Form No. J(1)

IN THE HIGH COURT AT CALCUTTA

CRIMINAL APPELLATE JURISDICTION

Present :

The Hon'ble Justice Rajasekhar Mantha
And
The Hon'ble Justice Rai Chattopadhyay

CRA 607 OF 2016
With
CRAN/2/2020

Tapas Das Kabiraj and Ors.
Vs.
The State of West Bengal

For the Appellant Nos. 1, 2 & 4:	Mr. Apurba Kumar Datta Ms. Sreemoyee Mukherjee
For the Appellant No.3:	Mr. Kallol Mondal, Senior Advocate Mr. Krishna Ray Mr. Souvik Das Mr. Anamitra Banerjee Mr. Akbar Laskar Mr. Sreyash Kumar Singh Ms. Moupiya Chakraborty
For the State:	Ms. Rituparna De Ghosh Ms. Nahid Ahmed
Judgement Reserved on:	**12.03. 2026**
Judgment on:	**16.03.2026**

Rajasekhar Mantha, J.:

1. The subject appeal is directed against the judgment of conviction dated 9th August, 2016 and order of sentence dated 10th August, 2016 passed by the Additional Sessions Judge, Birbhum at Rampurhat in

Session Trial no.01/ June/2012 arising out of Sessions Case no.50 of 2012.

2. The appellants were sentenced to life imprisonment and also to pay a fine of Rs.5000/- each for the offence under Section 302 read with Section 34 of the Indian Penal Code. In default thereof, to further suffer rigorous imprisonment for period of one year.

3. The appellants were also sentenced to suffer rigorous imprisonment for seven years each and to pay a fine of Rs. 3000/- for offence punishable under Section 201 read with Section 34 of the Indian Penal Code. The sentences were to run concurrently.

THE PROSECUTION CASE AND THE EVIDENCE ON RECORD:-

1. **Dulal Das Kabiraj, PW 1**, filed a complaint with Margram Police Station, Birbhum on 16th December, 2011, based on which FIR no. 113/91 was registered. The complainant stated that his nephew Tapas Das Kabiraj, appellant no.1, had informed him in the morning of 16th December, 2011 that the victim Sadananda Das Kabiraj had died. The complainant, PW 1, also stated in his complaint that he suspects that his nephew, son of victim, had killed the victim.

2. When PW 1 thereafter went to see the victim at his house he stated in the complaint that he found the victim lying in the bathroom of the house with his head cut off. On the arrival of the police at the P.O, they found that the victim was lying in the toilet of his house with his throat slit.

3. Inquest was conducted at the PO between 8:15 a.m. and 9:35 a.m. on the date of occurrence against the U/D case. The **Inquest officer, PW 13**, found the throat of the victim cut and blood stains on his body, hand, and chest.

4. The inquest witnesses stated that the victim was murdered by his son (appellant no.1) and daughter-in-law, Kalpana Das Kabiraj. The appellants including Tapas Das Kabiraj, Kalpana Das Kabiraj and Uttam Das son-in-law were arrested on the same day. Appellant, Manasi Das, the daughter of the victim was arrested later.

5. Investigation was completed and charge sheet was filed. Charges were framed by the trial judge against the two appellants and also against Kalpana Das Kabiraj, wife of appellant no.1 and Manasi Das, the wife of appellant no.3 under Sections 302 read with Section 34 and Sections 201 of the IPC.

6. PW 1 proved the complaint signed by him and stated that it was scribed by **PW16 Moti Sk**. He briefly described his family namely his brothers including the deceased victim and their children and the relations between the appellants and the victim. He deposed that the appellant no.1 informed him that the victim cut himself with a boti (a sharp cutting long blade mounted on a wooden pedestal, used to cut vegetables common to most kitchens in India), in the neck.

7. **PW 2 was Ananda Das Kabiraj**, another brother of the victim and an inquest witness. **PW 3** was the paternal cousin **of the victim.** He was

a teacher at the local private school. He confirmed for the first time that there was a dispute between the victim and his daughter and son-in-law with regard to the sale proceeds of certain land of the victim. The son and daughter in law of the victim, appellant nos. 1 and 2 supported the demand of money raised by the son in law.

8. PW 3 was also witness to the recovery of the 'boti', the weapon used in the offence. He identified the 'boti' and the label thereon. He further deposed that son of the deceased (the appellant no.1) supported the demands of his sister and brother-in-law (the appellant no.2) against the father.

9. In cross-examination, PW 3 confirmed the discord between the victim and the appellants with regard to the money of the former obtained from the sale of his land and a sum received from the local cooperative society, namely Rampurhat Co-operative Bank.

10. PW 3 further deposed in his cross-examination that the relations between the victim and the son-in-law and daughter were cordial during the initial stage of marriage but soured in connection with the demand for sale proceeds of land. He also deposed that his house was a stone's throw distance from the house of the victim. He heard from PW 4 that the appellant no. 3 and his wife (appellant no. 4) had come to the house of the victim on the previous night (15.12.2011) around 9:30 p.m. He was also a witness to the seizure of a torch light and a mug from the PO.

11. **PW4 (Parimal Sarkar), PW5 (Sridhar Dalal), PW6 (Bamkim Das) and PW8 (Haradhan Das)** were the neighbors of the victim. Each of them deposed that when they were having a casual conversation in the verandah of the house of PW-4, when they saw the appellant no.3 and his wife going towards the house of the victim at about 9:30 p.m. in the night of 15.12.2011.

12. The said witnesses further confirmed that they were aware of the discord between the appellants and the victim in connection with the money in the hands of the victim being sale proceeds of the land and money derived from other sources.

13. The statements of the PW 4, 5, 6, 8 were recorded before the Magistrate under Section 164 of the CrPC. During the Trial, they had identified their signatures thereon. The said statement was proved by the **Magistrate being PW 24**. They were all interrogated by the police.

14. **PW 7, Sandhya Das,** was the younger sister of the deceased**.** She confirmed, to a question put by the trial Court that the victim informed her that the appellant no.3 and 4 were demanding money from the victim, which the victim has obtained from the sale proceeds of land and money from the cooperative bank.

15. **PW 9 was Bappa Simalandi**. He was the seizure witness of the torch light and mug along with **PW 10, Utpal Das Kabiraj,** nephew of the victim. **PW 12, Balaram Prasad Das,** was a friend of the deceased.

16. **PW 13, PW 14 and PW15 were police constables**. They took the body of the victim for post mortem and also took the garments and

viscera of the victim to the FSL for analysis. They identified the cloths of the victim seized by the police.

17. **PW 16 Ash Mohammed @ Moti Sk** was the scribe of the complaint filed with the said PS. He also recovered the weapon from a local pond called Etelghora. At the request of the IO of the case, he went inside the pond and recovered the boti (the instrument used in the kitchen for cutting vegetables). He further confirmed the presence of the two male appellants (nos. 1 and 3) at the time of the recovery of the weapon. The evidence of PW 3 confirms that leading statements were given by the appellants for recovery of the weapon along with their admission of the guilt before the police. Such admission of guilt before the police is however is not admissible in evidence.

18. **PW 17, Hemendra Kumar Ghosh Mondal,** was an LIC Agent. He confirmed that the victim had a joint account with his son, the appellant no.1. He deposed that the victim has bought an insurance policy, the maturity value whereof was Rs. 1 lac. The son was the nominee in the policy. He further deposed that the victim had bought several Kisan Vikas Patras.

19. **PW 18 was the doctor, Dr. Subhas Chandra Poddar**, who performed **postmortem** examination on the deceased. He observed as follows:-

> *"i).....on examination of the dead body I found one spindle shaped sharp cutting injury measuring 5" X 21/2" X 1" deep placed over neck in horizontal direction just above adams apple. The wound is wider and deeper at the middle of injury and taper of both ends. Each extended up to the sternocledo mastoid muscle of either side. The injury cuts the skin, soft tissue, carotid vessles,*

nerves and muscle and finally he cut the larynx trachea lumen was blocked by blood and blood clots. No other injury was detected.

ii) In my opinion death was due to effect of above noted injury which is antemortem and homicidal in nature. This is the P.M report prepared by me in my own hand writing and thereafter I signed on it with office seal. The P.M report is marked as Exbt.12.

iii) The injury which I have mentioned in my P.M report was caused by single struck and the said injury was caused by the maker with pressure. The injury that I found on the dead body of the deceased must be caused with confidence and without any resistance."

20. PW 18 has deposed in his cross-examination as also in his examination-in-chief that the injury on the victim was caused by sharp cutting instrument which had severed the carotid vessels and nerves and cut the larynx and trachea of the victim. He further deposed that the injuries were ante mortem and homicidal in nature and were caused with substantial pressure and confidence. The victim did not offer any resistance..

21. **PW 19 Provat Kumar Das,** was the photographer**.** He deposed that he took photographs of the deceased in the toilet of the house. He also stated that there were certain illegible writings on the wall of the toilet where the victim was found.

22. **PW 20, Partho Das** was a person who borrowed money from the victim. He ran a lodge at Tarapith, He deposed and was ready to return the same. He identified the handwriting of the victim.

23. PW 21 and PW 22 were declared hostile. PW 23 was the investigating officer.

24. The appellants were examined under Section 313 CrPC. They denied all the incriminating circumstances in the evidence on record that were

confronted to them. They did not offer any alibi of not being present in the house of the victim on the date of incident.

25. On behalf of the defence, **one Sukhen Das, DW 1 was examined.** He was the Manager of the local cooperative society namely, Rampurhat Cooperative Bank. He identified the letters written by the victim that were marked as Exhibits A and B. The said letters were written about 6 months prior to the incident. The victim had written how his money was to be used ie amounts to be given to his grand children. The victim also wanted a plate to be placed in the memory of his late wife and his photograph placed next to his wife in a frame.

26. Based on the evidence on record the trial judge convicted the appellants under Section 302 of the Indian Penal Code and sentenced them as indicated above.

ANALYSIS OF THIS COURT:-

27. Learned counsel for the appellant has pointed out that the FIR was lodged at 7.45 A.M. on December 16, 2011. The inquest, however, commenced from 08.15 A.M. of the same day. PW 16, who scribed the said written complaint, has deposed that it was around 9 A.M. to 10 a.m. that the complainant, PW 1, came to him to get the said written complaint drafted. Learned counsel would therefore argue that the FIR is suspect.

28. Section 174 of the CrPC states that when a person has died under suspicious circumstances, the inquest officer shall ascertain whether the person in question is a victim of homicidal, suicidal, or accidental

death. It is based on this, that an FIR is lodged based on applicable sections. An FIR can be lodged before the commencement of inquest proceedings when the complaint to the police unambiguously reveals that the victim has died a homicidal death.

29. In practice however, we see that an inquest is conducted in respect of unnatural death, regardless of the complaint clearly stating how the victim has died. The reason is that an inquest report records the immediate circumstances prevailing at the PO after the receipt of information of a crime, that to against a case number which is titled UD (unnatural death).

30. In the present case, the appellant no. 1, the son of the victim, told PW 1 that the victim had committed suicide by cutting his throat. PW 1 however suspecting foul play, mentioned in the complaint that the appellants may have killed the victim. He referred to the dispute between the appellants and victim as regards the cash and assets of the victim.

31. Therefore, at first blush, it would appear that the victim died under suspicious circumstances and hence the inquest ought to have commenced before the lodging of the FIR. However, considering the nature of the injury indicated by PW 1, a cognizable offence is evident and hence the Margram PS immediately and rightly registered the FIR.

32. The inquest report itself recorded that the FIR was lodged at 7:45 A.M. Thus, there has been no suppression on the part of the investigating agency. The inquest commenced 30 minutes after the

lodging of the FIR that is from 8:15 a.m. Thus, there has been no substantial time gap between the lodging of the FIR and the commencement of the inquest. The inquest report is consistent with the complaint lodged by PW1, and the medical evidence on record.

33. The decision in ***Mohd. Muslim v. State Of Uttar Pradesh, reported in 2023 7 SCC 350,*** cited by the appellant, has dealt with the situation where the police took four days to send the FIR to the Magistrate. The FIR in the instant case was sent to the magistrate the very next day of its registration. The said decision in ***Mohd. Muslim (Supra)*** thus is inapplicable to the present case.

34. The case of prosecution was based on circumstantial evidence. The first link in the chain of circumstances against the appellants is motive of the appellant to end the life of the victim.

35. The evidence on record has established that the appellants were unhappy with the victim for not making over money obtained from the sale proceeds of his land and money received from the Rampurhat Cooperative Bank of son-in-law and daughter. The appellant nos. 3 and 4 were demanding the money from the victim. The appellant nos. 1 and 2 supported such demand. The victim was not inclined to part with the same as he had in writing wanted the same to be distributed amongst his grand children. The son appellant No.1 would have benefitted from the insurance policy and the proceeds of the joint bank account with the deceased.

36. Failure to obtain undue pecuniary benefit is definitely a motive for crime. In ***Chunni Bai v. State Of Chhattisgarh, reported in 2025 INSC 577***, it was held as follows:-

> 48. For committing a serious crime like homicide, there could be various motivating factors..... ***One may also commit homicide to gain undue pecuniary benefit or otherwise. One may commit such a crime out of sheer frustration and dejection with life channelising through violent acts***
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> Emphasis applied

37. The evidence on record has not suggested that the appellants were well to do. The wife of the victim predeceased him. Upon the demise of the victim, the appellants were to succeed his assets including the cash in the bank, house and insurance policy and investments. It, therefore, cannot be ruled out that the appellants had an eye on the lump sum amount of money obtained by the victim from the aforesaid sources. Exhibit A and B demonstrate that the victim wanted his money and other assets to be distributed amongst his grandchildren. This was contrary to the wishes of the appellants. The motive of the appellants to commit the crime is thus clearly established.

38. The evidence on record has clearly suggests the discord between the victim and the appellants with regard to the demand of the said sum of money by the latter. The discord was openly known even to the neighbors of the victim in whom he must have confided. The discord between the victim and appellants in the next link in the chain of circumstances.

39. The next link in the chain of circumstances is the conduct of the appellant no. 1 in communicating the death of the victim to the complainant, PW 1 and also the suppression made by him while communicating the said information, The appellant no. 1 pretended that he did not know the cause of the death. This demonstrates the conduct of the appellant no. 1 just after the commission of the crime. The said conduct is relevant in view of Section 8 of the Indian Evidence Act, 1872. Section 8 and substantiates the conduct of the accused relevant after the commission of the crime. In ***Vaibhav v. The State Of Maharashtra reported in 2025 INSC 800***, it was held as follows:-

> 21……. Undoubtedly, in a case based on circumstantial evidence, facts indicating subsequent conduct are relevant facts under Section 8 of the Evidence Act…….

40. The appellant no. 1 came to the house of the complainant, PW 1, to inform that his father, the victim has died. In his evidence during the trial PW-1 deposed that he was informed by the appellant no.1 that the victim cut himself in the neck with the boti, implying suicide. If that was the case the weapon would have been found by other witnesses next to his body. Admittedly the weapon was recovered from a nearby ditch/pond on the leading statement of the appellants, albeit not brought on record. This is another link in the chain of circumstances against the appellants. The argument of the appellants's counsel that the victim committed suicide is therefore not supported in the facts of the case. A suicide by cutting one's neck by a boti is extremely unusual, apart from being nearly impossible.

41. The attempt by the appellants to inform family members that the victim had committed suicide is a relevant fact. The factum of the boti not being found in the place of occurrence is therefore a relevant fact and a vital link in the chain of circumstances. PW-1 did not believe the appellant no.1 and went on to lodge the complaint, naming the appellants as suspects. This chain of events is natural, logical, and most likely no other conclusion is possible. It furthers the prosecution case.

42. PW 2 has deposed that the appellant no. 3 and 4 used to frequently visit the house of the victim demanding the said money, which soured a previously cordial relation. The appellant no. 3 and 4 therefore had a pre-existing grievance with the victim. The appellant no.1 & 2 supported the other appellants as they themselves would also benefit from the death of the victim. Unless the victim had died the sum assured under the insurance policy would not become payable. This indicates a meeting of the minds and common intention amongst the appellants as regards the death of the victim causing the same. This is yet another link in the chain of circumstances against the appellants.

43. The next link in the chain of circumstances is the recovery of murder weapon at the instance of the two male appellants and its link with the injuries on the victim. In a case based on circumstantial evidence, the recovery of the offending weapon and its link with the accused assumes great significance. The medical evidence in this regard must be noted. It links the appellants with the murder weapon.

PW 18, the postmortem doctor, has deposed that the middle portion of the neck of the victim received the deepest injury. The features of the weapon by which the injury was caused therefore need to be appreciated.

44. PW 23, the IO of the case, directed PW 16 to go down to the pond and see whether there is a Boti. PW 16 has deposed that the male accused persons were present at the time of the said recovery. Thus, the appellant no. 1, the son of the victim and the appellant no. 3, the son-in-law of the victim, were present. PW 2 has confirmed their presence at the time of recovery.

45. PW 16 found one Boti in the said pond. PW 16 has deposed that the said two male appellants showed him the place of the Boti in the pond. PW 16 collected the Boti and handed it over to the IO. The said two appellants identified the Boti as the murder weapon.

46. The said IO has deposed that the said two appellant nos. 1 and 3 have confessed before him that they have cut the throat of the victim. The said statement of guilt before the police is not admissible in evidence. The said two appellants however have spoken beyond the said statement of guilt. They identified the place where the murder weapon was kept. The same was witnessed by independent witnesses.

47. PW 16 has unequivocally stated that the appellants have pointed out the place of boti in the said pond and had identified the Boti as the murder weapon. The appellants thus were aware of the place where the weapon was disposed and its use in the murder of the victim. The

mandate of Section 27 of the Evidence Act is fulfilled. This is yet another link in the chain of circumstances.

48. The decision in ***Boby V. State Of Kerala, reported in (2023) 15 SCC 760 thus*** is inapplicable to present case since the appellant nos. 1 and 3 have distinctly identified the place of the said pond from where the boti was recovered. They identified the said boti as the murder weapon. The defense has not introduced any evidence of any past relation between the police and the PW 16. Thus, PW 16 is not proved to be a stock witness.

49. The nature of the injury found on the victim indicates that the throat cut on the victim was caused by a Boti. The middle portion of the victim's neck received the deepest cut. The middle portion of a blade of a Bonti is the sharpest. The reason is that the vegetables are cut through the middle portion of the Boti. The middle portion of the boti is most often sharpened by users.

50. Therefore, when the appellant nos. 1 and 3 applied the Boti on the neck of the victim, the middle portion of the blade of the boti came in contact with the neck of the victim and caused the deepest cut on middle of the neck of the victim. The statement of PW 23, the IO, inspires confidence in view of the fact that he has deposed that only the male accused persons identified the Boti. In this regard, we note that the accused women cannot be expected to hide the offending weapon in the pond. They cannot also be expected to have applied the Bonti on

the victim in the presence of the appellant nos. 1 and 3. They however actively participated in crime with the said two male appellants.

51. Had the IO intended to falsely implicate all the appellants, he could have deposed that all of them were present at the time of recovery. The IO had the opportunity to weave a story that all the appellants had identified the boti as the murder weapon. He, however, did not. His statement before the Trial Court on the identification of the murder weapon is thus trustworthy.

52. Learned Counsel for the appellant has argued that there was an absence of common intention amongst the appellants to end the life of the victim. However, all four appellants were present at the PO on that fateful night. They remained at the PO after the commission of the crime. The only witnesses to the murder of the victim thus were the four appellants.

53. No hue and cry was raised from the house of the victim on that fateful night. No one knew that the victim had been murdered till the appellant No. 1 informed PW 1 about it. Therefore, none of the inmates in the house of the victim offered any resistance to the execution of the murder of the victim. The four appellants were such inmates in addition to the victim. The medical evidence has established that the victim did not offer any resistance. There is evidence on record to indicate that the crime was committed in the bathroom adjacent to the toilet. The victim was later brought to the toilet and left to bleed

thereat, allowing the blood to flow directly into the Indian Style commode.

54. The assailants of the victim therefore intended that the victim gets murdered without anyone being alarmed. The victim was old and depressed and hence offered no resistance. He could easily have been pinned down by three others as one of them was cutting throat. The murder was made possible by the active participation of all the inmates of the victim's house. This indicates that all four appellants acted with a common intention

55. There was no noise from the house as the victim had not offered any resistance. This is evident from the arrival of the appellant no. 3 and 4 at the house of the victim on that fateful night. Appellant no. 4 was the daughter of the victim. She used to reside in her matrimonial home. She however came to the victim's house on that fateful night with her husband, the appellant number 3. They were thus allowed entry by the appellant nos. 1 and 2. The said fateful night was thus pre-planned.

56. Appellant Nos. 3 and 4 entered into the house of the victim; all the appellants then took control of the house, and thereafter executed their common plan namely the murder of the victim. When a group of persons assembling at the PO, each member thereof need not inflict injuries on the victim. Two or three of the appellants overpowered the old and frail victim. He may have also been gagged. The decision in ***Krishan Kumar & Anr v. The State of Haryana, reported in 2023***

INSC 679 is therefore inapplicable since common intention was not clearly proved in that case.

57. In the present case, the most major link in the chain of circumstances is the last seen theory. The neighbors of the victim have deposed that the appellant no. 3 (the son-in-law of the victim) and appellant no.4 (the daughter of the victim) were walking towards the house of the victim on that fateful night. The said neighbors have also found the appellants at the PO when they arrived thereat, upon being informed about the death of the victim. The argument of Ld counsel for the appellants that walking towards the house does not mean they entered the house of the appellant, cannot be accepted. At 9:30 in the night it is only natural and obvious that the daughter and son-in-law would go to the house of the victim. They would not be passing by as they did not reside in the village of the victim. This is another link in the chain of circumstances against the appellants.

58. The appellants Nos 1 and 2 they lived in the house of the victim in the ordinary course. There is therefore a presumption that the said appellants were in the house at the place and time of the murder. The arguments of ld Counsel for the appellants that the prosecution was required to prove that they were present the the PO cannot be accepted. It was upon the appellants to demonstrate that they were present elsewhere than the PO on the date and time of the incident. This has not been done.

59. In fact, the last seen theory in the present case assumes more significance since in effect, it translates to the theory of last stayed together. The appellants were not merely last seen with the victim. They were under the same roof with the victim on that fateful night. In ***the State Of Madhya Pradesh v. Balveer Singh 2025 INSC 261,*** it was held as follows:-

> 87. If an offence takes place inside the four walls of a house and in such circumstances where the accused has all the opportunity to plan and commit the offence at the time and in the circumstances of its choice**, it will be extremely difficult for the prosecution to lead direct evidence to establish the guilt of the accused**. ***It is to resolve such a situation that Section 106 of the Evidence Act exists in the statute book.....The law does not enjoin a duty on the prosecution to lead evidence of such character, which is almost impossible to be led, or at any rate, extremely difficult to be led. The duty on the prosecution is to lead such evidence, which it is capable of leading, having regard to the facts and circumstances of the case.***

60. It was impossible for the prosecution to lead evidence as regards what transpired in the house of the victim on that fateful night. There was no witness to the murder of the victim. The only eyewitnesses to the murder of the victim were the appellants in view of their presence with the victim under the same roof on that fateful night. Thus the events of that fateful night at the PO fell with the special knowledge of the said appellants. The appellants have not denied their presenece at the PO on the date of the incident.

61. A duty was therefore cast on the inmates of the said house to lead evidence as regards what happened to the victim on that fateful night. The appellants being the inmates of the house were in an exclusive

position to state as to why and how the throat of the victim was cut. The appellants were unable to demonstrate the same.

62. The prosecution is not duty-bound to prove a negative fact. The negative fact herein is that the appellants did not commit the crime notwithstanding that they were present under the same roof with the victim. The appellants were therefore duty-bound to lead positive evidence regarding their actions or inactions in the said house on that fateful night. The paragraph nos. 78 and 80 of ***Balveer Singh (supra)*** are of specific importance in this regard, wherein it was held as follows:-

> 78.: What lies at the bottom of the various rules shifting the evidential burden or burden of introducing evidence in proof of one's case as opposed to the persuasive burden or burden of proof, i.e., **of proving all the issues remaining with the prosecution and which never shift is the idea that it is impossible for the prosecution to give wholly convincing evidence on certain issues from its own hand and *it is therefore for the accused to give evidence on them if he wishes to escape***. Positive facts must always be proved by the prosecution. **But the same rule cannot always apply to negative facts. It is not for the prosecution to anticipate and eliminate all possible defences or circumstances which may exonerate an accused. Again, when a person does not act with some intention other than that which the character and circumstances of the act suggest, it is not for the prosecution to eliminate all the other possible intentions**.
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> 80. A manifest distinction exists between the burden of proof and the burden of going forward with the evidence. Generally, the burden of proof upon any affirmative proposition necessary to be established as the foundation of an issue does not shift, **but the burden of evidence or the burden of explanation may shift from one side to the other according to the testimony. Thus, if the prosecution has offered evidence, which if believed by the court, would convince them of the accused's guilt beyond a reasonable doubt, *the accused, if in a position, should go forward with countervailing evidence, if he has such evidence***. ***When facts are peculiarly within the knowledge of the accused, the burden is on him to present evidence of such facts, whether the proposition is an affirmative or negative one***. He is not required to do so even though a prima facie case has been established, for the court must still find that he is guilty beyond a reasonable doubt before it can convict. **However, the accused's failure to present evidence on his behalf may be**

> **regarded by the court as confirming the conclusion indicated by the evidence presented by the prosecution or as confirming presumptions which might arise therefrom**. Although not legally required to produce evidence on his own behalf***, the accused may therefore as a practical matter find it essential to go forward with proof.*** This does not alter the burden of proof resting upon the prosecution
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> Emphasis applied

63. When the foundational facts have established that it is the accused only who could have an answer to and lead evidence as regards a fact(namely who has murdered the victim in his house in the presence of the accused), the burden to introduce evidence that the accused did not murder the victim shifts to the accused.

64. The prosecution need not prove that the accused has in fact committed the murder. The prosecution has to demonstrate that the accused could only be the person who had the opportunity to kill the victim in the house since the accused was present with the victim.

65. When the accused fails to prove the said peculiar fact as to who caused the murder of the victim, the case of the prosecution that it was the accused only who could have murdered the victim stands reinforced. In the present case the prosecution has been able to prove the following foundational facts for the application of section 106 of the Indian Evidence Act-

A. The appellant no.1 and his wife, the appellant no. 2 resided with the victim father in the same house at the place and time of occurrence.

B. The appellant no.3 and his wife, the appellant no.4 joined them on that fateful night. The entry of the appellant nos. 3 and 4 in

the house of the victim on that fateful night has been confirmed and they were identified by PW4, PW5, PW6 and PW8. The said PWs have deposed that they saw the said two appellants entering the house of the victim on that fateful night around 9:30pm.

C. The evidence on record has established the walls of the house of the victim were sufficiently high. Hence, the said walls could not be easily crossed over by any other person. The door of the house of the victim was often locked. One can safely infer that the door of the house to let in the appellant nos.3 and appellant no.4 was opened by the said appellant nos. 1 and 2.

D. The appellants had a pre-existing dispute with the victim as regards the transfer of money in favor of the former lying in the hands of the victim.

E. The victim could not have committed suicide by cutting his own throat as in such case the boti would have been found at the PO.

F. The evidence led by the appellants before the trial court indicates that the appellants wrote about 6 months prior to his death, what could have been a testamentary disposition of his money contrary to the wishes of the appellants.

66. The prosecution therefore has been able to establish the presence of the appellants at the place and time of occurrence. The burden of proof therefore shifted on the appellants to demonstrate under Section 106 of the Evidence Act that either they were elsewhere than the P.O or that there were somebody else also in the P.O on the date and time of

occurrence. There is absolutely no evidence whatsoever in this regard brought by the appellants. They have not denied their presence at the PO.

67. The decision in ***Krishan Kumar & Anr v. The State of Haryana, reported in 2023 INSC 679***, cited by the appellant, has held that the evidence on the victim being last seen with the accused should be established by positive evidence. Evidence on the last seen theory should not be derived from inference from the other evidence on record. In the present case, all the appellants were with the victim at the PO as already demonstrated above. The decision in ***Krishan Kumar(supra)*** is thus inapplicable.

68. The said first link has established the motive of the appellants to kill the victim. The motive was to lay hands on the money of a reluctant victim. The second link has established the conduct of the appellant no. 1 after the commission of the crime. The conduct was one of suppression of the cause of the death of the victim from PW 1.

69. The third link has established the mental awareness of the appellant nos. 1 and 3 about the place where the murder weapon was kept. The medical evidence has established that the said murder weapon was used to cut the throat of the victim. The nature and extent of the injury on the neck of the victim has linked the said murder weapon with the murderous injury on the neck of the victim. The fourth link has established the exclusive presence of the appellants at

the house of the victim on that fateful night. The appellants's motive is also clearly established as discussed hereinabove.

70. The aforesaid links leads to the irresistible inference and only conclusion that all the four appellants were ad idem to kill the victim. They could be the only persons to kill the victim. They were driven and motivated by the urge to lay hands on the money of the victim. They thus took the extreme step of ending the life of the victim. In ***Balveer Singh (supra),*** it was held as follows:-

> 64. In a case of circumstantial evidence, the judgment remains essentially inferential. The inference is drawn from the established facts as the circumstances lead to particular inferences. The Court has to draw an inference with respect to whether the chain of circumstances is complete, and when the circumstances therein are collectively considered, the same must lead only to the irresistible conclusion that the accused alone is the perpetrator of the crime in question. All the circumstances so established must be of a conclusive nature, and consistent only with the hypothesis of the guilt of the accused.

71. In the backdrop of the aforesaid discussion this Court is of the view that the impugned judgment and order of conviction calls for no interference of this Court.

72. Insofar as the quantum of sentence imposed on the appellants this Court is of the view that the appellants had clearly acted with the common intention and motive to end the life of the victim.

73. The victim was stumbling block standing in their way from receiving the money of the victim from sale proceeds of his land of about 8 lacs and Rs.60,000 from the Co-operative bank, and his bank account balance and value of the Kisan Vikas Patras. The death of the victim would in

addition to achieving the ends of the appellants would also entitle them to proceeds of the insurance policies to the tune of Rs.1 lac.

74. The appellants pre-planned the murder. This is evident from the arrival and presence of the appellant nos. 3 and 4, who were supposed to at their own home. They however arrived at the house of the victim to take part in the murder of the victim. The appellants murdered the helpless victim who was old and weak and already depressed because of the death of his wife. The appellants were driven by undue pecuniary benefit. The appellants thus executed a cold blooded murder with all brutality.

CONCLUSION

75. In the light of the above, the sentence of imprisonment for life under Sections 302 read with Section 34 of the IPC is appropriate and calls absolutely for no interference. The appellants, if on bail, shall be immediately taken into custody by the jurisdictional police, and be produced before the jurisdictional court. The latter shall ensure that the appellants undergo the punishment imposed by the Trial Court, as stated above.

76. With the above observations, CRA 607 of 2016 therefore fails and hereby dismissed. Consequently, all connected applications shall stand dismissed

77. However there shall be no order as to costs.

78. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)

I Agree.

(Rai Chattopadyay, J.)