

In the Court of Additional District Judge, 2nd Fast Track Court, Alipurdaur

Present : Sri Pukar Pradhan

Addl. District Judge, 2nd Fast Track Court, Alipurdaur

J.O. Code No. WB 01097

SC 166/2023 (GR No.650/2023)

ST-73/2023

CNR No. WBJP05-001200-2023

Order No.40

dtd.12.03.2026

This day is fixed for production and judgment.

UTP/accused Bhupal @ Puna Chhetri is produced from Alipurdaur District Correctional Home.

Ld.Public Prosecutor Mr. Suhrid Majumdar is present by filing hazirah.

Ld. Defence Counsel Mr. Avik Saha is also present.

The judgment is ready and Therefore, this court has 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;

Additional District & Sessions Judge

Fast Track 02nd Court, Alipurdaur

Additional District & Sessions Judge

Fast Track 02nd Court, Alipurdaur

(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 governed 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 weighed in a balance sheet then the mitigating factors are overweighing/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 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;

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

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