation of the occurrence then only Court can rely upon it as the solitary piece of evidence and convict the accused. Therefore, the determination of fit state of mind of the maker of dying declaration is a must. Ld. Advocate also challenged the prosecution version and contended that the scribe of the complaint along with two other witnesses namely Suman Rai and Gokul were allegedly present at the PO but they are left from the purview of cross-examination causing serious prejudice to the accused person. Similarly, the seized offending weapon is not produced by the prosecution rendering the seizure infructuous. It is also contended that the alleged incident took place on 11.04.2023 and the seizure took place on 15.04.2023, therefore, this delay in seizure has to be looked into with suspicion. Hence, there are several lacuna in prosecution case, rendering the present case to be fit for acquittal.

On the other hand, Ld. Public Prosecutor namely **Mr. Suhrid Majumder** made every attempts to justify the indictment of the accused person with vehemence. Before digging deeper and dwell upon the moot questions it will be apt to crosscheck the submission advanced by



rival sides to have a look at the given situation from the perspective/point of view of both sides.

J] The argument for the case of the prosecution:

The followings are the breviloquent representation of the argument as advanced by the learned Public Prosecutor – He has firmly stood beside the case of prosecution and has made strenuous efforts to impress upon the Court that the tabled evidence are potent enough and there cannot be any other inference but finding of guilt and such conclusion is indefensible.

According to him the chain of events have been proved and there is no room for nurturing any doubt about the claim of the prosecution that on the mentioned date, time and place the accused murdered the victim.

Ld. Public Prosecutor further drawn the attention of the Court to the fact that the de-facto complainant identified the voice of her husband and she rushed to the place of occurrence and saw her husband lying on the ground with grievous injuries. This fact is relevant in terms of **Section 8 of Evidence Act**. Similarly, the relevancy of the statement made by the deceased to the de-facto complainant when he narrated about the incident and how he sustained injury remained admissible as oral dying declaration.



To corroborate the same Prosecution Witness No.2 Madhukar Rai who as an eye witness also deposed in the same line making the statement conclusive.

While relying upon the judgment in the case Ratan Vs. Queen, Ld. Public Prosecutor contended that crying of the deceased is relevant and substantive piece of evidence and the **extra judicial confession** made by the accused before PW 4 is also relevant in terms of Section 24 of Evidence Act.

The Defence has admitted the extra judicial confession in his cross-examination and also admitted the seizure list through which the offending weapon was recovered. In the same line, I.O. of this case proved the leading statement as per the requirement of 27 of Evidence Act.

The contradiction is very natural if it does not go to the root of the case then it will be regarded as omission only. By relying upon the judgment of Hon'ble Supreme Court reported in **2023 INSC 957** Ld. Public Prosecutor also drawn the attention of the Court to the fact that in order to draw the contradiction defence ought to have brought out the previous statement to the knowledge of the witness and then only contradiction can be taken into account but in the instant case the defence failed to brought out the formal statement, hence, the oral evidences are trustworthy and believable. If those



contradictions were sufficient then only **Rule 264 (g) of P.R.B** will be applicable that to against the I.O. Hence, the defence cannot relied upon the omission part only.

As an epilogue of the prosecution version, it has been expounded that 'to err is human' and few infirmities, if there be any, in various processes and testimonials, which might have crept in due to fallible nature of human beings, cannot block the road to the 'Truth' and must not be allowed to pave the escape route for the accused person. He has tried to assure the Court by saying that nothing of that sort has come to the notice which have potential to destabilize the plinth of the case of the prosecution.

Analysis of the prosecution evidence

&

Decisions With Reasons

[Both the points are taken up together for discussion for the shake of the brevity and convenience as well as avoid repetition of sentence.]

'Culpable homicide' is a genus and 'murder' is its species and all murder are culpable homicide but all culpable homicide are not murder. Therefore, Sec. 300 of Indian Penal Code specifically dealt with cases of murder with its exception too and Section 302 IPC prescribes punishment for such murder.

In the instant case the prosecution brought forward the charge of 'murder' against the sole accused namely



Bhupal @ Puna Chhetri, hence, the burden is upon the prosecution, and such burden is much more heavier.

It is established principle of law that in a criminal trial, it is the duty of the court to require the prosecution to prove every fact and its case, affirmatively by sufficient and cogent evidence. Where the prosecution evidence falls short of proving the guilt of the offence with reason, certainty, it is the duty of the Court to acquit the accused straight away **[AIR 2011 SC 200 relied]**.

Therefore, upon pursuing the mandate of law under criminal jurisprudence it is incumbent upon the prosecution that it must establish the guilt of the accused person beyond all reasonable doubt in terms of **Section 101 & 102 of Evidence Act**.

While discharging the same and in order to sustain the charge so framed against the accused person, the prosecution so far been successful to examine as many as ten (10) witnesses in this case as well as exhibited 19 documents.

The analysis of the evidence of each prosecution witnesses are discussed herein below in the following manner:-

I. Complainant

1. Samita Rai, the defacto complainant who deposed as PW 1 in this case. She deposed that '*Lok Bahadur Rai was my husband. He was murdered on 11/04/2023 at about 5.00*



p.m by Puna Chhetri, He is present in Court today (identified on dock). On the relevant date I myself and my husband were at home till 4.30 p.m. Thereafter, he came out of the house saying to me that he will go to bazar for sometime. He left the house and I was in the varendah in front of my house. Suddenly, I heard the noise of many people including the voice of my husband too. He was saying 'moloji maryo maryo Puna le' (Puna killed me killed me). On hearing his voice, I ran to the spot which is near my house and saw that my husband was lying on the ground. He said that 'Sumita punale moloji maryo' (Sumita Puna killed me). I also saw Puna with patang (sharp cutting weapon) in the hand of Puna. There was blood in said weapon as well as in the body (cloth) of Puna. I asked for the help from the nearby people saying that Puna killed my husband. (witness is weeping all throughout her deposition). Suman Rai, Madhukar Rai and driver of the vehicle belonging to Gokhle took my husband to Birpara hospital and I came back to my house to get cloth for my husband and went to hospital in a bike of one neighbour following the vehicle. Bike was riding by Prasant Rai. I was present there when my husband was lifted to the vehicle. My husband was able to talk while taking him to hospital. He was able to talk even in the hospital. I saw him there but thereafter, doctor asked me to remain away from him for his treatment. Later on, I was informed that my husband was no more. Immediately, I went to Birpara PS to lodge complaint. I was also accompanied by my nephew Prakash Sonar who wrote complaint as per my instruction. This is said complaint.



It is written in English. Prakash read over and explained the contents to me in Nepali language. I understood that it was written the way I have said. Thereafter, I put my signature. This is my signature. Let the complaint be marked as Exhibit 1.'

The veracity and credibility of this witness **PW 1** has been challenged by the defence with an scathe cross-examination. Wherein the witness **PW 1** deposed that she cannot read and write English. Therefore, the defence challenged the prosecution version on the ground that prosecution failed to examine the scribe of the complaint rendering the entire case defective.

On the other hand, Ld. Public Prosecutor vehemently contended that it is during the cross-examination the witness PW 1 deposed that the formal FIR was written by her nephew **Prakash Sonar** and after writing the same it was read over and explained to her in Nepali language and after knowing the content fully she put her signature over it. Therefore, it is the defence who admitted the prosecution version and the examination in-Chief wherein the witness specially said these words that the complaint was written by her nephew Prakash Sonar as per her instruction, it was read over and explained to her in Nepali language and after knowing its contents she put her signature. Therefore,



there is no such doubt left regarding the admissibility of the formal complaint.

From the evidences on record it apparently clear that there is no such challenged regarding the lodging of complaint by PW1 rather it is **admitted** by the defence. On the other hand, the defence try to brought out the other facts and try to mingle the prosecution case. In the event, it is during the **cross-examination** the witness further **admittedly deposed** that after hearing the call of her husband '*Puna le marao -marao*' she rushed to the place and saw her husband with severe injuries caused by sharp cutting weapon. Rest of the questions put to the witness are only suggestions.

I (A). Oral dying declaration of the deceased:

Now as the prosecution version is that the deceased screamed '*Puna le marao -marao*' [Puna killed me- killed me] to his wife and the witness narrated the same before the court in verbatim and Id Public Prosecutor contended that it is a 'oral dying declaration'. Hence it is a substantive evidence of the fact and admissible.

Ld. Advocate for the defence challenged the admissibility of oral dying declaration and contended that prosecution never proved that the deceased was in fit state of mind and his dying declaration was not recorded



by the doctor, even though the victim was in the hospital for more than 2-3 hours.

In this regard, **Hon'ble Apex Court** it is judgment reported in **2013 (12) SCC 586** in the case **Hiraman Vs State of Maharashtra**, it is observed that legislature has accorded special sanctity to the statement made by a dying person as to the cause of his own dead. The statement is made at the earliest opportunity without any influence, such statement has to be accepted as available and truthful one revealing the circumstances which resulted her death. Absence of any corroboration can not take away its relevance. It is also established principle of law that there is no requirement of law that a dying declaration must be necessarily be made to the Magistrate.

The doctrine of dying declaration is based on maxim *nemo moriturus praesumitur mentire* (a person will not meet their maker with a lie in their mouth). The principle assumed that a person facing imminent death is unlikely to lie, making such statements uniquely trustworthy.

Hon'ble High Court in the case of State of **Orissa Vs. Daktar Bhoi**, it was held that the dying declaration is a substantive of evidence only for the reason that a person in acute agony is not expected to tell a lie and in all probability, it is expected from such persons to disclose the truth and an order of conviction can safely



be recorded on the basis of dying declaration, if the court is fully satisfied that the declaration made by the deceased was voluntary, true and reliable and in such case, no further corroboration can be insisted. Ld. Court further observed that a dying declaration need not be addressed to a particular individual and the deceased's utterance identifying his assailant while in acute agony constituted a valid dying declaration. Court further noted that minor discrepancies in the testimony of witnesses particularly regarding auditory perception can be attributed to age differences and do not demolished the credibility of their evidence. The Court considered the statement made by the witnesses to others immediately after the incident as admissible under section 6 of Evidence Act as *res-gestae*.

A dying declaration is entitled to great weight. Once the Court is satisfied that the dying declaration was true and voluntary, it can based its conviction without any further corroboration. The rule requiring corroboration is merely a rule of prudence.[**1976 (3) SCC 104**]. The same fact has been dealt with by the Hon'ble Apex Court and reiterated and summed up several judgments of the Hon'ble Apex Court in the case of **Shyam Shankar Kankaria V. State of Maharashtra reported in 2006 (13) SCC 165**.



- “(i) There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration. (Munnu Raja v. State of M.P).
- (ii) If the Court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration. (State of U.P v. Ram Sagar Yadav and Ramawati Devi v. State of Bihar.
- (iii) This Court has to scrutinise the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination. The deceased had opportunity to observe and identify the assailants and was in a fit state to make the declaration. (K. Ramachandra Reddy v. Public Prosecutor).
- (iv) Where dying declaration is suspicious it should not be acted upon without corroborative evidence (Rasheed Beg v. State of M.P).
- (v) Where the deceased was unconscious and could never make any dying declaration the evidence with regard to it is to be rejected. (Kake Singh v. State of M.P).
- (vi) A dying declaration which suffers from infirmity can not form the basis of conviction. (Ram Manorath v. State of U.P).
- (vii) Mere because a dying declaration does not contain the details as to the occurrence, it is not to be rejected. (State of Maharashtra v. Krishnamurti Laxmipati Naidu).
- (viii) Equally, merely because it is a brief statement, it is not to be discarded. On the contrary, the shortness of the statement itself guarantees truth. (Surajdeo Oza v. State of Bihar) 1980 (Supp.) SCC 769.
- (ix) Normally the court in order to satisfy itself whether the deceased was in a fit mental condition to make the dying declaration look up to the medical opinion. But where the eyewitness has said that the deceased was in a fit and conscious state to make this dying declaration, the medical opinion cannot prevail. (Nanhau Ram v. State of M.P) 1988 (Supp) SCC 152.
- (x) Where the prosecution version differs from the version as given in the dying declaration, the said declaration cannot be acted upon. (State of U.P v. Madan Mohan) 1989 (3) SCC 390.
- (xi) Where there are more than one statement in the nature of dying declaration, one first in the point of time must be preferred. Of course, if the plurality of dying declaration could be held to be trustworthy and reliable, it has to be accepted (Mohanlal Gangaram Gehani v. State of Maharashtra) 1982 (1) SCC 700.”

Therefore, in the instant case upon considering the ratio of the judgment of Hon’ble Apex Court and upon analysis of the evidence of **PW1** this Court is satisfied that the deceased was in fit mental condition and he gave a cogent and plausible explanation of the occurrence,



even though it is short but relevant and admissible when other eye witnesses namely **Madhukar Rai PW 2** also deposed in the same line, supported by the evidence of **PW 5 Suman Rai** and the evidence of **Dipkumari Rai PW 4**.

II. Eye witness

The prime witness of this case who deposed as **PW2** is **Madhukar Rai**. He is the eye witness of this case and he deposed that *'the incident took place on 11.04.2023 at about 5.30 p.m. At the relevant time, I went to going towards Pagligate, Lankapara from my house. Lok Bahadur Rai was also going the same way in front of me. I saw Puna Chhetri was chasing Lok Bahadur Rai with patang in his hand. Then I saw Puna Chhetri was assaulting Lok Bahadur Rai with said patang in front of the house of Rajani Thatal. Lok Bahadur Rai fell down on the ground with bleeding injury. I started shouting. On hearing my voice, Rajani Thatal came out of his house, then Puna Chhetri fled away with patang towards Pagligate. I along with Suman Rai took Lok Bahadur Rai to Birpara hospital by a vehicle. On the way to hospital Lok Bahadur Rai asked for water and he also told us that Puna Chhetri assaulted him. After we reached hospital, he was admitted but after about half an hour, doctor declared him dead. Police came to the hospital and prepared one paper and asked me to put my signature in said paper. This is my signature. Let the signature be marked as Exhibit 1A. Police came to PO and collected the soil with blood from there and prepared a paper. I put my signature. This is my signature. Let the signature be marked as Exhibit 2. Police produced me before Magistrate, who recorded my*



statement and I put my signature in said statement. This is my signature in the said statement (two pages). Let the signatures be marked as Exhibit 3 series. Puna Chhetri @ Bhopal Chhetri is present before this Court today (identified on dock).'

The prosecution also produced the statement of this witness so recorded U/S 164 Cr.PC and the same was marked as **Exhibit 14** on admission.

While giving his statement before the Magistrate, the witness further confirmed and deposed that '*Achanak Puna Chhetri bhagke Lok Bahadur Rai ko patang se mara. Humlog ne Lok Bahadur ko hospital le ke aya.....*' [Suddenly, Puna Chhetri ran towards Lok Bahadur Rai and assaulted him with sharp cutting weapon (patang). Thereafter, they took Lok Bahadur Rai to hospital.....].

This statement of the witness so recorded by the Magistrate remained unchallenged, rather it is admitted by the defence.

During cross-examination of this witness no such questions were put to the witness challenging the signature appearing at the inquest report and at the seizure list.

III. Extra Judicial Confession

The prosecution examined another witness **PW 4 Dip Kumari Rai**, who deposed that '*Lok Bahadur Rai was known to me. He has died. Puna Chhetri killed him using a sharp cutting weapon. Puna Chhetri is present in Court*



(Identified). The incident occurred on 11.04.2023 at about 5 pm. I was sitting in front of my house. Puna Chhetri came running at Paggli Gate with a sharp cutting weapon locally known as "Patang". I became frightened. I went to Paggli Bazar and visited the house of Puna Chhetri. He himself told me that he killed Lok Bahadur Rai. (The seizure list having PR No. 86/23 is shown to the witness.) This is my signature. (The signature of Dip Kumari Rai on the seizure list having PR No. 86/23 is marked as Exbt. 4. Puna Chhetri left the patang in front of my house. Police came there and asked whose patang it was. I told them it was Puna Chhetri's patang. Police seized the same and I signed on the related document. Police took away the patang thereafter. Police interrogated me. I came to the Court and I made statement before the Magistrate. These are my signatures on the said statement. (The statement of Dip Kumari Rai recorded u/s 164 Cr.PC is marked as X for identification and four signature of Dip Kumari Rai thereon are marked as Exbt. 5 series). Puna Chhetri is also known as Bhupal Chhetri.'

Subsequently, the statement so recorded by the Ld. Magistrate **U/S 164 Cr.PC** has been marked as **Exhibit 15** on admission.

Upon perusal of **Exhibit 15** the witness **PW4** corroborated her examination-in-chief and stated that 'mey ghar ke age baithi thi. Bhopal Chhetri dour ke aya aur bola ki 'maine Lok Bahadur Rai ko kat ke aya.' ye bol kar woh bhag gaya. Woska bat sun ke mey dar gayi aur room mey ghush gayi. [I was sitting outside then Bhupal Chhetri came



running and told me that 'I killed Lok Bahadur Rai' then he fled away upon hearing such news I was frightened and went inside the room].

From the oral evidence of **PW4** two facts are forthcoming. First one that she identified the accused who killed Lok Bahadur Rai by using sharp cutting weapon on 11.04.2023 at 5.00 p.m. and secondly the accused confessed his guilt and gave his extra judicial confession before her. The oral testimony of the witness is corroborated by her statement so recorded **U/S 164 Cr.PC (Exhibit 15)**. There is no such denial from the side of the defence.

Another aspect of her evidence in this case is that the recovery of offending weapon, during the evidence the witness **PW4** deposed that accused Puna Chhetri left the patang in front of her house. Subsequently, police came and asked whose patang it was, then she stated that it belonged to accused Puna Chhetri. During the evidence of the **IO SI Balai Ch. Sarkar** who deposed as **PW 9** deposed that the accused Puna Chhetri @ Bhupal Chhetri gave a **leading statement** which has been marked as Exhibit **P12/PW9** and on the basis of which he recovered the offending weapon and seized the same vide seizure list dtd.15.04.2023 and the seizure list was marked as **Exhibit P13/PW9**.



The leading statement in terms of **Section 27 of Evidence Act** is relevant. Rather the defence **admitted** these facts during the cross-examination of witness **PW4**, wherein the witness deposed '*when Puna Chhetri @ Bhupal Chhetri came running at Pagligate and left the patang near my house at that time barring me no one else was present.*' and corroborated the prosecution version that Puna Chhetri left patang in front of the house of Dip Kumari Rai who is the seizure list witness and her signature was marked as **Exhibit 4**. Therefore, the oral statement of the witness supported by her statement before Ld. Magistrate (**Exhibit 15**) and her signature appearing at the seizure list (**Exhibit 4**) as well as the leading statement of the accused (**Exhibit P12/PW9**) and the seizure list (**Exhibit P13/PW9**) remained corroborative, impeccable, unchallenged and conclusive.

On the other hand, Ld. Advocate for the defence try to draw a line of contradiction and relied upon the judgment of **Tahsildar Singh V. State of Uttar Pradesh** but the said legal principle is not applicable in the present case when there is overwhelming evidence of the prosecution.

The leading statement (Exhibit P 12/PW 9) also finds its relevance in terms of **Section 27 of Evidence**



Act, when the witness PW 4 proved the seizure list Exhibit P13/PW9 / Exhibit 4.

Section 27 of Evidence Act : How much of information received from accused may be proved.

Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police-officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.

The applicability of this Section remains on a factor that the statement must be split into its component and to separate the admissible portion only and the immediate cause of discovery would be legal evidence **AIR 1976 SC483.**

IV. Res-gestae:-

The facts which, though not an issue, are so connected with a fact in issue as to form part of the same transaction, are relevant, whether they occurred at the same time and place or at different times and places are relevant. Therefore, the prosecution in order to prove the relevancy, examined the following witnesses:-



In order to fulfill the criteria and the ingredient of the offence and keeping in mind the provision as laid down U/S 6, 8 and 9 of Evidence Act, prosecution also examined **Rajani Thatal** as **PW 3**, **Suman Rai** as **PW 5** and **Milan Mangar** as **PW 6**. Their evidences are reproduced herein below for evaluation.

The prosecution examined witness **PW3 Rajani Thatal** and she deposed that *'Lok Bahadur Rai was known to me. He is no more. He died about 1 ½ / 2 years ago. Purna Chhetri is present inside the Court room (Identified). I was inside my room and I heard hue and cry. I went to the spot and saw that Lok Bahadur Rai was already taken to hospital. Thereafter, police came to my house and I signed on a document. This is my signature. (The signature of the document seizure list dated 11.04.2023 having PR No. 85/2023 is marked as Exbt. 2/1.) Police interrogated me. I don't know where the incident happened but police collected earth from a place which was situated behind of my house.'*

The prosecution examined witness **PW 5 Suman Rai** and he deposed that *'Lok Bahadur Rai was known to me. He is no more. He died. Puna Chhetri has killed him using a sharp cutting weapon. The incident took place on 11.04.2023 at 5 pm. I went to Paggli Khas and I found that a dead body was lying on the ground. Police interrogated me. Madhukar Bhai told me that Puna Chhetri killed Lok Bahadur Rai. I came to Court and made statement before the Magistrate. These are my signatures on the statement*



recorded by the Magistrate. (Signatures on the statement recorded u/s 164 Cr.PC is marked as 'Y' for identification and four signatures of Suman Rai on the said statement are marked as Exbt. 6 series.)'

The prosecution examined witness **PW 6 Milan Mangar** and he deposed that '*Presently I earn my livelihood by driving car. On 11.04.2023 too I was earning livelihood by driving car. On the said date at about 5.00 p.m. I parked my vehicle near Pagli Gate and thereafter, I was returning home. There was a big crowd near the market in the vicinity of Pagli Gate. They stopped me and asked me to carry a person to the hospital. Initially, I was reluctant but they insisted. I took the person to the hospital. I don't know the name of the person whom I took to the hospital. I took the person to Birpara Hospital along with two young men who were accompanying the said person. I dropped the said person and the said two young men at the hospital and I went away.*'

These witnesses also confirmed that the incident took place on 11.04.2023, proved their signatures appearing on the seizure list and heard the shouting, they saw the injured victim who was assaulted by accused Bhupal @ Puna Chhetri and PW6 Milan Mangar deposed that he took the victim / deceased to the hospital. Therefore, the evidence of this witness also becomes relevant and admissible. More importantly, there is no



such cross-examination challenging the oral testimony, the signature appearing at the seizure list, and the statement so recorded by the Ld. Magistrate.

In view of **Section 134 of Evidence Act**, it is well known principle of law that reliance can be based on the solitary statement of a witness if the Court comes to the conclusion that the said statement is true and correct version of the case of prosecution. The Courts are concerned with the merit of statement of a particular witness. They are not concerned with the number of witness examined by the prosecution. It is the quality of evidence and not the quantity of the evidence.

It is also well settled law that the Court can rely upon the testimony of a child witness and it can form the basis of conviction if the same is credible, truthful and is corroborated by other evidence brought on record (**AIR 2013 SC 2144**) relied.

V. Postmortem

The prosecution examined witness **PW10 Dr. Tanay Mohanta through audio video means** and he deposed that *'On 12.04.2023 I was posted at MIN Medical College & Hospital Cooch Behar as Associate Professor and Head of the Department. On that day I conducted PM of one Lok Bahadur Rai aged 53 years, being identified by constable 363 Dulal Rava of Birpara PS. Upon examination of the dead body I find :-1) Stitched wound (SW) (5"x0,2") present over*



the face more or less horizontally placed containing five stitches located 6.5" above from chin and 8.2" below from vault of the skull. On cutting the stitches the wound is seen to be of bone deep associated with fracture of nasal bone, maxilla and other facial bones, margins are regular and clean cut. 2) SW (5"x0.2") present over medial aspect of left arm containing two stitches more or less obliquely placed located 10.5" below from tip of the left shoulder joint and 4.5" above from left cubital fossa. On cutting the stitches the wound is seen to be of bone deep associated with fracture of shaft of left humerus bone, margins are regular and clean cut. 3) SW (4"x0.2") present postero-medial aspect of left forearm more or less obliquely placed containing three stitches located 4" below from left cubital fossa and 9.3" above from left wrist joint. On cutting the stitches the wound is seen to be of muscle deep, margins are regular and clean cut. 4) SW (3"x0.2") present over postero-medial aspect of left upper limb located 3" above from left wrist joint more or less obliquely placed containing two stitches. On cutting the stitches the wound is seen to be of muscle deep, margins are regular and clean cut. In my opinion the cause of death was due to effects of ante-mortem injuries, HOMICIDAL in nature.'

Therefore, during his evidence the PM report be marked as **Exhibit P17 /PW10** and the signature was marked as **Exhibit P17(1)/PW 10**.

The witness also faced the cross-examination wherein he deposed that he sought for chemical examination report to ascertain whether there was any poisoning or not.



In the event, the chemical analysis report is also produced and marked as **Exhibit 18 and Exhibit 19** in terms of **Section 294 of Cr.PC** and upon perusal of the expert's report from RFSL, Jalpaiguri the blood was detected in the offending weapon (marked E).

VI. Inquest

The prosecution examined witness **PW 7 Dr. Debarshi Sengupta** who deposed that the witness PW7 give intimation to ASI Jagat Singh Barman regarding the death of Lok Bahadur Rai and accordingly, UD case No.17 of 2023 dtd.11.04.2023 was started and the inquest was held.

Constable Dulal Rava deposed as **PW 8** in the instant case and the witness deposed that on 11.04.2023 he accompanied ASI Jagat Singh Barman to Birpara Hospital and the accompanying officer conducted inquest over the dead body. Thereafter, he issued a dead body challan (**Exhibit P7/PW8**) wherein he signed as a witness (**Exhibit P7(1)/PW8**). The witness also confirmed that he took the dead body to Cooch Behar Hospital for its postmortem / autopsy. He also identified the dead body before the medical officer and later on he brought back the viscera, wearing apparels of the deceased and handed over to ASI Jagat Singh Barman, who seized the same under a seizure list.



There is no such cross-examination challenging the inquest or the dead body.

VII. Investigating Officer

The prosecution examined witness **PW9 Balai Ch. Sarkar** the witness is formal in nature but in the event he proved the endorsement over the formal complaint of the then OC, P.T. Bhutia which was marked as Exhibit P1(1)/PW9. He also confirmed that after receiving such complaint the formal FIR was drawn up by SI P.T. Bhutia, therefore, the FIR was marked as Exhibit P9/PW9. These statement of the Investigating Officer remains relevant in terms of Section 47 of Evidence Act and the evidence is admissible.

The witness further proved the rough sketch map which was prepared by him as Exhibit P10/PW9. The witness also proved the the seizure list dtd.11.04.2023 prepared and signed by him through which he seized blood controlled earth from the PO. The witness PW 9 also deposed that he arrested the accused Bhupal Chhetri @ Puna, son of Lt.Jagat Bahadur Chhetri and forwarded the accused to the Court and thereafter, he obtained him in police custody. It is during the PC period he also recorded the leading statement of the accused. The witness deposed that *'During PC period I recorded the statement of the accused and as per the leading statement given by the accused Bhupal Chhetri @ Puna I went to*



Lankapara khas and recovered the offending weapon ie. a "patang" from the forest in front of the house of Suman Rai.'

Hence, the leading to recovery statement of the accused (relevant portion) has been marked as Exhibit P12/PW9 as well as he also proved the seizure list dtd.15.04.2023 (Exhibit P13/PW9) through which he seized the offending weapon.

During cross-examination the IO admitted that he did not sent Samita Rai (de-facto complainant) for recording her 164 Cr.PC statement. The witness also admittedly deposed that he did not seize any document relating to the ownership of Index A (alleged PO) from Rajani Thatal. He also admittedly deposed that he did not mention the exact measurement of the courtyard of Rajani Thatal in his rough sketch map.

The witness **PW 9** being investigating Officer also face a severe scathy cross-examination wherein he deposed that the accused stated to him that he fled away by throwing his weapon at Bengali Para near the house of Dipa Rai and admitted that at the seizure list (Exhibit P13/PW9) he have shown the place of seizure at Paglikhash near the house of Suman Rai.

Therefore, Ld. Advocate for the defence contended that the IO of this case has failed to realize these two different place and two different names and try to raise a serious suspicion over the investigation.

But the investigating Officer remained firm and deposed that *'Suman Rai is the husband of Dipa Rai. It is true that at the statement I did not mention the above facts that Suman*



Rai is the husband of Dipa Rai. It is true that Paglikhash and Bangali Para are same area but I have not mentioned the same at my seizure list or at Exhibit P12/PW9.'

Ld. Advocate for the defence thereby relying upon the judgment of Hon'ble Apex Court in the case of Tahsildar Singh Vs. State of Uttar Pradesh further contended that the witness PW 9 is the vital witness of this case and he was confronted with the statement which was reduced in writing with the statement of the witnesses so deposed before the Court and the defence has been successful in contradicting the evidence of the prosecution.

Ld. Public Prosecutor to the other hand raises vehement objection and contended that such minor discrepancies will not take away the true version of the eye witness corroborated by other witnesses, inclusive of oral dying declaration and extra judicial confession made by the accused which remained unchallenged. Therefore, the omission on the part of the IO will not vitiate the entire case.

Ld. Public Prosecutor thereby relying upon the judgment of Hon'ble Apex Court reported in 2023 INSC 957 submitted that if the witness is put a lengthy cross-examination then some discrepancies invariably occur in such cases but it will not take away the impeccable evidence of the prosecution. Hon'ble Apex Court in the case of **Nirmal Nath V. State of Rajasthan** reported in **2023 INSC 957** was pleased to observe that '*when an eyewitness is examined at length it is quite possible for him to make some discrepancies. No true witness can possibly escape from making some discrepant*



details. Perhaps an untrue witness who is well tutored can successfully make his testimony totally non-discrepant. But courts should bear in mind that it is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that the court is justified in jettisoning his evidence. But too serious a view to be adopted on mere variations falling in the narration of an incident (either as between the evidence of two witnesses or as between two statements of the same witness) is an unrealistic approach for judicial scrutiny.'

In the landmark case of **Tahsildar Singh Vs. State of U.P.** Hon'ble Court has held that to contradict a witness would mean to discredit a witness. Therefore, unless and until the formal statement of witness is capable of discrediting a witness it would have little relevant. A mere variation in the two statement would not be enough to discredit a witness. Hon'ble Court in the case reported in **2025 INSC 28** was pleased to observe that if there is variance in the statement of the witness it is a minor and not of such nature which would drive their testimony unworthy. In the instant case, this Court finds that the oral testimony of **PW 1** de-facto complainant has been duly corroborated by the evidence of **PW2** Madhukar Rai and it also found support in the evidence of **PW 4** Dipkumari Rai, **PW 5** Suman Rai and **PW 6** Milan Mangar. They are all independent witnesses. Therefore, a faulty investigation or minor discrepancies should not be taken as a gospel truth.



In this regard the observation of **Hon'ble Justice Arijit Pasayat** in the case of **Krishna Mochi V. State of Bihar reported in AIR 2002 SC 1965** at Para No.94, Hon'ble Court observed that *'normal discrepancies in evidence are those which are due to normal errors of observation..... those are always there however, honest and truthful a witness may be. Material discrepancies are those which are not normal and not expected of a normal person.....while normal discrepancies do not corrode the credibility of a party's case, material discrepancies do.'*

A mere proposition of the defence advocate regarding some discrepant statements will not take away the prosecution impeccable evidence of eye witness. It is established principle of law that the quantity of evidence that matter not the number of evidence.

Hon'ble Apex Court in the judgment reported in **AIR 1978 SC 1091** Hon'ble Court laid down that *'proof beyond reasonable doubt is a guideline, not a fetish a guilty man cannot get away with it because truth suffers some infirmity when projected through human process'*.

In the instant case the prosecution brought forward an impeccable and corroborative evidence drawing attention of the Court to the heinous crime committed by the accused person.

Motive:- It is a mental act which allures a man to do a particular act. Where the motive established evil intend regarding criminal act is also proved. When the motive is absent the court must considered the said act



as a circumstances in favour of the accused. Where there is a clear prove of motive for the commission of crime it gives support to the finding of the court that the accused was guilty of the offence complained of. Lack of motive does not render the evidence on trustworthy or unreliable because most upon it is only perpetrator of the crime alone who knows as to what circumstances prompted him to a certain course of action leading to the commission of the crime. **[Suresh Chand Bahri Vs. State of Bihar; AIR 1994 SC 2420.]**

In the instant case the accused with an intention and knowledge of causing such grave bodily injury and causing death of the victim is palpably clear and visible. Prosecution established both the ingredients by producing such reliable and trustworthy evidences. The knowledge is so strong which is manifested into the act of the accused Bhupal @ Puna Chhetri who gave a sufficient blow of patang (sharp weapon) which caused an immediate death of the deceased Lok Bahadur Rai. He also confessed his guilt before Dip Kumari Rai PW4. The severity and the assault was seen by the witness Madhukar Rai PW2 and dying declaration of the deceased before the de-facto complainant Samita Rai put the final nail in the defence case.

Hon'ble Apex Court (three judge bench) in the judgment reported in **AIR 2002 SC 1965, Hon'ble**



Justice BN Agarwal observed that *it is a matter of common experience that in recent times there has been a sharp decline of ethical values in public life even in developed countries much less a developing one, like ours, where the ratio of decline is higher. Even in ordinary cases, witnesses are not inclined to depose or their evidence is not found to be credible by Courts for manifold reasons. One of the reasons may be that they do not have courage to depose against an accused because of threats to their life, more so when the offenders are habitual criminals or high-ups in the Government or close to powers, which may be political, economic or other powers including muscle power. A witness may not stand the test of cross-examination, which may be sometimes, because he is a bucolic person and is not able to understand the question put to him by the skilful cross-examiner and a times under the stress of cross-examination certain answers are snatched from him. When a rustic or illiterate witness faces an astute lawyer, there is bound to be imbalance and, therefore, minor discrepancies have to be ignored. These days it is not difficult to gain over a witness by money power or giving him any other allurence or giving out threats to his life and/or property at the instance of persons, in/or close to powers and musclemen of their associates. Such instances are also not on common where a witness is not inclined to depose because in the prevailing social structure he want to remain indifferent. (Para 31).*

Similarly, **Hon'ble Apex Court** in the judgment reported in **2025 INSC 28**, Hon'ble Court observed that *"crime creates a sense of societal fear and it affects adversely the societal conscience. It is inequitable and unjust if such a situation is allowed to perpetuate and continue in the society. In every civilized society, the purpose of criminal administrative system is to protect individual dignity and to restore societal stability and order and to create faith and cohesion in the society. The courts in the discharge*



of their duties are tasked with balancing of interests of the accused on one hand and the state/society on the other”.

In the factual background of the present case, the Court felt to quote the observation of Hon’ble Apex Court (Three Judges Bench) in the case of **Krishna Mochi Vs. State of Bihar report in AIR 2002 SC 1965** wherein his Lordship M.B. Saha J., B.N. Agrawal J. and Arijit Pasayat J. was pleased to observe at Para No.76 *‘these days when the crime is looming large and the humanity is suffering and society is so much affected thereby, duties and responsibilities of the Courts have become much more. Now, the maxim ‘let hundred guilty person be acquitted but not a single innocent be convicted’ is in practice changing world over and the Courts have been compelled to accept that society suffers from wrong conviction and it equally suffers from wrong acquittal’.* Hon’ble Court also observed that no person committing an offence should get scot-free.

VIII. Epilogue:

In view of the discussion made herein above, on basis of evidence on record, in the light of the pronouncement of Hon’ble Apex Court in various judgment as quoted herein above and for the reasons mentioned hereinabove, the prosecution successfully discharged its onus and burden of proof and successfully proved the charges so framed showing the culpability of the accused Bhupal @ Puna Chhetri, as well as proved the essential ingredients of the offence of unlawful



homicide. All the witnesses also identified the accused Bhupal @ Puna Chhetri and also proved the recovery of offending weapon. The evidences so produced by the prosecution in the form of oral evidence and documentary evidence, remained consistent, corroborative and impeccable. Therefore, this court have no hesitation to hold that the accused Bhupal @ Puna Chhetri has committed the offence of murder and he is found guilty for the offence punishable under section **302 IPC**.

Hence, it is

ORDERED

That the accused person namely **Bhupal @ Puna Chhetri** is found guilty for committing the offence **u/s. 302 of IPC** and he is hereby convicted of the charge framed against him in terms **Section 235 (2) of Cr.PC**.

Accordingly, the convict namely, **Bhupal @ Puna Chhetri** who is produced from the Judicial custody is again sent back to judicial custody for proper reflection of his mind and to be produced at 3.00 p.m. for hearing on the point of the sentence.

Dictated and corrected by me;

Sd/-

Sd/-

Additional District & Sessions Judge
 Fast Track 02nd Court, Alipurduar

Additional District & Sessions Judge
 Fast Track 02nd Court, Alipurduar

(WB01097)



Later:

12.03.2025 at 3.00:00 p.m. [Sentencing part]

The convict namely **Bhupal @ Puna Chhetri** is produced for hearing on the point of sentence.

Ld. Advocate Mr. Avik Saha is present before this Court.

Ld. P.P. in-Charge Mr. Suhrid Majumdar is also present.

Accordingly, convict **Bhupal @ Puna Chhetri** is duly informed that he has been **found guilty** of the charge so framed by the prosecution for the commission of offence punishable under section **302 of IPC** and he is informed that the punishment prescribed is life imprisonment **or** death only and he shall also pay fine, in addition to his sentence.

On being asked the convict **Bhupal @ Puna Chhetri** claimed not guilty and submitted that he has 85 years old mother and his father expired long ago when he was 6-7 years old. He further stated that he has falsely implicated in this case. Hence, he claimed mercy and prays for leniency.

Ld. Advocate for the convict **Bhupal @ Puna Chhetri** also submitted that the convict is innocent and only bread winner of his family and only person to look after his aged mother as well as contended that the



stigma of conviction will also hunt him for life as such prays for leniency.

Ld. Public Prosecutor on the other hand prays for maximum prescribed punishment of death for the offence punishable under section of 302 of IPC citing the brutality and heinous conduct of the convict and it is also contended that the convict Bhupal @ Puna Chhetri brutally murdered Lok Bahadur Rai, husband of defacto complainant with intention and with knowledge. Therefore, he is a menace to the society. The convict committed preplanned cool blooded murder in the broad day light, as such he was apprehended by the villagers at the P.O. Therefore, the conduct of the convict itself shows the aggravating factor to award the capital sentence so that the other persons accused of similar offence be deterred from committing such crime.

It is established principle of law that the age of the victim cannot have any effect on the punishment to be awarded. Where a new born child is deliberately murdered it is as serious an offence as the murder of a grown up person and deserved to be punished as severely.

As a Court of law a message to the society has to be given that one cannot take law in their own hands and the culprits shall not be spared in any manner as well as



a punishment has to be given for their respective misdeeds, as no one is above the law.

As it is observed by **Hon'ble Apex Court** in the judgment reported in **2025 INSC 28** *"crime creates a sense of societal fear and it affects adversely the societal conscience. It is inequitable and unjust if such a situation is allowed to perpetuate and continue in the society. In every civilized society, the purpose of criminal administrative system is to protect individual dignity and to restore societal stability and order and to create faith and cohesion in the society. The courts in the discharge of their duties are tasked with balancing of interests of the accused on one hand and the state/society on the other."*

To award death sentence, the aggravating circumstances (crime test) have to be fully satisfied and there should not be no mitigating circumstances (criminal test) favouring the accused. Even if both the tests are satisfied as against the accused, even then the Court has to finally apply the **Rarest of Rare Test**, which depends on the perception of the society and not judge-centric, i.e. whether the society will approach the awarding of death sentence to certain facts of crime or not. While applying this steps, the Court has to look into variety of factors like society's abhorrence, extreme indignation and antipathy to certain type of crime like rape and murder of minor girl, specially intellectually challenged minor girls, minor girls with physical disability, old and infirmed woman with those disabilities



etc. Examples are only illustrative and not exhaustive.
[Gurvail Singh @ Gala Vs. State of Punjab AIR 2013 SC 1177].

The foundation of punishment is prescribed **U/S 53 of Indian Penal Code, 1860**. Similarly, **Hon'ble Apex Court** in the case of **Bachan Singh Vs. State of Punjab (1980) 2 SCC 684**, was pleased to give guidelines to be considered for or against death sentence. Ordinarily, death sentence is ruled out and can only be imposed for '**special reason**' as provided in **Section 354(3) of Cr.PC**. Therefore, the provision of **Cr.PC** makes it mandatory for the Court to record special reason.

Hon'ble Apex Court in the case of **Machhi Singh Vs. State of Punjab** reported in **1983(3) SCC 470** **Hon'ble Court** was further pleased to set the guideline with respect to awarding a capital punishment. In fine, a balance sheet of aggravating and mitigating circumstances has to be drawn up and in doing so the mitigating circumstances have to be accorded full weightage and a just balance has to be struck between the aggravating and mitigating circumstances before the option is exercised to award one sentence or the other.

The cardinal questions to be asked and answers are :-



a) is there something uncommon about the crime with render sentence of imprisonment for life in adequate and calls for a death sentence?

b) are the circumstances of the crime such that there is no alternative but to impose death sentence even after according maximum weightage to the mitigating circumstances which speak in favour of the offender?

Therefore, after taking into the consideration all the circumstances, the evidences on record and the submission made by both the parties inclusive of the plea of mercy / leniency by the convict, the balancing of aggravating and mitigating circumstances for death penalty is govern by a doctrine 'Rarest of Rare' as laid down by **Hon'ble Apex Court** in **Bachan Singh Vs. State of Punjab**, the Court endeavoured to frame aggravating circumstances of the present case which are (a) brutality of the crime, (b) premeditation and planning, (c) vulnerability of the deceased and the motive of the convict who murdered the victim on broad day light at the public place. But on the other hand, the mitigating circumstances are (a) no criminal antecedent, (b) good behaviour, (c) possibility of reformation and (d) socio-economic background as well as mental or emotional distress of the convict **Bhupal @ Puna Chhetri**. If both



these aggravating and mitigating factors are weigh in a balance sheet then the mitigating factors is over weighing/heavy.

In the recent case of **Subham Vs. State of U.P. reported in 2015 (6) SCC 632 Hon'ble Three Judges Bench** was pleased to guide us and observed that *'the significant aspect of sentencing policy in Indian Criminal Jurisprudence regarding award of death penalty is that life sentence is a rule and death sentence is an exception only to be awarded in the 'rarest of rare' cases. Death sentence must be imposed only when life imprisonment appears to be an altogether inadequate punishment having regard to the relevant circumstances of the crime, and provided the option to impose sentence of imprisonment for life cannot be conscientiously exercised having regard to the nature and circumstances of the crime and all the relevant circumstances.'*

Having regard to the above observations of the Hon'ble Court and after taking into consideration the overwhelming evidences brought forward by the prosecution also keeping in mind the mitigating factors as observed hereinabove, the possibility of awarding death sentence is minimum.

Therefore, for the above reasons and for the fact that a precious life has been lost due to the conduct of



the convict. Hence, the convict namely **Bhupal @ Puna Chhetri** is **convicted** for the offence punishable **under section 302 of IPC and he is sentenced to imprisonment for life (till its full natural span)** as guided by **Hon'ble Apex Court** (three Judges Bench) in the case of **Swamy Shraddananda Vs. State of Karnataka reported in 2008 (13) SCC 767.**

The convict **Bhupal @ Puna Chhetri** is also **sentenced to pay fine of Rs.50,000/- in default** he **shall undergo further imprisonment of one year more.**

Both the sentences shall run concurrently.

The above **fine amount, if paid**, shall be **remitted to the victim's family as a compensation** in addition to any other compensation awarded by the Appropriate Authority.

The period of the sentence of imprisonment shall be **set off** to the period of detention already undergone by the convict in terms of section **428 of Cr.PC.**

Let the copy of this judgment be given free of cost to the convict.

The judgment and final order are pronounced in the open Court in presence of the learned public prosecutor,



the convict and the learned defence counsel and given under my hand and seal of the Court today.

In terms of the verdict of the **Hon'ble High Court of Calcutta** in **CRA No. 380 of 2006** in judgment dated **04.10.2018** the convict is informed that he may file an affidavit regarding the mitigating factor that go in his favour and is also made aware that he can prefer an appeal free of cost, by taking help from the **District Legal Service Authority, Alipurduar**.

Under the above facts and circumstances of this case the allegation of murder has been proved and that the victim died in unnatural circumstances. Hence, a recommendation should also be made to the competent authority for payment of **Rs.2,00,000/- (Two Lakhs)** compensation under **Section 357A of the Cr.PC.**

Hence, let a copy of this judgment and order be sent to The **Secretary of District Legal Services Authority, Alipurduar** (in short DLSA) for taking proper steps for payment of compensation under the **Victim Compensation Scheme, 2017** referred to in **Section 357A of the Cr.PC.**

Seized articles be deposited off in terms of **section 457 of Cr.PC.**

Let a copy of this judgment be also transmitted to **The District Magistrate, Alipurduar in compliance**



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to Section 365 of Cr.PC and The Ld. Secretary, DLSA, Alipurduar (via email) in compliance to the direction of the Division Bench of **Hon'ble High Court of Calcutta** in a judgment reported in **2013 (3) CHN (Cal) 704 (DB)** for the information of the complainant, as well as to the convict so that they can prefer an appeal taking aid of **DLSA, Alipurduar**.

Let the copy of the judgment be forwarded to clerk in charge bail bond register for necessary entries and information.

B.C.-II is directed to issue Warrant of Execution of Sentence (U/S 418 Cr.PC).

The case thus stands disposed off.

Let the case record be consigned to the District record room following all the established norms and modalities and after expiry of period of appeal.

DA is hereby directed to make necessary entries in the register and CIS at once.

Dictated and corrected by me;

Sd/-

Sd/-

Additional District & Sessions Judge
Fast Track 02nd Court, Alipurduar

Additional District & Sessions Judge
Fast Track 02nd Court, Alipurduar
(WB 01097)