

Criminal Appeal  
Present: The Hon'ble Justice Debiprasad Sengupta  
And  
The Hon'ble Justice Prabhat Kumar Dey  
Judgment on: 19.01.2010  
C.R.A. No. 231 of 2006  
GOPAL NEOGI  
Versus  
STATE OF WEST BENGAL

**Point:**

**CIRCUMSTANTIAL EVIDENCE:** Accused and the deceased were last seen alive immediately before the deceased was found dead - whether it suggests that there is no possibility of any person other than the accused to be the author of the crime - Indian Penal Code, 1860 S. 302, 201.

**Fact:** The appellant preferred the instant appeal challenging the judgment and order of conviction and sentence passed by the learned Additional Sessions Judge, Hooghly in a Trial whereby he was convicted under Section 302/201 of the Indian Penal Code. charge framed in the present case was vague inasmuch as the date and time of commission of murder as mentioned in the said charge was not based on any material on record. It was urged on behalf of the appellant that there was nothing on record to show that on the date and time as given in the charge such offence was committed by the present appellant. It was further urged that P.Ws. 7, 8, 9, 10 and 14 are the witnesses regarding the time of recovery of the deadbody and the deadbody could not be fully decomposed. The victim was last seen on 2.7.1998 and the deadbody was recovered on 3.7.1998 and accordingly, there was no possibility of the body being decomposed as it was stated by P.W. 15 in his evidence.

**Held:** This is a case based on circumstantial evidence, from the evidence of P.Ws. 7, 8, 9, 10 and 14 and all these witnesses stated in their evidence that the accused was last seen with the victim and her daughter on 2.7.1998 when he disclosed to these witnesses that they were going to Polba to their aunt's house and they would come back after 2/3 days. On the following morning the accused

was found in the village when also he disclosed that his wife and daughter would come back after 2/3 days. On 3.7.1998 the dead bodies of Lakshmi and her daughter were found on the field. Regarding the evidence of “last seen together” we do not find any reason to disbelieve the witnesses referred to above. They were cross-examined at length, but nothing infirm could be elicited from their cross-examination to disbelieve the veracity of these witnesses. The jute bag containing one sari and one shirt was also recovered from the side of the dead bodies, which were also identified by P.Ws. 7 and 8. The accused appellant was found in the company of the victim lady and her daughter on 2.7.1998 at 11.00 / 11.30 A.M. On the following day the dead bodies of the victim and her daughter were recovered. The time gap between the point of time when the accused appellant and the deceased were last seen alive and the time when the deceased was found dead, was so small that it suggests that there is no possibility of any person other than the accused to be the author of the crime.

(Paragraph – 7)

**Cases cited:** 1. (2006) 3 SCC (Cri) 512 (Ramreddy Rajesh Khanna Reddy & Another Vs State of A.P.),  
2. (2007) 2 SCC (Cri) 162 (State of Goa Vs Sanjay Thakran & Another)

For the Appellant : Mr. Sourav Chatterjee,  
For the State : Mr. Ashok Mukherjee,

**The Court :**

1. This appeal is directed against the judgment and order of conviction and sentence dated 16.07.2004 and 17.07.2004 respectively passed by the learned Additional Sessions Judge, Hooghly in Sessions Trial No. 60 of 2002 thereby convicting the accused appellant under Section 302/201 of the Indian Penal Code and sentencing him to suffer rigorous imprisonment for life and to pay a fine of Rs.5,000/-, in default, to suffer further rigorous imprisonment for one year. The accused appellant was also convicted and sentenced to suffer rigorous imprisonment for seven years and to pay a fine of Rs.2,500/- for the offence under Section 201 of the Indian Penal Code. Both the sentences were directed to run concurrently.

2. The prosecution case, in short, was that on 2.7.1998 the accused appellant went out of his village with his wife Lakshmi and daughter Mamata saying that they would go to their aunt's house at Polba. On 3.7.1998 in the morning the accused appellant was found in the village at his residence and on being asked he told that he left his wife Lakshmi and daughter Mamata in his aunt's house at Polba. On 3.7.1998 at about 11.00 A.M. one beheaded deadbody of a lady and one deadbody of female child were found lying in the vacant field in Ichhapur Mouza within the jurisdiction of Haripal Police Station. Having received such information police arrived at the place of occurrence and started investigation. During investigation a severed head was also recovered from the side of the railway track bush. Subsequently the deadbodies were identified as deadbodies of Lakshmi Mondal and Mamata Mondal. On completion of investigation charge sheet was submitted by the police.

To prove its case, the prosecution examined as many as 19 witnesses including the Autopsy Surgeon and the Investigating Officer of the case and none was examined on behalf of the defence. The defence was a plea of innocence and of false implication.

P.W. 1, Nilmony Chatterjee was the informant in the present case. He found a deadbody of a lady without head lying in the field and at a distance from the said deadbody the deadbody of a minor girl was also found lying. He gave a written complaint to the police, which was scribed by his nephew as per his dictation. He further deposed that three days after the recovery of the said beheaded deadbody a severed head was recovered from the side of the railway track bush. From the said place a jute bag containing some wearing apparels were also recovered. Inquest was held over the deadbody without any head and he signed the inquest report.

P.W. 2, Prolay Chatterjee was nephew of P.W. 1 and he was the scribe of the FIR. He was also a witness to the seizure of the wearing apparels of the deadbody.

P.W. 3 was also a witness to the inquest of the deadbodies.

P.W. 4 was a witness to the inquest of the severed head, which was found by the side of the railway track.

P.W. 5, Subir Santra was a witness to the inquest of the headless deadbody and the deadbody of the minor girl.

P.W. 7 was one Alok Kumar Malik. He stated in his evidence that the accused appellant Gopal after the death of his first wife married Lakshmi @ Kinu (the victim). He also stated that the first wife of the accused appellant was murdered. It was his further deposition that the accused had an illicit relation with the wife of one Haru belonging to his village and because of such extramarital affair there was a dispute between the accused appellant and his wife Lakshmi. He stated that six years back in the month of Ashar Lakshmi went to his house and took one jute bag and one sari from his wife. The accused appellant and the minor daughter Mamata was also found with Lakshmi at that time and the accused stated that they were going to Polba to their aunt's house. He further stated that on the following day he found the accused appellant Gopal in his village and on being asked he stated that his wife and daughter would return after 4/5 days. It is in his evidence that three days after that the aunt of Polba came to his village and told that the accused and the victim Lakshmi never visited her place at Polba. Thereafter they started searching for Lakshmi and her daughter. Subsequently after receiving an information that Lakshmi and her daughter were murdered he had been to Haripal Police Station and could identify the sari of his wife and the jute bag as also the shirt of Gopal. Having seen the photographs he could identify the same as the deadbodies of his niece Lakshmi and her daughter.

P.W. 8, Mongala Malik was the wife of P.W. 7 and she corroborated the evidence of P.W. 7 in all vital aspects. She also stated about the illicit relation of the accused appellant Gopal with the wife of Haru and further stated that over this extramarital affair of the appellant there was a dispute between the appellant and his wife.

P.W. 9, Aditya Malik was the father of the deceased. He stated in his evidence that six years back in the month of Ashar at about 10.30 / 11.00 A.M. he found the appellant, Gopal, his daughter and his granddaughter to proceed through the playground and on being asked the appellant replied that they were going to their aunt's house at Polba. The appellant further told this witness that they would stay there for 2/3 days and would return after the Rath Mela was over. This witness further stated in his evidence that on the next morning he found Gopal in the village when he was brushing his teeth and on being asked by this witness the appellant Gopal told that they would return to the village after 2/3 days. Four days thereafter Bhabi (aunt of Polba) came to the village and told that neither Gopal nor his wife or daughter went to her place.

P.W. 10, Pairag Patra also stated in his evidence that he saw Gopal, his wife and daughter going to Polba to see Rath Yatra there. This witness also corroborated the evidence of P.W. 9 on all vital aspects and further stated that on the next morning Gopal was seen in the village and on being asked he again stated that his wife and daughter would return to the village after few days.

P.W. 11 was a witness to the seizure of jute bag and wearing apparels of the deceased.

P. W. 12 was declared hostile by the prosecution.

P. W. 13 was Haru Santra and he stated in his evidence that the appellant Gopal had some illicit relation with his wife and one day he saw Gopal and his wife Padma in the same bed.

P. W. 14 was Nikhil Chandra Malik and he was a panchayet member. He also corroborated the evidence of P.Ws. 7, 9 and 10 and stated that on 2.7.1998 in the forenoon Gopal took his wife and daughter to Polba for witnessing Rath Yatra. On the next morning Gopal was found in the

village and on being asked Gopal told that his wife and daughter would return after 2/3 days. Two weeks thereafter they got an information that wife and daughter of Gopal were murdered. He also stated about the illicit relation of Gopal with the wife of Haru (P.W. 13). This witness further stated that the appellant Gopal never made any attempt to search for his wife and daughter in any place.

P. W. 15 was the Autopsy Surgeon, who held post mortem over the deadbodies and on examination he found that the body was fully decomposed. After dissection haemorrhage was found under neck. Larynx and trachea were found congested. Hyoid bone was intact. All the viscera were found decomposed. This witness further opined that the cause of death was due to shock from asphyxia.

P.W. 16 was the Investigating Officer of the case, who visited the place of occurrence, held inquest over the deadbodies, recorded the statements of witnesses and arrested the accused person.

P. W. 17 was Dr. Provash Chandra Sarkar, who held post mortem examination on the severed head of unknown female in the present case. This witness found the following injuries as quoted below :

- “2. One sliced sharp cut injury was found just below the left ear-2” x 1” skin deep at occipital region almost round in shape.
3. One sharp cut injury along the occipital bone (sliced injury) extending from occipital region to foramen magnum – 4” x 4” (Max) with convexity upwards.

4. A sharp cut injury on posterior aspect of head extending from left side crossing the foramen magnum of which lower border is curved with convexity downwards – 4” x ½ “ (Max).
5. One sharp cut injury on right side of lower portion of head 3 ½ “ x 2” extending above downwards.
6. Margin of skin was everted.
7. Head de-touched from rest of the body at the base of head with sharp cut injury except some portion of tissue (muscle etc.) surrounding the base of the skull.
8. On occipital region a small portion of skin was present.
9. I found fracture skull and contained sliced injury at superficial region in connection with above noted injury, otherwise scalp was congested and was containing the evidence of viral reaction. Membrane were injured. Brain materials were redish colour.

In my opinion the head is separated from the body by a sharp curved cutting weapon and de-touched from the rest of the body which was ante mortem and homicidal in nature.”

P.W. 18 was the first Investigating Officer, who on transfer handed over the Case Diary to the Officer-in-Charge of the police station.

P.W. 19 was the Sub Inspector of Police, who on completion of investigation submitted charge sheet.



Mr. Sourav Chatterjee, learned Advocate appearing for the appellant submitted that the charge framed in the present case was vague inasmuch as the date and time of commission of murder as mentioned in the said charge was not based on any material on record. There was nothing on record to show that on the date and time as given in the charge such offence was committed by the present appellant. But we are unable to accept such contention. This is a case based on circumstantial evidence and it is not known when such murder was committed by the appellant. Although date and time has been mentioned in the charge, the same had not caused any prejudice to the accused. The accused knew very well about the charge, which was to be answered by him. In absence of any prejudice the charge cannot be said to be bad in law.

It was submitted by the learned Advocate of the appellant that P.Ws. 7, 8, 9, 10 and 14 are the witnesses regarding the time of recovery of the deadbody and it was also submitted by the learned Advocate that the deadbody could not be fully decomposed. The victim was last seen on 2.7.1998 and the deadbody was recovered on 3.7.1998 and accordingly, there was no possibility of the body being decomposed as it was stated by P.W. 15 in his evidence. We are unable to accept such contention as we find that there is the specific evidence of P.W. 15 being the Autopsy Surgeon that he found the deadbody fully decomposed.

It was also submitted by the learned Advocate of the appellant that the prosecution case was that the appellant had some extramarital affairs with one lady named Padma. She was not examined by the Investigating Officer of the case and was not cited as a witness in the present case. Although the husband of Padma deposed in court, he was never examined by the Investigating Officer during investigation.

It was submitted by the learned Advocate of the appellant that evidence of “last seen together” by itself is not of much significance. It may, however, provide for a link in the chain, but unless the time gap between the deceased having been last seen in the company of the accused and the murder is proximate, it is difficult to prove the guilt of the accused only on the basis of the evidence of “last seen together”. In support of his contention, the learned Advocate relies upon a judgment reported in **(2006) 3 SCC (Cri) 512 (Ramreddy Rajesh Khanna Reddy & Another Vs State of A.P.)**, wherein it was held by the Hon'ble Apex Court that the last seen theory comes into play where the time gap between the point of time when the accused and the deceased were last seen alive and the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. It was further held that even in such cases courts should seek for some corroboration.

The next judgment relied upon by the learned Advocate of the appellant is reported in **(2007) 2 SCC (Cri) 162 (State of Goa Vs Sanjay Thakran & Another)**. In the said judgment it was held in paragraph 13 as follows :

**“13. The prosecution case is based on the circumstantial evidence and it is a well-settled proposition of law that when the case rests upon circumstantial evidence, such evidence must satisfy the following tests :**

**(1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established.**

- (2) Those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused.**
- (3) The circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and**
- (4) The circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.”**

3. We have gone through the said judgment. The principle of law laid down by the Hon'ble Apex Court is settled principle of law, but the said judgment is not applicable in the present case as the facts and circumstances in the present case are totally different. In the present case, it is in the evidence of the prosecution witnesses, namely, P.Ws. 8, 9, 10 and 14 that the victim and her daughter were last seen in the company of the accused on 2.7.1998 and the deadbodies of the victim and her daughter were found on the following day i.e. on 3.7.1998. These witnesses further deposed in their evidence that they saw the victim with the appellant and on being asked, the appellant disclosed that they were going to Polba to their aunt's house and they would come back after 2/ 3 days, but the accused appellant never visited the place of his aunt (bhabi) at Polba, which was disclosed by the aunt, who came to their village and told the aforesaid witnesses that the appellant never visited her place at Polba with his wife and daughter. P.Ws. 7 and 8 specifically stated in their evidence that the appellant visited their house and took one jute bag and one sari and

told them that they were going to Polba. The said jute bag and sari was recovered from the side of the deadbody, which was subsequently identified by these witnesses.

4. It was submitted by the learned Advocate of the State that there was no motive in the present case and in absence of motive, the prosecution case should be disbelieved. This argument, in our considered view, also does not have any merit. From the evidence on record it appears that the accused had illicit relation with a lady named Padma Santra, wife of one Haru Santra. Haru Santra himself being P.W. 13 had specifically stated in his evidence that Padma did not reside with him and she used to reside with Gopal and that one night he could find Gopal and his wife in the same bed. This extramarital affair of accused appellant with Padma, which caused a dispute between the appellant and the victim Lakshmi, might be the motive behind the commission of such offence.

5. The learned Counsel appearing for the State submitted that the charge framed in the present case did not suffer from any defect. Since this is a case based on circumstantial evidence and since it is not known when such murder was committed, it is not possible to give any specific date and time of such murder in the charge. Although date and time has been mentioned in the charge, which, according to the appellant, is not correct, the same cannot cause any prejudice to the accused and in absence of any prejudice, the charge framed against the accused appellant cannot be said to be bad in law.

6. It was submitted by the learned Advocate of the State that the accused appellant took his wife and daughter on 2.7.1998 from their house for going to Polba to witness Rath Yatra. On

3.7.1998 the deadbodies of the victim Lakshmi and her daughter Mamata were recovered. Even on the following morning when the accused appellant was found in the village and was asked about the whereabouts of his wife Lakshmi and daughter Mamata, he stated that they would come back after 2/3 days. The accused appellant never made any attempt to search for his wife when she was found missing. The jute bag and the sari, which were taken from the house of P.Ws. 7 and 8, were recovered from the side of the deadbodies and were identified by the said witnesses. It was submitted by the learned Advocate of the State that this is a case of circumstantial evidence and the chain of circumstances was complete to prove the guilt of the accused. The judgment and order of conviction and sentence as passed by the learned Trial Court do not suffer from any illegality.

7. We have heard the learned Advocates of the respective parties. We have also perused the judgments of the Hon'ble Apex Court as referred to above. As we have already stated that this is a case based on circumstantial evidence, from the evidence of P.Ws. 7, 8, 9, 10 and 14, we find that all these witnesses stated in their evidence that the accused was last seen with the victim and her daughter on 2.7.1998 when he disclosed to these witnesses that they were going to Polba to their aunt's house and they would come back after 2/3 days. On the following morning the accused was found in the village when also he disclosed that his wife and daughter would come back after 2/3 days. On 3.7.1998 the deadbodies of Lakshmi and her daughter were found on the field. Regarding the evidence of "last seen together" we do not find any reason to disbelieve the witnesses referred to above. They were cross-examined at length, but nothing infirm could be elicited from their cross-examination to disbelieve the veracity of these witnesses. The jute bag containing one sari and one shirt was also recovered from the side of the deadbodies, which were also identified by P.Ws. 7 and 8. The accused appellant was found in the company of the victim

lady and her daughter on 2.7.1998 at 11.00 / 11.30 A.M. On the following day the deadbodies of the victim and her daughter were recovered. The time gap between the point of time when the accused appellant and the deceased were last seen alive and the time when the deceased was found dead, was so small that it suggests that there is no possibility of any person other than the accused to be the author of the crime.

8. After hearing the learned Advocates of the respective parties and after scrutinizing the entire evidence on record, we are of the view that the impugned judgment and order of conviction and sentence do not suffer from any illegality and we do not find any reason to interfere with the same.

9. The present appeal is accordingly dismissed.

10. A copy of this judgement along with LCR may be sent down to the court below immediately.

11. Since the appeal has been disposed of, the application being C.R.A.N. No. 2023 of 2009 has become infructuous and the same is also accordingly disposed of.

12. Urgent Xerox certified copy of this judgment and order may be supplied to the learned Advocates of the respective parties, if the same is applied for.

**(DEBIPRASAD SENGUPTA, J.)**

I agree,

**(PRABHAT KUMAR DEY, J.)**