

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**

C.R.A. 79 of 2017

Abdul Rajjak & Ors.
– Vs. –
The State of West Bengal

For the Appellants: Mr. Ayan Basu,
 Mr. Amit Roy,
 Mr. Prabir Das,
 Mr. Sumit Raut.

Heard on: June 18, 2026.

Judgment on: June 18, 2026.

Rajasekhar Mantha, J.:

1. The instant appeal is directed against the judgment of conviction and order of sentence dated 12th January, 2017 and 13th January, 2017 respectively, passed by the learned Additional Sessions Judge, 2nd Court, Raiganj, Uttar Dinajpur in Sessions Trial No. 2(02) 2015 arising out of the Sessions Case No. 61 of 2014.
2. The appellants were convicted and sentenced to suffer imprisonment of ten years and fine of Rs.5,000/- for the offence committed under Section 304(Part-I) of the Indian Penal Code.

THE PROSECUTION CASE:

3. The appellants and the victim's family, who deposed as PW-1 to PW-7 in the trial, are near relatives. On 7th June, 2012, one Humayun Kabir Azad, the victim, son of Kamrul Nesa Begum and Abul Kalam Azad, was alone at home. The appellants Rejamul Haque, Abdul Rajjak, Rahela Khatun, Abdul Rashid, Santua Ray and Madan Roy tried to enter into the house of the victim. When the victim resisted the appellants, the latter assaulted the former with a sharp cutting weapon.
4. Babar Haksi, PW 6, the alleged sole eye witness, is stated to be a next door neighbor. He has claimed that he has heard the exhortation of the appellants on the victim when the latter resisted the appellants from entering his house. The accused persons tied the victim. The first blow was struck by Abdul Rajjak, after the victim was restrained by Madan Roy and Rejamul Haque. The victim is stated to have died thereafter.
5. The said PW 6 is stated to have informed the grandfather of the victim, PW 7. PW 7 travelled a distance of more than one kilometer to reach at the PO. He however did not find the victim thereat.
6. Abdul Karim, PW 7, thereafter went to look for his grandson at Raiganj Hospital and later at Siliguri where he found the victim dead. A formal complaint with the Kaliyaganj Police Station, Uttar Dinajpur was lodged on 9th June, 2012 against the appellants.

The FIR cum Kaliyagang police case no. 147 of 2012 dated June 9th, 2012 was lodged based on the said complaint. Investigation was completed and charge sheet was filed. The trial commenced.

EVIDENCE ON RECORD AND ANALAYIS OF THIS COURT:

7. **PW-1**, Lutfar Rahaman, brother of **PW-6**, Babar Haksi; **PW-2**, Salimuddin, **PW-3**, Kamrul Nesa Begum, mother of the deceased, **PW-4** Kashmira Khatoon, sister of the deceased, **PW-5** Anarul, uncle of the deceased had clearly deposed in the course of the Trial that the victim died of a motorcycle accident on the road. None of the aforesaid witnesses were declared hostile by Prosecution.
8. The aforesaid piece of evidence has not been appreciated by the trial Court. The said witnesses are the relatives of the victim. They therefore would not lie. This piece of evidence completely negates the prosecution case.
9. PW-6 was a neighbor of the victim. The prosecution cited him as an eye witness. His alleged eye-witness account is doubtful. He has deposed that first, he heard hue and cry emanating from the house of the victim. Thereafter, he saw that the appellants are assaulting the victim. This he saw through a hole in the wall of his house. The said wall has however not been shown as the common wall between his house and that of the victim. In fact, the Investigating Officer of the case, PW 12, did not mention any

hole in the wall in the house of PW-6. If there was a hole at all, the visibility therefrom at the PO would be doubtful.

10. PW 6 has deposed that he has informed his brother one Lutfar Rahaman, about the said incident. The latter visited the PO. PW 6, however, did never visit the PO. It remains unexplained to why PW 6 did not rush at the PO after witnessing the said incident.
11. Admittedly, the complainant, **PW-7** was not at the place of occurrence. He lived at a distance of more than one kilometer from the place of occurrence. His evidence is purely hearsay.
12. **PW-11** was ASI Binod Kumar Prasad was the Inquest Officer. In course of inquest, the brother of the victim told him that the victim died of a road accident hit by a motorcycle. The evidence of PWs thus finds corroboration from the evidence of PW 11.
13. The Investigating Officer, PW 12 contradicted himself when he said that the victim was removed to the Hospital by the police. Whereas Exhibit-7 shows that the victim was removed to the Hospital by the local residents. In fact, Exhibit-7 also records that the victim died as a result of a road accident.
14. The Post Mortem Doctor, Dr. Rumi Maitra, **PW-13** does not mention how any of the injuries were sustained by the victim. She, however, admits that he had seen the inquest report before conducting the Post Mortem.

15. The deceased suffered one external injury, i.e., an abrasion over the right leg. This kind of injury is ordinarily suffered when one come in contact with a rough surface. When a bike rider falls on the road or slides across the road surface, he may suffer this kind of abrasion.
16. The victim suffered the following internal injuries- a scalp hematoma with a fissure fracture over the left side of the skull above the ear, a hematoma of the chest wall, and a fracture of the sternum. The said injuries indicate that the victim has suffered blunt-force injuries on his person. This kind of injuries is ordinarily suffered when a motorcyclist strikes the road, another vehicle, or a hard object, after being thrown from the motorcycle.
17. Significantly, the sternum fracture indicates a substantial impact to the front of the chest. This is commonly suffered in road traffic accidents. Equally important is the absence of multiple external injuries, defensive wounds, incised wounds, stab wounds, or any injury suggestive of a targeted assault.
18. The distribution and nature of the injuries further indicate a single episode of high-velocity blunt trauma rather than a deliberate attack. In fact, the post mortem doctor during cross-examination has expressly admitted that the injuries mentioned in Exhibit-8 could also be caused by a road traffic accident. The

medical evidence is thus consistent with the evidence of PWs that the victim died of road accident.

19. In the backdrop of the evidence that has come on record where PW-1, PW-2, PW-3, PW-4 and PW-5 have admitted that the victim died in a road accident and they having not even being declared hostile by the prosecution, this Court is of the unequivocal view that the prosecution has failed to establish the guilt of the accused persons even to a minimum extent let alone beyond reasonable doubt.

20. Having regard to the above, C.R.A. 79 of 2017 is allowed and disposed of. Consequently, all connected applications are disposed in terms of this Order.

21. The impugned judgment of conviction dated 12th January, 2017 and the order of sentence passed by the learned Additional Sessions Judge, 2nd Court, Raiganj, Uttar Dinajpur in Sessions Trial No. 2(02) of 2015 arising out of Sessions Case No. 61 of 2014 are set aside.

22. The appellants shall be set at liberty forthwith from the custody, if not wanted in any other case, upon execution of bonds to the satisfaction of the Learned Trial Court, which shall remain in force for a period of six months under Section 437A of

the Code of Criminal Procedure corresponding to Section 481 of the BNSS, 2023.

23. The trial court records along with a copy of this judgement be sent down at once to the learned trial court for necessary action.

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

(Rajasekhar Mantha, J.)

I agree.

(Rai Chattopadhyay, J.)