

IN THE HIGH COURT AT CALCUTTA

Criminal Application

Appellate Side

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

CRA 193 of 2020

IA No. CRAN 1 of 2020 (Old No. CRAN 4593 of 2020)

IA No. CRAN 2 of 2020 (Old No. CRAN 4594 of 2020)

Sk. Abu Kalam @ Kalam @ Akram

Versus

The State of West Bengal

For the appellant	: Mr. Arindam Jana, Adv.
	: Mr. Soumajit Chatterjee, Adv.
	: Mr. Sk. Toslim Ali, Adv.
For the State	: Mr. Saibal Bapuli, Id. APP.
	: Ms. Bibaswan Bhattacharya, Adv.
Hearing concluded on	: December 06, 2022
Judgment on	: December 15, 2022

Md. Shabbar Rashidi, J.:

1. The appeal is directed against the judgment of conviction dated 25.09.2019 and order of sentence dated 26.09.2019 passed by learned Second Additional Sessions Judge, Srirampur, Hooghly in connection with Sessions Trial No. 27 of 2012 convicting the appellant under section 302 of the Indian Penal Code.
2. The fact giving rise to the instant case is that the daughter of the de facto complainant was married some sixteen years ago. After five years of such marriage, she was separated from her husband and started residing in the locality of the de facto complainant i.e. her father, in a house near that of her father. She used to reside in the said house with her only daughter. For one or two years preceding the incident, the daughter of the de facto complainant started residing with the appellant Abu Kalam @ Kalam. The de facto complainant forbade his daughter

not to live with the appellant as there were many criminal cases pending against him. It was also reported that the daughter of the de facto complainant used to report her often that she was assaulted by the appellant.

- 3.** On 05.03.2012, the de facto complainant came to know from local people that at about 09.35 a.m., the appellant assaulted the daughter of the de facto complainant and the granddaughter with a crowbar in her own house on different parts of their bodies following some quarrel over the landed properties. As a result of such assault, the victims i.e. the daughter of the de facto complainant Halima and the granddaughter Reshma fell on the ground and the appellant fled away. The daughter of the de facto complainant was taken to Srirampur Hospital and the grand daughter to Uttarpara Hospital where both of them were declared brought dead by the doctors.

- 4.** On the basis of the written complaint lodged by the de facto complainant Mohammad Mallick on 05.03.2012, the case was registered as Dankuni Police Station case no. 57 dated 05.03.2012 under section 302 of the Indian Penal Code against the appellant Abul Kalam @ Kalam @ Akram. Two separate UD cases being Uttarpara Police Station UD Case No. 32 dated 05.03.2012 and Srirampur Police Station UD Case No. 46 dated 05.03.2012 were started. Inquests were conducted on the dead bodies of the two victims Halima and Reshma.
- 5.** The police took up investigation of the case and on completion of investigation submitted charge-sheet under section 302 of the Indian Penal Code against the appellant.
- 6.** Upon production of the appellant and on compliance of the provision under section 207 of the Code of Criminal Procedure, the case was committed to the Court Of Sessions. Accordingly, on the basis of

materials in the CD, charge under section 302 of the Indian Penal Code was framed against the appellant, which was admittedly read over and explained to him to which he pleaded not guilty and not claimed to be tried.

7. In order to substantiate the charge levelled against the appellant, the prosecution examined twenty-two witnesses in all. In addition, the prosecution also adduced documentary evidences.

8. The de facto complainant himself deposed as PW1. He has stated that being retired person, he was staying at Monoharpur under Dankuni Police Station. The victim Halima was the daughter and Reshma was his granddaughter. Halima was married about seventeen years ago with one Abbas Uddin residing at Kamarkundu and she had a daughter named Reshma out of the aforesaid wedlock. She had some altercations with her husband and, thereafter, she came back to PW1 and did not return to her

matrimonial house thereafter. PW1 also stated that he arranged one land beside his own house and constructed a house where Halima and her daughter used to reside. PW1 identified the appellant Abul Kalam as he had visiting terms at the house of Halima, rather he used to stay at her house in the night. PW1 forbade Halima not to let the appellant come to her house. He also forbade the appellant from visiting the house of Halima as he was a murderer and there were many cases pending against him. Halima did not pay any heed to it and started living with the appellant in the said house as husband and wife. It was further stated that as reported by Halima, the appellant used to threaten his daughter asking her to transfer the said house in his name otherwise she will be killed.

- 9.** PW1 also stated that his daughter Halima and granddaughter Reshma were murdered by the appellant by inflicting a sabol-blow on their heads on 05.03.2012 at about 9.30 a.m. Halima was sent to

Walsh Hospital and granddaughter of PW1 was sent to Uttarpara Hospital where they were declared brought dead by the doctors. PW1 has further stated that at the time of incident, he was at the house of his son Mairul Mallick when his granddaughter Reshma came there and stated that her mother was assaulted by Abul Kalam by an iron Sabol on her head and other parts causing bleeding injuries and she went unconscious. After giving such information Reshma went to her own house. Hearing this, PW1 and his son went towards the house of Halima closely following Reshma. PW1 further stated that his son saw Abul Kalam assaulting on the head of Reshma by a sabol. Seeing the son of PW1, the appellant fled away with the said sabol. When PW1 reached the house of Halima, both Halima and Reshma had been moved to the hospital. However, he could see torn blood-stained clothes and the earth was also blood-stained. Later on,

he came to know that both Halima and Reshma had expired.

- 10.** Following this, PW1 went to Dankuni Police Station and lodged written complaint written by one Sk Mubarak as per his instruction which was read over and explained by him and, thereafter, PW1 put his LTI on the said complaint. PW1 also stated that police visited the place of occurrence and seized blood-stained clothes and blood-stained soil in his presence and he put his LTI on the seizure list also. It was also stated by PW1 that no one except Halima, Reshma and the appellant Abul Kalam used to reside in the house. A room was being constructed by Halima with the help of a mason but the appellant drove the said mason and started assaulting Halima with a sabol. PW 1 also stated that about 10-12 days of the occurrence, the appellant Abul Kalam was brought in police custody to the locality where he made a statement to the effect that he had thrown away the sabol with which he

killed Halima and Reshma, into the jungle behind the house while fleeing away and he could find the sabol if police takes him to that place. The police took the appellant to the said place where he i.e. the appellant brought out the sabol from the bush, and, therefore, handing over that to the police, he, the accused identified the same to be the weapon by which he had killed Halima and Reshma. It was seized by the police in a seizure list.

- 11.** In his cross-examination, PW1 admitted that he or his daughter did not file any case against Abbas Uddin. He also admitted that he did not make any statement to the effect that he constructed the house for his daughter after purchasing a land. PW1 also stated in his cross-examination, that he did not state in the FIR or his statement before the police that 'his son saw the appellant assaulting Reshma by a sabol on her head and seeing his son, the appellant fled away.'

12. PW2 is a local resident of Monoharpur and used to work as helper of mason. He knew Reshma and Halima. He has stated that about two-three years ago, he went to the house of Halima for doing some work of masonry. Halima asked him to go back as there was no cement available on that day. Later at about twelve noon, PW2 heard that Halima expired. However, he cannot say how she expired. The witness was declared hostile. In his cross-examination on behalf of the prosecution, PW2 denied having made any statement before the police. However, he proved his signature on the seizure list (Exhibit 1).

13. PW3 is another resident of Monoharpur. He has stated that Halima was married to some person at Kamarkundu. Later on, owing to some differences, the said marriage was terminated by Talak. Since then, Halima has been residing in the village at her father's house provided by her father. He further stated that Halima and her daughter Reshma were murdered on

05.03.2012 at about 9/10 a.m. PW3 also stated that the appellant Abul Kalam used to stay with Halima in her house with Reshma. The appellant had a love affair with Halima, married her and started staying in the house of Halima. The appellant used to assault Halima physically and threaten her. PW3 also stated that on the day of incident, he was in the house of Mohammad Mallick, the de facto complainant. At that time, Reshma came to PW3 crying and requested him to accompany her as the appellant was assaulting her mother. PW3 also stated that his Mama (maternal uncle) Jiarat Mallick asked PW3 to accompany Reshma and that he will follow them. PW3 went to the house of Halima and found her lying in the courtyard in bleeding condition and the appellant was assaulting her with a sabol. PW3 also stated that thereafter the accused also went to assault Resma with the sabol. PW3 tried to catch hold of the accused but he fled away with the sabol. Subsequently, on the alarm

raised by PW3 Jiarat Mallick, people assembled. Reaching back to his house, PW3 could learn that Halima and Reshma were dead. PW3 accompanied Mohammad Mallick to the police station and scribed a complaint as per the instructions of Mohmmad Mallick. PW3 proved the written complaint (Exhibit 2) and his signature thereon. PW 3 also stated that police seized some blood-stained clothes and blood-stained earth from the house of Halima under the seizure list on which he signed (Exhibit 1/1). He also proved his signature on the statement recorded under section 164 of the Indian Penal Code (Exhibit 3) and that on the seizure list through which sabol was seized by the police as per the leading statement of the appellant (Exhibit 4). He further proved his signature on another paper (Exhibit 5) and identified the seized sabol (MAT Exhibit-I). In his cross-examination, PW3 stated that Halima was his masi (maternal aunt) and the de facto complainant was the father of his mother and that on

the day of incident, he visited the place of occurrence with his mama (maternal uncle) Jiarat Mallick.

14. PW4 is a seizure list witness and a resident of the village where the occurrence took place. He identified the accused. He is, however, a hearsay witness to the incident. Upon hearing the news of the incident, he visited the house of Halima where blood-stained earth and blood-stained clothes were seized by police in his presence. He proved his signature on the seizure list (Exhibit 1/2).

15. PW5 is another seizure list witness. He has proved his signature (Exhibit 1/3). However, he has stated that he signed on the seizure list as per request of the police. The witness was also declared hostile and in his cross-examination for the prosecution, he denied having made any statement before police.

16. Similar statement has been made by PW6. He proved his signature (Exhibit 1/4). This witness was

also declared hostile by the prosecution and he denied having made any statement before police.

17. PW7 is an employee of Uttara Para State General Hospital. He has stated that on 05.03.2012, he reported IC, Uttara Para about the death of a patient. Police conducted the inquest over the dead body and he signed on it. He proved his signature (Exhibit 6).

18. PW8 is a police person who carried the dead body to the morgue of Walsh Hospital under dead body challan (Exhibit 7). He also handed over the wearing apparel, viscera etc. of the deceased to the investigating officer which were received under seizure list. PW8 proved his signature on the seizure list (exhibit 8).

19. Another police person has deposed as PW9. He carried the dead body of a lady from Uttara Para hospital to Srirampur Walsh Hospital where post mortem was conducted over the said dead body. PW9 proved the dead body challan (Exhibit 9).

20. The assistant director of FSL Kolkata was examined as PW10. She has stated that on 20.03.2012, she received five solid paper covers in connection with Dankuni Police Station Case no. 57 of 12 dated 5,3,12 which were marked with the letters A, B, C, D and E. She examined the contents of the aforesaid solid packets.

21. PW10 stated that she examined one cylindrical iron rod with chisel shape of one end and the other end was blunt and partly broken. The said iron rod contained dark brown stains which were found to be brought on examination. On examination, PW 10 also found blood on two closed vials, one saree and one blouse; and one kamiz (wearing apparel) contained in the packets. For detection of blood group, the samples were sent to the serologist, Government of India at Kolkata. Upon receipt of the serologist's report, PW10 prepared her report which she tendered and proved at the trial (Exhibit-10). She also proved the report of the

serologist dated 30.07.2014 (Exhibit-11). She also proved her letter to the serologist (Exhibit-12). PW10 also identified the iron rod examined by her (MAT Exhibit-I). She also proved the parcel packets marked as 'C', 'B' and 'D' examined by her (MAT Exhibit II, III and IV respectively). She also identified the saree and two card board packets the contents of which were examined by her (Exhibit-V, VI and VII respectively). In her cross-examination, she stated that the serologist could not ascertain the blood group found on the wearing apparel, iron rod, PM blood which were examined by her.

22. The Assistant Serologist and Chemical Examiner deposed as PW 11. He stated that he examined exhibited items i.e. 'sabal', blood soaked cotton, sari, blouse and shirt (Kameez) requestd by the Assistant Director of Biological Division, Forensic Science Laboratory, Kolkata. Upon examination, he prepared his report on 30.07.2014. He proved his report (Exhibit

11). In his cross examination, PW 11 stated that the origin of blood on the three pieces of cotton swab could not be ascertained.

23. PW 12 is the police officer who started Serampore Police Station U. D. Case No. 46 of 2012 on the basis of information received from Dr. Amit Chakraborty of Walsh Hospital, Serampore. He made necessary entries in the relevant register and proved the same (Exhibit 13). He also conducted inquest on the dead body of one Halima Begum and prepared a report in this regard (Exhibit 14). PW 12 also sent the dead body for post mortem examination, requisition for holding magisterial inquest to the SDO, Serampore and autopsy surgeon for preserving the visceral, nail, hair, blood etc. Subsequently, he collected the aforesaid articles along with the wearing apparels and handed over the same to the duty officer.

24. The Deputy Magistrate who conducted the magisterial inquest on 06.3.2012 has been examined

as PW 13. He has proved the inquest report prepared under his pen and signature (Exhibit 15).

25. PW 14 is the Doctor of Walsh Hospital S. D. Hospital, Serampore. He attended the patient Halima on 05.3.2012 and opined her brought dead upon examination.

26. PW 15 is a police officer. He has proved relevant entries in the U D Case register in connection with Uttarpara Police Station U. D. Case No. 32/12 dated 05.3.2012 and certified copy thereof (Exhibit 16 and 16/1).

27. The brother of the victim Halima deposed as PW 16. He stated that his sister Halima was married to Abbas of Kamarkundu and they had a daughter Reshma, out of the aforesaid wedlock. However, after the birth of the child, disputes cropped up and ended in divorce. Halima returned to her father's house and started residing with them. Subsequently, her father (PW 1) purchased a land and constructed house for

Halima a few yards away from her father's house where Halima started residing with her daughter Reshma.

28. PW16 identified the appellant. The appellant used to visit the said house and even spent night therein. PW 16 and his father asked her not to allow the appellant as there were several cases pending against him and he was a murderer. They also asked the appellant not to visit the house of Halima. Halima did not pay any heed to such request and continued to live with the appellant as husband and wife. There was frequent disharmony among them. PW 16 also stated that the appellant used to threaten Halima of murdering her and her daughter if the house was not transferred in his name.

29. It was further stated that the appellant killed Halima and Reshma on 05.3.2012. On that day, PW 16 and his father (PW 1) were in the house when Reshma came there crying and reported that appellant Abu

Kalam was assaulting her mother. PW 16 asked Reshma to go to her house and he would follow her. He also asked his nephew Mobarak to proceed to the house of Halima. Putting his wearing apparels, PW 16 proceeded towards the house of Halima while Mobarak was 50/60 cubits ahead. Going there, from the distance of a few yards, PW16 could see that his sister Halima was lying in her courtyard in bleeding condition. PW 16 also saw the appellant assaulting Reshma on her head on the ground that she informed the incident to her maternal uncle. Seeing PW 16 and Mobarak, the appellant fled away with the iron rod/crowbar with which he was assaulting Reshma. PW 16 chased him but failed to apprehend the appellant. On return, PW 16 found both Halima and Reshma lying with bleeding injuries. Reshma was taken to Uttarpura Hospital whereas Halima was moved to Serampore Hospital. PW 16 then went to police station. The Doctors in the respective Hospitals,

declared Halima and Reshma as dead. PW 16 proved his signature on the inquest reports of Reshma and Hlaima (Exhibits 6/1 and 14/1 respectively). He also proved his signature on the magisterial inquest report on the dead body of Halima (Exhibit 15/1). PW 16 also proved his signature on the seizure list through which offending crow bar was recovered as per leading statement of the appellant after 5/6 days and a on the label (Exhibit 4/1 and Exhibit 5/1). He also identified the offending crow bar (Sabal) in court. He also proved his signatures on his statement recorded under section 164 of the Code of Criminal Procedure. In his cross examination PW 16 admitted that he was an accused in a case on the charges of murder of one of the relatives of appellant.

30. The police officer who conducted inquest on the dead body of Reshma Khatun deposed as PW 17. He stated that he conducted the inquest at Uttarpara State General Hospital on 05.3.2012 in connection

with Uttarpara Police Station U. D. Case No. 32/12 dated 05.3.2012. He has proved the inquest report prepared in his pen and signature (Exhibit 6/2). He also sent the dead body to Serampore Walsh Hospital for post mortem examination under a challan (Exhibit 9). He received back the visceral blood samples, nail, hairs etc. of the victim and handed over the same to the investigating officer.

31. PW 18 is the learned Judicial Magistrate who recorded the statements of Sk. Mobarak (PW 3) and Jiyarath Mallick (PW 16) under the provisions of section 164 of the Code of Criminal Procedure in connection with Dankuni Police Station Case No. 57 dated 05.3.2012 duly identified police personnel. She proved the statements (Exhibit 3/4 and Exhibit 17/4 respectively).

32. PW 19 is the recording officer. He received the written complaint from Md. Mallick on 05.3.2012 by making an endorsement to that effect on the complaint

itself (Exhibit 2/1). On the basis of such complaint, he started Dankuni Police Station Case No. 57/2012 dated 05.3.2012 under section 302 of the Indian Penal Code. He proved the formal FIR filled up in his pen and signature (Exhibit 18).

33. PW 20 is the medical officer of S. G. Hospital. She stated that on 05.3.2012, she examined one Reshma Khatun who was brought dead. PW 20 proved a report prepared by her in this regard (Exhibit 19).

34. The autopsy surgeon was examined as PW 21. He has stated that on 06.3.2012 he conducted post mortem on the dead body of Halima in connection with Serampore Police Station U.D. Case No.46/2012 dated 05.3.2012. He proved the post mortem report prepared by him (Exhibit 20).

35. On the same day, he conducted post mortem over the dead body of Reshma Khatoon in connection with Serampore Police Station U.D. Case No.32/2012 dated 05.3.2012 and proved the post mortem report

prepared with his pen and signature (Exhibit 21). He also sent the nail, hairs, blood etc. of Halima for forensic examination under a forwarding note (Exhibit 22). PW 21 opined that the injuries found on the body of Halima and Reshma could be caused by blunt object like 'Sabal'.

36. The investigating officer deposed as PW 22. He has stated that being endorsed with the investigation of Dankuni Police Station Case No. 57/2012 dated 05.3.2012, he visited the place of occurrence and prepared its rough sketch map with index (Exhibit 23 & 23/1). He seized the bloodstained earth, plain earth and a wet piece of cloth with bloodstains under a seizure list (Exhibit 1/5) and recorded the statement of witness under section 161 of the Criminal Procedure Code. He also arrested the accused Abu Kalam on 12.03.2012 and submitted a prayer for his police remand. During such remand, PW 22 recovered the offending weapon i.e. iron made 'Sabal' as shown by

the accused from bushes about 100 meters from the house of the deceased, under a seizure list in presence of witnesses (Exhibit 4/2). He also identified the said Sabal (Mat. Ext. I). PW 22 also proved the relevant part of the statement under section 161 of the Code of Criminal Procedure of the appellant leading to recovery of the offending weapon (Exhibit 24) and the label attached to it (Exhibit 5/2). He collected the inquest reports, post mortem reports and sent the seized articles for forensic examination.

37. PW 22 also stated that witness Sk. Samirul Islam stated before him that on 05.3.2012 he along with others went to the house of Halima for work and accused Abu Kalam told them to go away. A verbal dispute was going on and at about 9.35 am he heard that accused Abu Kalam assaulted Halima and Reshma with Sabla causing severe bleeding injuries. PW 22 also stated that witness Sanowar Mir stated before him that for some days he was working at the

house of Halima and he saw quarrel between Halima and Abu Kalam and Halima was assaulted. He further stated that on 05.2.2012 he went to work at Halima's house and accused told him to go away. Later hearing that Abu Kalam has severely assaulted Halim and Reshma he went to Halima's house and found Halima and Reshma in a pool of blood and Abu Kalam fled away. PW 22 also stated that witness Sk. Hakim stated before him that Abu Kalam @ Akram married Halima and used to stay together. Abu Kalam demanded transfer of Halima's house in his name which she denied whereupon Abu Kalam quarreled with and assaulted her in his presence. The said witness also stated that on 05.3.2012, he went to the house of Halima for work but Abu Kalam told him to go away. Being reported both Halima and Reshma were assaulted by Abu Kalam, he went to their house and found them in unconscious state.

38. On completion of investigation, PW 22 submitted charge sheet against the appellant Abu Kalam under section 302 of the Indian Penal Code.

39. It is the case of the prosecution that on 05.3.2012 Halima and Reshma sustained bleeding injuries at their house. Halima was moved to Serampore Hospital whereas Reshma was taken to Uttarpara Hospital. They were attended by the doctor at the respective Hospitals and were declared dead. PW 20 the doctor at State General Hospital has deposed that on 05.3.2012, he examined one Reshma Khatun brought and identified by her uncle Jiyarat Mallik. She was brought dead. He prepared a report in this regard (Exhibit 19). He informed the death to the Ward Master. The Ward Master, PW 7 has testified that on 05.3.2012, he being the Ward Master at Uttarpara State General Hospital reported the I.C. of Uttarpara police station that one patient was declared brought dead by the attending doctor and an inquest was

conducted over the dead body. PW 17 conducted inquest on the dead body of Reshma aged about 16 years in connection with U.D. Case No.32/2012 on 05.3.2012 itself and prepared an inquest report (Ext. 6/2). He also sent the dead body to Serampore Walsh Hospital for post mortem examination under a 'challan' (Ext.9) through Constable Sunil Middah (PW9).

40. Similarly, PW 12 conducted inquest on the dead body of Halima in connection with U.D. Case No. 46 dated 05.3.2012 on the said date itself and prepared the inquest report (Ext. 14). After such inquest, he sent the dead body of Halima Begum for post mortem examination. PW 14 attended Halima in the Walsh Hospital, Serampore, on 05.3.2012 and had opined the patient brought dead. He advised post mortem examination of the dead body.

41. Accordingly, on the following day i.e. 06.3.2012, post mortem examination was conducted on both the dead bodies by PW21 followed by preparation of post

mortem reports (Exts. 20 & 21). According to PW 21, the injuries found during the post mortem examination on the person of Halima Khatun, could be caused if she was hit on her head by some blunt weapon like 'Sabal'. Similarly, PW 21 had opined that the injuries found on the body of Reshma Khatoon could be caused if she was hit or if she came in forceful contact with some blunt weapon.

42. The post mortem report of Halima Begum (Ext.20) showed injuries on her person that's to say:

- i. Blank eye both side.**
- ii. Lacerated wound 3 inches x 1 ½ inches at the left side of forehead.**
- iii. Puncture wound of bone of nose & angle of mouth left side.**
- iv. Lacerated injury 2 ½ inch x 1 ½ inch over vertex.**
- v. Lacerated wound over left parieto occipital region 2 ½ inch x ½ inch.**

- vi. The autopsy surgeon opined the cause of death as the effect of above noted injuries which were ante-mortem and homicidal in nature.**
- vii. Similarly, the post mortem examination of Reshma Khatun (Ext. 21) described the injuries on her person as:**
- viii. Left pinna is bifurcated.**
- ix. 1 ½ inch x ½ inch lacerated wound over left parietal region brain matter came out.**
- x. 2 inches x ½ inches lacerated wound over left parietal region.**
- xi. 3 inches x ½ inch lacerated wound over occipital region.**
- xii. Puncture wound over right eyebrow ½ inch x ½ inch.**
- xiii. The doctor opined that death was due to the injuries so noted which were homicidal in nature.**

43. Therefore, on the basis of evidence so adduced, it is quite evident that both Halima Begum and Reshma Khatun died of injuries caused to them by blunt weapon and that the injuries were ante mortem and homicidal in nature. As such, it can safely be held that both Halima and Reshma were murdered.

44. According to the story set out by the prosecution, Halima and Reshma were murdered by the appellant. He assaulted both of them by an iron 'Sabal' causing injuries which were sufficient to cause death. The appellant is said to have assaulted the victims and fled away with the offending weapon which he threw in the bushes few meters away from their house which was later on, recovered on the statement of the appellant.

45. On the basis of such evidence, adduced on behalf of the prosecution at the trial, the appellant was examined under the provisions of section 313 of the

Code of Criminal procedure. He pleaded innocence but declined to adduce any defense witness.

46. On the basis of evidence so adduced on behalf of the prosecution and upon examination of the appellant under section 313 of the Criminal Procedure Code, learned trial court, by the impugned judgment and order convicted the appellant and sentenced to undergo Rigorous Imprisonment for life and to pay a fine of Rs. 50,000/- and in default of payment of fine, to undergo further Rigorous Imprisonment for 5 years, for the offence punishable under section 302 of the Indian Penal Code, 1860.

47. The appellant has challenged the veracity of the statement of PW 1,3 and 16 in so far it relates to the reporting of incident by one of the victim Reshma. It is argued that no such statement was made by the aforesaid witnesses while lodging the written complaint and when their statements were recorded under section 161 of the Code of Criminal Procedure.

48. In his cross examination, PW 22 admitted that no specific identification mark was noted in the seizure list with regard to the offending 'Sabal'. He has further stated that the de-facto complainant (PW1) did not state before him that his granddaughter reported him that her mother was being assaulted by Abu Kalam by an iron Sabal causing bleeding injuries and she went unconscious. It was also not stated by the said witness that after giving such information Reshma went to her house followed by son of PW 1 and himself and that going there he found bloodstained cloth and earth. PW 22 admitted in his cross examination that de facto complainant never put his LTI on the seizure lists dated 05.3.2012 and 15.3.2012. PW 22 further stated that witness Sk. Samirul did not state before him that Abu Kalam asked him to go away and there was an altercation between Halima and Abu Kalam and Abu Kalam assaulted Halima and Reshma with a Sabal and fled away and the said witness found both of them in a

pool of blood. PW 22 also stated that witness Mobarak did not state before him that he saw the accused assaulting Halima with a 'Sabal' or that he went to assault Reshma with the 'Sabal'.

49. Appellant seeks to assail the impugned judgment and order of conviction. According to the story set out in the First Information Report, the victim Halima used to reside in her house provided by her father (PW 1) with the appellant and her daughter. On 05.3.2012, the de facto complainant came to know from local people that his daughter Halima and granddaughter Reshma were assaulted by the appellant by a crowbar, on her head and other parts of the body. As a result, they fell down with bleeding injuries and the appellant fled away. Local people took Halima to Serampore Hospital whereas, Reshma was taken to Uttarpara Hospital.

50. It is contended on behalf of the appellant that the de-facto complainant while deposing before the

Court made improvement in his statement in the FIR by stating that his granddaughter Reshma had rushed to the house of de-facto complainant's son where he was also present and had reported that the appellant was assaulting her mother. On such report the son of the de-facto complainant and his grandson Mubarak had been to the house of Halima where they could see the appellant assaulting Reshma and then fled away. It is argued that this part of the statement by PW 1 was not made by him either in the written complaint or in his statement recorded under section 161 of the Code of Criminal Procedure. Therefore, such part of the deposition is not worthy of trust.

51. Similar statements regarding report of incident by Reshma were made by PW 3 and PW 16 whereupon the two witnesses proceeded to the house of Halima and found her lying with bleeding injuries. Both the witnesses claimed to have seen the appellant assaulting Reshma and fleeing away. Such statements,

according to the appellant, were not made by them when they were interrogated by the police. The investigating officer, (PW 22) in his cross examination, had admitted that PW 3 did not state before him that he saw the accused assaulting Halima and went to assault Reshma with a 'Sabal'. However, attention of PW 22 was never drawn to such contradiction in respect of PW16. Therefore, the statements by PW 1 and PW3 with regard to report of the incident by Reshma and they having witnessed assault upon Halima and Reshma by the appellant may not be safely relied upon.

52. Nevertheless, there are statements on record that the appellant and Halima used to reside in the same house as husband and wife is consistent. There appears no cross examination or suggestion on the part of the appellant that he did not reside with Halima. PW 1, 3, 4 and 16 have stated that the appellant Abu Kalam used to reside with Halima and

Reshma in the house of Halima as husband and wife. Evidence even disclosed that the appellant had married Halima. In his examination under section 313 of the Code of Criminal Procedure, the appellant was asked that he had a love affair with Halima and after marrying her he used to stay with Halima in her house and that he used to physically assault Halima and even threatened to kill her on occasions, to which the appellant pleaded innocence but there was no specific denial on his part of the relationship and staying together.

53. Learned advocate for the appellant has relied upon a decision of **Yudhistir Versus State of Madhya Pradesh, 1971 (3) Supreme Court cases**. In the aforesaid case also, the Hon'ble Supreme Court declined to consider the evidence of a witness who omitted to inculcate the accused at the initial stage but in their statement at later stage, they referred the accused to some specific role in the commission of the

crime. In the case at hand also, certain statement regarding reporting of the incident by one of the victims Reshma to the effect that 'the appellant was assaulting her mother' seems to be an improvement over the previous statement of the said witnesses. For the aforesaid reason, the statements of PW1, 3, 4 and 8 to the extent, cannot be safely relied upon.

54. The appellant also relied upon the case of **State of Orissa versus Mr. Brahamananda reported in (1976) 4 SCC 288**. In the aforesaid case, the witness did not disclose the name of the assailant for a day and half in spite of having witnessed the occurrence, the testimony of such witness was found not reliable by the Hon'ble Supreme Court. In the instant case, however, the first information report was lodged on the date of incident i.e. on 05.03.2012. The de facto complainant in that very first information report had disclosed the name of the appellant as assailant. We have already concluded to discard the portion of the

statement which was not made at the initial stage but later on it was included in the statement.

55. On the basis of such evidence, there appears no doubt that the appellant was living together with Halima and Reshma in the house of Halima. Furthermore, it consistently comes out from the written complaint as well as the evidence of the aforesaid witnesses that the victim Halima and Reshma were assaulted by the appellant.

56. In that view of the facts, and in the given relationship between the appellant and Halima, the appellant was surely, under obligation to explain the circumstances leading to the death of Halima and Reshma in the house where he himself used to reside with the victims. The appellant has not been able to, rather never endeavored to discharge his obligation.

57. From the aforementioned discussion, we can summarise that if the recovery of bloodstained articles is proved beyond reasonable doubt by the prosecution,

and if the investigation was not found to be tainted, then it may be sufficient if the prosecution shows that the blood found on the articles is of human origin, even though the blood group is not proved because of disintegration of blood. The Court will have to come to the conclusion based on the facts and circumstances of each case, and there cannot be any fixed formula that the prosecution has to prove, or need not prove, that the blood groups match.

58. It has been contended on behalf of the appellant that the types of article recovered are easily available in open market and that the same has been recovered from an open place. It has also been challenged on the ground that such a recovered weapon was sent for forensic examination but the serologist could not detect the origin of blood on the said article.

59. In this regard, the appellant has relied upon the decision of **Balwant Singh versus Chattisgarh and anr. Reported in (2019) 7 SCC 781**. The learned

advocate for the appellant has drawn our attention to paragraphs 10 and 11 of the aforesaid judgment which lays down in the following terms:

***“10. As per the case of the prosecution, Balwan Singh is a powerful and influential person and the eyewitnesses were scared of him. It is relevant to note that even at the time of the recording of the statements of PW 9 and PW 16 after eight days of the incident, Blawan Singh was not arrested. He was arrested after about two months from the recording of the statements of these witnesses. It is relevant to note that these witnesses were not scared of other accused who were arrested. Be that as it may, we find that the whole story of the prosecution about the presence of PW9 and PW 16 on the spot at the time of the incident appears to be artificial and concocted.*”**

11. The prosecution also relies upon the evidence relating to recovery of sticks and tabbal which were bloodstained. Such evidence may not be helpful to the prosecution in this case inasmuch as there is no evidence to show that these articles were stained with human blood, and more particularly with blood of the same blood group as that of the deceased. As per the forensic science laboratory report, the bloodstains were disintegrated, and their origin could not be determined.”

60. However in the instant case, no case has been made out that the appellant was very influential person which operated as a deterrent in disclosing his name as assailant. Therefore, the ratio laid down in paragraph 10 of the aforesaid judgment has no applicability in the facts and circumstances in this case. So far as the principles laid down in paragraph

11 with regard to the chemical examiners report over the origin of blood, found on the seized articles are concerned, the Hon'ble Supreme Court in the self-same judgment in paragraph 23 has been pleased to lay down that,

“23. From the aforementioned discussion, we can summarize that if the recovery of bloodstained articles is proved beyond reasonable doubt by the prosecution, and if the investigation was not found to be tainted, then it may be sufficient if the prosecution shows that the blood found on the articles is of human origin though, even though the blood group is not proved because of disintegration of blood. The court will have to come to the conclusion based on the facts and circumstances of each case, and there cannot be any fixed

formula that the prosecution has to prove, or need not prove, that the blood groups match.”

61. The learned advocate for the appellant has also relied upon an unreported decision of Hon’ble Supreme Court in Criminal Appeal No. 613 of 2016, **ADUKKALPATTU MANI versus State of Andhra Pradesh**, in the aforesaid case, the Hon’ble Court was pleased to hold that

“On going through the evidence of PW-8, we find that his deposition does not inspire confidence of the Court, particularly since he has admitted that he is not an expert in postmortem examination and that he did not take any opinion from other experts while giving his final opinion as to the cause of death. It has also been admitted by him that sometimes, ante-mortem burn injuries may appear to be postmortem in

nature. Thus, from the evidence of PW-8, it is clear that he is not only confused, but he has also tried to mislead the Court by deposing in vague terms.”

62. However, in the instant case, although offending weapon was seized as per the leading statement of the appellant himself from bush, the said weapon was sent for chemical examination but the origin of blood or blood group cannot be detected. The evidence on record goes to show that the recovery was made after over fifteen days of the occurrence. There is every possibility of disintegration of the blood clots required for the purpose of chemical examination. Nevertheless, the fact remains that the seized weapon was recovered as per the leading statement of the appellant. In the case of **ADUKKALPATTU MANI (supra)**, the Hon’ble Supreme Court was hesitant to accept the evidence of the medical officer on the ground that he admitted in his deposition that he was not an expert in

postmortem examination in as much as he was a civil assistant surgeon. However, in the facts of the aforesaid case, the medical officer conducted postmortem on a dead body where death was caused due to burn injuries. In the instant case, however, in his cross-examination, PW21 has stated that he had an added diploma in public health and he was not an autopsy surgeon. He was then posted as Deputy Superintendent at the Kolkata Medical College and Hospital at the relevant time. He although stated that he was not an autopsy surgeon, but he never deposed that he was not an expert in postmortem examination. Moreover, in connection with the case at hand, he was investigating the case of death in case of assault by hard blunt object. In view of the facts involved in the instant case, it cannot be said that PW21 was incapable of holding postmortem examination. The said witness was extensively cross-examined on behalf of the appellant with regard to the injuries found on

the person of the victims. In the facts and circumstances of the present case, it does not seem advisable to completely discard the testimony of PW1 merely on the ground that he was not a designated autopsy surgeon.

63. Therefore, in view of the deposition of PW21 together with the testimony of Exhibits 20 and 21 and also taking into consideration the evidence of other witnesses' examination on behalf of the prosecution, there appears no iota of doubt regarding death of the victims Halima Begam and Reshma Khatun due to the injuries inflicted by blunt substance.

64. We have already held herein that the appellant was living with the victims under the same roof as husband and wife and as such, he was under obligation to explain the circumstances leading to the death of the two victims. The appellant has not been able to discharge his obligation in terms of the provision under section 106 of the Indian Evidence

Act. The circumstances coming out from the evidence on record gives rise to a definite proposition pointing to the guilt of the appellant and no one else.

65. Hence in the light of the discussion made herein we find no reason to interfere with the impugned judgment of conviction and order of sentence dated 26.09.2019 passed by learned Second Additional Sessions Judge, Srirampur, Hooghly in connection with Sessions Trial No. 27 of 2012.

66. Accordingly, the appeal being **CRA No. 193 of 2020** is, therefore, dismissed.

67. Period of detention suffered by the appellant during investigation, enquiry and trial shall be set off from the substantive sentence imposed upon the appellant in terms of Section 428 of the Code of Criminal Procedure.

68. Copy of the judgment along with Trial Court Records be sent down to the appropriate court at once for necessary compliance.

69. Urgent Photostat Certified copy of this order, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

70. Connected applications, if any, shall stand disposed of.

[MD. SHABBAR RASHIDI, J.]

71. I agree.

[DEBANGSU BASAK, J.]