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18.03.2025.
Sudipta/sp/pk/ap

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION**

Present:

The Hon'ble Justice Rajasekhar Mantha
&
The Hon'ble Justice Ajay Kumar Gupta

**C.R.A. No. 383 of 2012
With
I.A. No. CRAN 3 of 2025**

**Rinku Sk. & Ors.
Versus
The State of West Bengal**

Mr. Mrityunjoy Chatterjee,
Mr. Manas Das,
Ms. Suchismita Chatterjee,
Mr. Akash Sarkar

...For the appellants.

Mrs. Zareen N. Khan,
Mr. Antarikhya Basu,
Ms. Rita Dutta

...For the State.

Rajasekhar Mantha, J.

1. Report of the Baishnabnagar Police Station dated 16th March, 2025 is taken on record. The report of the Kaliachak – I Gram Panchayat is annexed to the said report.
2. It appears from the records that two of the appellants, namely, Sujan Bibi and Sukuruddin Sk. have died. It further appears from the records that amongst three other appellants, two are on bail.
3. The instant appeal is directed against judgment and order of conviction dated 25.04.2012 and 26.04.2013 passed by the Additional Sessions Judge, Fast Track, 4th Court, Malda

in Sessions Trial No. 22 of 2011 arising out of Sessions Case No. 87 of 2009 file in number convicting the appellants to life imprisonment under Section 302/34 of the Indian Penal Code.

4. The prosecution case in brief is that the victim, Nazima Khatun, wife of Rinku Sk. was brutally assaulted and murdered with a hansua (sickle) in her matrimonial home.

5. The incident occurred on 11th October, 2007 between 7.30 and 8.00 p.m. The complainant was the father of the victim, Humayan Mia.

6. The victim was originally married to one Putul Sk. (PW 13). He divorced the victim, by way of Talaqnama in accordance with law in front of witnesses. She thereafter married the appellant no. 1, Rinku Sk. The evidence on record indicates the defence case that the victim continued her relationship with the first husband despite the second marriage. The matter came to the knowledge of the appellants.

7. The appellant no. 1, Rinku Sk. had a brother called Sukuruddin Sk. (now deceased after conviction). He also had a sister called Chinta Bibi. Sahanur Bibi, the other appellant was the wife of Sukuruddin Sk. Sujan Bibi was the mother of Rinku Sk and Sukuruddin Sk.

8. Upon coming to know of the murder of the victim, PW 1 to PW 6 are stated to have come to the place of occurrence and had found the victim lying in a pool of blood inside her bed room in the marital house. All the appellants had fled the place of occurrence.

9. The appellant no. 1 Rinku Sk. was arrested from a market in a nearby village upon being caught by local people. When the police arrived and detained him he confessed and showed the I.O. (PW 20) the place where he hid the offending weapon i.e. on the ceiling of his tiled residence at the place of occurrence. The weapon was covered with blood. The seizure was effected in presence of three witnesses PW 6, 11 and 12. The blood-stained wearing apparels of the appellant no. 1 were also seized.

10. The other appellants were apprehended the next day. The records do not indicate as to when Sukuruddin Sk. was arrested. The seized wearing apparels and offending weapons were sent for forensic examination to the FSL, Jalpaiguri. Wearing apparel of the deceased was also seized and sent to the FSL. The blood-stained portions of the weapon and the apparels were sent for serology test to a laboratory at Calcutta.

11. FSL indicated that the blood on the wearing apparel of the appellant no. 1 and the offending weapon were human blood. Blood group, however, could not be determined by the Serologist.

12. After investigation was commenced, sketch map was prepared and the inquest was performed on the body of the victim in presence of the Magistrate. The body was later sent for post mortem. Injuries on the body of the victim are as follows :

“On Examination I found – rigomortis present, Body was pale, I found the following external injuries:

- 1) fresh sharpout wound with haemorage and smooth margin over –

- a) right side of face, horizontally measuring 4" x $\frac{3}{4}$ " x bone deep
- b) right side of face and scalp horizontally measuring 5" x 2" x bone deep over face and $\frac{1}{8}$ " deep over scalp and left arm dorshally and horizontally measuring 3" x $2\frac{1}{2}$ " x $2\frac{1}{2}$ "
- c) front side of right side of chest horizontally measuring 5" x $2\frac{1}{2}$ " x lung deep.
- d) Right breast horizontally 1 $\frac{1}{2}$ " x $\frac{1}{4}$ 2 x $\frac{1}{4}$ ".
- e) Lower part of frontal chest obliquely measuring 8" x 3" viscera deep.
- f) Upper part of left side of abdomen – almost horizontally measuring 3 $\frac{1}{2}$ " x 1 $\frac{1}{4}$ " viscera deep.
- g) Upper part of abdomen almost horizontally measuring 3" x 3 $\frac{1}{2}$ " – viscera deep and 4" x 3" x viscera deep.
- h) Lower part of left forearm 4" x 2" x full bone deep.
- i) Upper part of left side of chest over back obliquely measuring 1" x $\frac{1}{8}$ " x $\frac{1}{8}$ ".
- j) Upper part of abdomen horizontally measuring 3" x $\frac{1}{2}$ " x viscera deep.
- k) Upper part of right thigh over front horizontal measuring 3" x $2\frac{1}{2}$ - partial bone deep.
- l) Right palm horizontally measuring 5" x 1 $\frac{1}{2}$ " x bone deep.
- m) Left side of neck over back obliquely measuring 3" x 1" x 1".
- n) Left side of forehead measuring 2" x $\frac{1}{8}$ th" x $\frac{1}{8}$ ".
- o) Front of neck towards left obliquely measuring 4" x 2" oesophague deep cutting mucclle vessels, thyroid cartilage, oesophagua over front of neck.

2. no other external injury was found.

On dis-section-

All organs were pale. Cut injury over chest cutting 4th, 5th 9th and 10th rib right side of chest and 5th and 6th ribs over left side of chest and sternum. Cut injury over right palm measuring 4" x $\frac{1}{4}$ " x 1" and 3" x $\frac{1}{4}$ " and 1" and over left lung measuring 2" x $\frac{1}{4}$ " x 1". Cut injury over heart measuring 3" x $\frac{1}{8}$ " x chamber deep. Peritoneal cavity contains large amount of blood. Cut injury over stomach measuring 3" x $\frac{1}{8}$ " – cavity deep and contains undigested food.

Multiple sharp cut wound over small intestine.

Cut injury over lever front side measuring 4" x $\frac{1}{2}$ " x 1".

Probable time since death – within 36 hrs. of P.M. examination.

In my opinion death was due to the effect of antimortem injury as stated in my report and death is homicidal in nature. All injuries were anti-mortem. Caused by hard and sharp cutting weapon.

All injuries collectively and by fact, chest, abdomen, left forearm, right thigh, right palm neck injuries individually are sufficient to cause death."

13. Statements under Section 161 of the Cr. P. C. were recorded of several witnesses particularly PW 1 to PW7 and PW 9.

14. After completion of investigation, charge sheet was filed under Section 498A/302 read with Section 34 of the IPC. The Trial commenced after the accused pleaded “not guilty”.

15. PW 1 Sakhina Bibi was the mother of the deceased, PW 2 was Finul Mia, a neighbor and cousin of the father of the victim. PW 3 was Ainul Hoque, fellow villager. PW 4 was Md. Nousad Ali, another co-villager. PW 5 was Humayan Ali also co-villager. PW6 was Tamijuddin Ahamed. He was a cousin uncle of the deceased. PW 7 was Humayan Mia, the de facto complainant, father of the deceased. PW 8, Ketabuddin Sk. was the uncle of the de facto complainant. PW 9 was Jasmin Bibi, co villager. PW 10 Abdul Hannan was the scribe of the complaint. PW 11 Abdul Rahaman was a seizure witness. PW 12 was Abdus Salam, another seizure witness. PW 13 Putul Sk. was the first husband of the deceased. PW 14 was Md. Abdul Hai, a marriage registrar, who performed the marriage between the deceased and the appellant no. 1. PW 16 and PW 17 were the police officials, who retrieved the dead body of the victim and also participated in the inquest. PW 18 was the post mortem Doctor, Dr. Debnath Sarkar. PW 19 was Emajuddin Ahammed, a signatory to the inquest report. PW 20 Gopal Pandey was the I. O.

16. PW 1 to PW 9 and PW 15 had stated in their evidence to the following effect. They came to know of the death of the

victim from either Sukuruddin Sk., who was lame and was fleeing from the place of occurrence on a bicycle. He stated to have shouted that somebody has been cut and killed in his house.

17. Another version has been indicated by some witnesses. One Zarina, five-year old sister of the victim, claimed to be present in place and time of the occurrence, fled the marital house of the victim and was running towards her house shouting that her sister has been killed, after being chopped to pieces. The victim's father stated that he was performing Namaz and heard Sukuruddin Sk.'s shout from a bicycle that somebody was cut and killed. Some witnesses stated that the wearing apparels of Sukur Sk. was drenched in blood. Several witnesses stated that the victim complained of torture in her marital house.
18. PW-9 stated that the victim told that she was tortured in the house and was unhappy. Zarina was not cited as witness and did not depose evidence in trial. The Investigating Officer of the case however clearly deposed that PW-1, PW-2, PW-3, PW-4, PW-5, PW-6, PW-7 and PW-9 had not stated in course of investigation that Sukur Sk. alerted others about the death of the victim and that Zarina came out running of the victim's house stating that her sister was killed by the appellants.
19. The aforesaid, therefore, appears to be an afterthought, and concocted by the aforesaid witnesses to implicate the appellants, for the first time during the trial.

20. What is, however, clear from the post mortem report and the injuries on the body of the victim are that as many as 8-9 deep cut injuries were inflicted on the frontal portion of the body of the victim.
21. There are two situations where the above may occur. First, if the victim was in fact physically restrained by the other persons in the house and the assailants would continuously inflict injuries on the body of the victim with a sickle. The other possibility is that the victim may have collapsed after the first few strikes with the sickle and the rest of the injuries were inflicted as she was lying on her back of the floor of the room in her marital house.
22. Significantly, all the injuries inflicted on the person of the victim are found on the frontal portion of the body *only*. If the victim had been beaten by more than one person, injuries would have spilled and scattered over various parts of the body including the *back portion* thereof. The injuries then would not have been confined to the frontal portion of the body. When multiple persons beat a victim they would normally surround her. They would ensure that the victim does not escape from their control. The injuries on the victim would be *expansive* and will indiscriminately spread all over the body, and will not, therefore, be pointedly restricted to the frontal portion.
23. There is no other evidence, ocular or otherwise, to indicate the participation of the other appellants, except the appellant no.1, in the murder of the victim. The depositions of the aforesaid prosecution witnesses in course of trial indicated

that about three years after the incident there was definitely an attempt by the family of the victim to implicate the mother-in-law, the sister-in-law and the brother-in-law of the victim. Not a word deposed in course of trial by the aforesaid witnesses was informed or told or recorded in the statements recorded under Section 161 of the Code of Criminal Procedure to the Investigating Officer of the case. This is a vital omission on the part of the prosecution witnesses that amounts to a contradiction granting a benefit of doubt in favor of the other appellants. Reference in this regard, the decision of the Supreme Court in ***Alauddin & Ors. v. The State of Assam*** reported in **2024 INSC 376:-**

7. When the two statements cannot stand together, they become contradictory statements. When a witness makes a statement in his evidence before the Court which is inconsistent with what he has stated in his statement recorded by the Police, there is a contradiction. When a prosecution witness whose statement under Section 161 (1) or Section 164 of CrPC has been recorded states factual aspects before the Court which he has not stated in his prior statement recorded under Section 161 (1) or Section 164 of CrPC, it is said that there is an omission. There will be an omission if the witness has omitted to state a fact in his statement recorded by the Police, which he states before the Court in his evidence. The explanation to Section 162 CrPC indicates that an omission may amount to a contradiction when it is significant and relevant. Thus, every omission is not a contradiction. It becomes a contradiction provided it satisfies the test laid down in the explanation under Section 162. **Therefore, when an omission becomes a contradiction, the procedure provided in the proviso to sub-Section (1) of Section 162 must be followed for contradicting witnesses in the crossexamination.**

8. As stated in the proviso to sub-Section (1) of section 162, the witness has to be contradicted in the manner provided under Section 145 of the Evidence Act. Section 145 reads thus:

“145. Cross-examination as to previous statements in writing.—A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but, if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him.”

24. It therefore follows from ***Alauddin (supra)*** that an omission amounts to a contradiction only when the procedure, specified in Section 145 of the Evidence Act, is duly followed. In substance under Sec. 145, a prosecution witness, who appears to be deposing a fact not previously stated to the police, must be confronted with the omission during his cross-examination.

25. In the present case the prosecution witnesses were not confronted with the said omission. It was incumbent upon the defense counsel to do so. On his failure, it was incumbent upon the trial court to point out the said omission and/or ask relevant questions to that effect in the exercise of Sec 165 of the Evidence Act.

26. A presumption under Sec. 114 of the Evidence Act would therefore automatically follow, that the subsequent implication of the other appellants in the deposition before the Court was an afterthought. The reason being that the bereaved family of the victim was raring to fire all cylinders to take revenge against the whole family of the second husband (appellant no. 1) of the victim.

27. The alleged shout-out by the Sukuruddin Sk. that someone had been killed in his house and so also the alleged shout-out by, Zarina, the five-year-old sister of the victim that the latter had been killed by the appellants are vital details.

28. These two shouts were the call by which the prosecution witnesses are alleged to have been alerted and informed that something wrong had taken place in the house of the

appellants, which is related to the victim. Therefore, it would have been natural for them to narrate the story of shouting out to the police at first instance. The fact that the prosecution has not cited Zarina as a prosecution witness, the sister of the victim, who has been alleged to be a direct eyewitness being present in the PO, indicates that the story was a belated and motivated formulation.

29. Insofar as the appellant no.1, namely, Rinku Sk. is concerned, this Court is of the view that the absence of ocular/direct eye witnesses would not stand in the way of his conviction under Section 302 of the Indian Penal Code. Reference in this regard, the decision of the Supreme Court in ***Nusrat Parween v. State Of Jharkhand*** reported in **2024 INSC 955 :-**

‘7. It is a well-established principle of criminal jurisprudence that conviction on a charge of murder may be based purely on circumstantial evidence, provided that such evidence is deemed credible and trustworthy. In cases involving circumstantial evidence, it is crucial to ensure that the facts leading to the conclusion of guilt are fully established and that all the established facts point irrefutably to the accused person’s guilt. The chain of incriminating circumstances must be conclusive and should exclude any hypothesis other than the guilt of the accused. In other words, from the chain of incriminating circumstances, no reasonable doubt can be entertained about the accused person’s innocence, demonstrating that it was the accused and none other who committed the offence.....’

30. At this stage, it would not be inappropriate to observe that there is little or no evidence of offence under Section 498A of the Code of Criminal Procedure, brought on record by the prosecution. Except the bald and omnibus allegations of torture by several witnesses in a single sentence, there is no other proof or evidence brought on record that the victim was tortured by the family of the appellant.

31. Coming back to the appellant no.1, namely, Rinku Sk., this Court finds that the circumstantial evidence against him found on record and the evidence of the witnesses are sufficient to lead to the single conclusion of his guilt in murdering his wife with the sickle. There is no other conclusion possible from the chain of circumstances narrated hereinbelow.

32. The most vital link in a chain of circumstantial evidence is motive. In fact, it constitutes the very fundamental object for the appellant no.1 to commit the offence of murder. The motive being that the victim continued to maintain illicit relations with her first husband with whom she often met in her parental house. It is natural for a husband to be enraged and act irrationally against the wife in such a circumstance. Several prosecution witnesses have been confronted with the aforesaid evidence of illicit relations of the victim with PW-13. In fact, PW-13 the first husband himself was confronted by the defence with a suggestion to this effect. At Para no. 9 of ***Nusrat decision (supra)***, it was held as follows:-

‘9. Firstly, we proceed to consider the theory of motive. It is trite law that proof of motive is not sine qua non in a case of murder. However, in a case based purely on circumstantial evidence, motive if properly established, assumes great significance and would definitely provide an important corroborative link in the chain of incriminating circumstances and strengthen the case of prosecution....’

33. The next link in the chain of circumstance is that Rinku Sk. fled from the place of occurrence and was caught the next day in a market place by the local place, who recognized him. He was thereafter arrested by the police. The conduct of appellant no. 1 in fleeing from PO cannot be

equated with the fleeing of the other appellants, given the other evidence which implicate the appellant no. 1 beyond reasonable doubt. Such evidence does not exist qua the other appellants, as indicated hereinafter.

34. The third and equally vital link in the chain of circumstance is the discovery of the offending weapon, namely, the sickle on the confession of the PW-1. The confession has been marked and exhibited in the Trial Court. The blood-stained weapon was discovered on the roof of the tiled house in the residence and in the bed room of the marital house where the victim was murdered. Section 27 of the evidence Act is therefore attracted. This Court **in C.R.A. No. 417 of 2017 Rajkumar Rishi v. The State of West Bengal** disposed off by judgment and order dated 11th March, 2025 has discussed the application of the Sec. 27 with reference to the decisions of the Supreme Court in **Hansraj v. State of MP** reported in **2024 INSC 318** and **Perumal Raja @ Perumal v. State, Rep. by Inspector of Police** reported in **2024 INSC13**. Under Para no. 36 and 37, this Court held:-

36.....The reason is that the information, given to police by the accused leading to the discovery of the materials, must 'distinctly' relate to the fact, discovered as a result of such a revelation. Here, the fact 'discovered' does not only include the particular place and the materials, recovered therefrom. Rather, it also includes the mental awareness of the accused about the presence of the incriminating materials in that place. Information given under Section 27, therefore, cannot be vague, which was the case in Hansraj (supra). Section 27, therefore, mandates exactitude in the given information

37. **The appellants herein have zeroed down on the place of presence of the bombmaking materials by directing the police to their respective residences, from where the said materials have been recovered. The appellants have, therefore, proved their mental awareness about the presence of the bomb-making materials in their respective houses. These materials are found to have been used to make the bomb contained in the parcel. On top of it, the place from where such materials were recovered is related to the appellants being their**

respective residences. This adds one more circumstance in the chain of circumstances pointing towards the guilt of the appellants. Had the materials been recovered from a place not related to the appellants, the liability thereof upon the appellants would not have been readily imposed.

Emphasis applied

35. Appellant no.1 herein has also zeroed down the place of his residence from where the incriminating materials were recovered, namely the roof of his tiled residence from where the murder weapon and his blood-stained apparel were recovered. The roof of the tiled house is not open to all and sundry. Thus, appellant no. 1 had the exclusive knowledge of the place and the presence of the said two incriminating substances. The police did not have to search the house of appellant No. 1. The appellant instead pinpointed the roof, from where the said recovery was made. This circumstance directly involves the appellant No.1 in the crime.

36. The blood on the offending weapon and the wearing apparels of the appellant no.1 have been proved to be human blood by the FSL report being Exhibit 12 series. The Supreme Court in ***Dharmendra Kumar @ Dhamma v.State of Madhya Pradesh*** reported in **2024 INSC 480** held that the accused has to explain the presence of human blood in the murder weapon, attributed to him, and his wearing apparel, notwithstanding the blood group of blood thereon. Para nos. 59, 60, and 61 thereof are set out below:-

59. Learned Senior Counsel on behalf of Appellant asserted that the knife purportedly retrieved from him underwent examination at the Forensic Science Laboratory, where the test results were inconclusive, particularly regarding the determination of the blood group on the weapon. Consequently, the absence of a conclusive match in the blood group analysis should be construed in favour of the Appellant and against the prosecution.

60. Upon a thorough examination of the FSL report, it stands confirmed that the blood group classification test conducted on the

recovered knife yielded inconclusive results. **However, it is crucial to note that human blood was detected on the knife recovered at the instance of the Appellant (Exhibit "I" before FSL).** This fact gains some importance, considering that various weapons, including lathis and even the knife attributed to accused Asgar, underwent an FSL examination, yet, no traces of human blood were found on them. Notably, human blood was solely found on the knife used by the Appellant.

61. In line with the precedents set forth by this Court in *Raja @ Rajinder v. State of Haryana*⁷ and *John Pandian v. State*, **the nonexplanation of human blood on the weapon of crime constitutes a circumstance against the accused. It is incumbent upon the accused to provide an explanation regarding the presence of human blood on the weapon. The Appellant has failed to do so. The judgments delivered by both the Trial Court and the High Court also do not reveal that the Appellant rendered any satisfactory explanation concerning the presence of blood on the recovered knife. While it may not be a decisive factor to determine the guilt, but a conspicuous silence does lend support to the prosecution case**

Emphasis applied

37. The appellant no.1 has not been able to explain the participation or involvement of any other person in the murder of his wife. In fact, in the examination under Section 313 of the Code of Criminal Procedure, he has denied the knowledge of how his wife has died, which, to say the least, is incredible. He has not indicated the presence of any other person in his house. In fact, none of the appellants in course of examination under Section 313 of the Code of Criminal Procedure have not indicated that the victim was murdered by any other person.

38. The aforesaid evidence that has come on record is sufficient to complete the chain of circumstances against the appellant no.1. The conviction of the appellant no.1, namely, Rinku Sk., is, therefore, upheld by this Court.

39. Insofar as the other appellants are concerned as already stated hereinabove, there is no clear evidence of them having participated in the murder of the victim. The illicit relations that the victim had with PW-13 would not have enraged the family to such an extent as it has enraged the

appellant no.1. The conviction of the other appellants, namely, 2, 3, 4 & 5 therefore, is de hors the evidence on record and is liable to be set aside and is hereby set aside.

40. For the reasons stated hereinabove, the instant criminal appeal is allowed in part insofar as the appellant nos.2 to 5 are concerned. The bail bonds of the appellant nos.2 to 5 shall stand discharged after six months in terms of Section 437A of Cr.P.C. corresponding to Section 481 of the BNSS, 2023.

41. The appellant no.1, namely, Rinku Sk. shall undergo sentence of imprisonment for life imposed upon him by the Trial Court, subject to any other benefits available to him under the provisions of the Code of Criminal Procedure and the law of the land.

42. Hence, C.R.A. No. 383 of 2012 shall stand disposed of.

43. In view of the disposal of the main appeal itself, the connected application being CRAN 3 of 2025 shall also stand disposed of.

44. Let a copy of this judgment be sent down to the Court below for information.

45. Urgent photostat certified copy of this order, if applied for, be supplied to the parties as early as possible.

(Rajasekhar Mantha, J.)

I agree.

(Ajay Kumar Gupta, J.)