

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

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

CRA 367 of 2018

Krishna Kanta Dhar & Others

Vs.

The State of West Bengal

With

CRA 303 of 2018

Biplab Saha @ Buro

Vs.

The State of West Bengal

With

CRA 47 of 2021

With

CRAN 3 of 2025

Rajesh Hazra @ Bapi

Vs.

The State of West Bengal

For the appellants in : Ms. Suchismita Dutta, Adv.
CRA 367 of 2018

For the appellant in : Ms. Sibangi Chattopadhyay, Adv.

CRA 303 of 2018

Ms. Momotaj Begam, Adv.

For the appellant in
CRA 47 of 2021

: Mr. Dipanjan Chatterjee, Adv.
Mr. Kalayan Kumar Bhattacharjee, Adv.
Mr. S.G. Chowdhury, Adv.
Ms. Rimpa Adhikari, Adv.
Ms. Kakan Das, Adv.
Mr. Y. Rakshit, Adv.

For the State

: Mr. Debasish Roy, Ld. P.P.
Mr. Partha Pratim Das, Adv.
Ms. Manasi Roy, Adv.

Hearing concluded on : 10.12.2025

Judgment on : 04.02.2026

Md. Shabbar Rashidi, J.:-

1. The three appeals are taken up for analogous consideration as these have emanated out of a common judgment of conviction dated April 26, 2018 and order of sentence dated April 30, 2018 passed by learned Additional Sessions Judge, Katwa, Burdwan in Sessions Trial No. 07 of 2012 arising out of Sessions Case No. 03 of 2012.

2. By the impugned judgment and order the appellants were convicted of the offences punishable under Sections 448/396/302/412/34 of the Indian Penal Code, 1860. By the impugned order of sentence, the appellants were sentenced to simple imprisonment for one year for the offence punishable under Sections 448/34 of the Indian Penal Code. The appellants were

further sentenced to imprisonment for life with fine of ₹10,000/- for committing the offence punishable under Section 396/34 of the Indian Penal Code, 1860. In default of payment of fine, the appellants were directed to undergo Simple Imprisonment for a further period of one year. The appellants were further sentenced to suffer Simple Imprisonment for 5 years with fine of ₹ 5, 000/- for the offence under Section 412/34 of the Indian Penal Code. In default of payment of fine the appellants were directed to undergo Simple Imprisonment for a further period of 6 months. No separate punishment for the offence punishable under Section 302 of the Indian Penal Code was imposed by learned trial Court in view of the conviction of the appellants for the offence under Section 396/34 of the Code. All the sentences were directed to run concurrently. One accused Soumitra Pal charged under Section 120B of the Indian Penal Code was acquitted.

3. Learned advocate for the appellants submitted that the learned trial Court failed to appreciate the evidence adduced on behalf of the prosecution and proceeded to convict the appellant without application of mind. Learned advocate for the appellant further submitted that according to the case made out by the prosecution, one of the two victims was landlady at whose house, alleged dacoity was committed. The other victim was living in the same premises as tenant with her paramour. The second victim had

broken her marriage with her husband and the said husband of the second victim used to threaten to kill her. Such facts were not taken into consideration by the learned trial Judge.

4. It was further contended by learned advocate for the appellants that the prosecution failed to establish a clear motive behind the alleged incident of dacoity. It was further argued that the alleged ornaments recovered from the possession of the convicts were purchased and put on test identification parade, which were identified by the married daughter of the victim who used to reside separately. There was no specific identification mark on such ornaments. Therefore, alleged identification of the ornaments does not establish the charges leveled against the appellants. In support of such contention, learned advocate for the appellants relied upon the authority reported in **(2012) 2 Supreme Court Cases 399 (Madhu Vs. State of Kerala)**.

5. Learned advocate for the appellants further submitted that the case is based on circumstantial evidence. Prosecution has not been able to prove the chain of circumstances which exclusively point to the guilt of the appellants to the exclusion of all others. In that view of the facts it can be said that the prosecution has not been able to substantiate the charges leveled against the accused persons beyond all reasonable doubts. It was also contended by learned advocate for the appellants that the examination of the

accused persons under Section 313 of the Code of Criminal Procedure, 1973 was not conducted properly in accordance with law.

6. It is further contended by learned advocate for the appellants that there are material contradictions in the testimony of the prosecution witnesses. Not only that, the case made out in the First Information Report is contradictory to the evidence led at the trial. Learned advocate for the appellant submits that, the First Information Report contained an allegation against one Suraj Majhi, however, the said Suraj Majhi was not sent up for trial. The appellants were entangled in the case without any evidence against them. There were no independent witnesses to the seizure made by the police. The place of seizure of the articles was not identified in evidence. There was no endeavor on the part of the investigating officer to ascertain the articles taken away by the alleged dacoits.

7. On the other hand, learned Public Prosecutor for the State stood by the impugned judgment of conviction and order of sentence. It was submitted by learned Public Prosecutor that the prosecution sufficiently establish the charges levelled against the appellants with the help of cogent and convincing evidence.

8. Learned Public Prosecutor further submits that initially the husband of the second victim Gouri Majhi was a suspect and accordingly an FIR was lodged. However, in course of investigation,

involvement of the appellants in the alleged incident was unearthed and accordingly the investigation ended in a charge sheet against the present appellants. Evidence were led at the trial by the prosecution and the prosecution successfully established the charges levelled against the appellants.

9. The mother of the second victim Gouri Majhi namely Tulsi Majhi lodged a written complaint with the inspector in charge Ketugram police station on October 2, 2011. In such written complaint she stated that on October 1, 2011 at 9:30 PM she heard that her daughter Gouri Majhi was lying dead in the house of Sadhan Gopal Roy at Kandra. Going there, she saw her daughter aged about 22 years and her landlady namely Rekha Rani Roy, wife of late Sadhan Gopal Rai aged about 67 years lying dead on the first floor of landlord Sadhan Roy. She further stated that the marriage of her daughter was solemnized five years ago with one Suraj Majhi and they had a daughter aged about four years out of such wedlock. Her daughter started residing with one Rupak Bairagya in a rented residence due to matrimonial discord with her husband. The written complaint also stated that on September 27, 2011, the husband of the daughter of the de facto complainant came to her house and threatened the second victim. He also gave out to kill her. The de facto complainant expressed her suspicion in the written complaint

that the landlady might have created an obstruction for which she was also killed by the said Suraj Majhi.

10. On the basis of such written complaint Ketugram PS Case No. 259/2011 dated October 2, 2011 under Sections 448/302/34 of the Indian Penal Code, 1860 was started against Suraj Majhi. The police took up investigation and on conclusion of investigation, submitted charge sheet against the present appellants as well as other accused persons. Accordingly, on the basis of materials in the case diary, charges under Sections 448/396/302/120B/34/412 of the Indian Penal Code, 1860 were framed against the appellants on March 23, 2012. A separate charge under Section 120B of the Indian Penal Code, 1860 was framed against another accused Soumitra Pal. The accused persons pleaded not guilty to the charges and claimed to be tried.

11. In order to substantiate the charges, prosecution examined 20 ocular witnesses. In addition, prosecution also relied upon various documentary as well as material evidence.

12. The de facto complainant herself deposed as PW1. She although stated that she lodged a written complaint with the police but owing to her illiteracy, she put her left thumb impression on such complaint. She could not also state the name of the scribe of such written complaint. She further stated that she lodged the written complaint over the incident of murder of her daughter and

the landlady of her daughter. Her daughter was married to one Suraj Majhi. Later on, her daughter had matrimonial discord with her husband and developed a relationship with Rupak Bairagya. PW 1 further stated that she came to know about the mother of a daughter and her landlady at about 9.30 p.m. from Rupak. She came to the place of occurrence with one Shibani Majhi by the motorcycle of one Ashim Saha at about 10/10.30 p.m. Reaching there she found the dead body of her daughter on the first floor of the house in the Thakurghar and that of the landlady lying in the kitchen. She further stated that the neck of her daughter was slit open and her wearing apparels were stained with blood. The body of the landlady was also found with her neck slit and blood was dripping from the side of her ear.

13. PW 1 stayed there till the arrival of police when she handed over a written complaint. The police personnel conducted inquest over the dead bodies. PW 1 and Shibani Majhi put their left thumb impression upon the writings prepared by police. She also stated that in the morning the dead bodies were brought to the police station where from those were sent to Katwa S. D. Hospital. Later on she received the dead body of her daughter for cremation. She also stated that after five days, she went to police station when she was informed by the police officer that some persons were arrested in connection with the incident. The arrested persons were shown to

her in the police station. She identified them in Court. She however could not identify the accused Soumitra Pal.

14. The daughter of the victim landlady Rekha Rani Roy deposed as PW 2. She stated that her mother was murdered on October 1, 2011 in the evening at her house at Kandra. She also knew the tenant Gouri Majhi who used to reside with one Rupak Bairagya. Gouri Majhi was also murdered on the same date and time. PW 2 also stated that she was informed about the incident by her cousin Ashok Roy at about 9/9.30 p.m. Being so informed, she arranged for a Maruti Omni car and arrived at Kandra at about 1.00 a.m. In the morning, she along with her husband and son entered the house and met with the de facto complainant, another woman Shibani Majhi and Rupak Bairagya along with the police personnel. She saw the dead body of Gouri Majhi in the rented room whereas the dead body of her mother was in the kitchen with her neck. There were several injuries on her head and shoulders. The floor was full of blood. The wearing apparels of her mother were also stained with blood. She saw the dead body of her mother lying upside down. There was a cooker stained with blood.

15. PW 2 also stated that all the gold ornaments worn by her mother except the earrings were missing. The cell phone and wristwatch of her mother were also missing. She further stated that the dead body of Gouri Majhi was also lying upside down and her

wearing apparels i.e. green printed saree, green petticoat and a pink blouse were stained with blood. The elder sister of PW 2 arrived the place of occurrence after about 15 minutes of the arrival of PW 2. Police conducted inquest over the two dead bodies. Tulsi Majhi, Shibani Majhi put their left thumb impression on the inquest report of Gouri Majhi as witnesses whereas inquest report of the Rekha Rani Roy, the mother of PW2 was signed by PW2 and her sister. Rupak Bairagya signed on both the inquest reports. PW2 proved her signature on such inquest report.

16. In her deposition, PW2 further stated that she was informed by Rupak that Buro, Krishna Dhar, Bimal Saha and some other persons had a talk with her mother regarding letting out of her premises. Previously, Buro used to reside as tenant in the house of her mother with his wife and she left the tenancy sometimes in January, 2011. Later at about 5.00 a.m. police seized controlled cotton, bloodstained cotton, pressure cooker and a bottle under a seizure list. PW2 along with her brother Chandra Shekhar Roy and Ratna Roy signed on such seizure list. She identified her signature on the seizure list. Thereafter, police took away the dead bodies for post mortem examination. PW2 identified the appellants in court. PW2 also identified 11 gold ornaments of her mother which she identified in a test identification parade in the court premises

together with mobile phone and wrist watch. The said articles were marked as material exhibits at the trial.

17. Another daughter of the victim Rekha Rani Roy was examined as PW3. She stated that her mother was murdered on October 1, 2011 in her house at Kandra. She also knew Gouri Majhi who used to reside in the house of her mother with one Rupak Bairagya. She was also murdered. Both the victims were murdered in the evening. She further stated that she got the information of the incident from her cousin brother Ashok Roy over telephone and after arranging a vehicle she reached her mother's house at about 1.10/1.15 A.M. She saw her sister PW2, her husband and son. She saw her mother lying dead in the kitchen and the entire room was full of blood. The gold ornaments on the dead body were noticed missing except the ear rings. She saw the neck of her mother slit and an injury over her head. She was wearing Khairy coloured sari and petticoat without blouse.

18. PW3 further stated that she also saw the dead body of Gouri Majhi in the next room having her neck slit. She was lying upside down and the room was full of blood. Her wearing apparels were described by PW3 as green sari, green petticoat and pink blouse. Police conducted inquest over the two dead bodies and prepared reports. She signed on the inquest report of her mother with others which she proved. She also described the witnesses to

the inquest over the dead body of Gouri Majhi. PW3 further stated that she was informed by Rupak who was reported by victim Gouri, that in the evening of the fateful day, Buro, Krishna Dhar and 2/3 other persons had come to talk to mother of PW3 for letting out the premises. Police seized controlled cotton soaked with blood of the two victims, a bottle and blood stained cooker under a seizure list. PW3 proved her signature on such seizure list. The wrist watch and mobile phone used by the mother of PW3 was also missing. Later on, the dead bodies were sent for post mortem examination.

19. PW3 further stated that on October 5, police came to her mother's house with six accused persons when they confessed to have committed dacoity and murder of the two victims. On October 6, PW3 came to know that some gold ornaments belonging to her mother were recovered. She also identified the gold ornaments, mobile phone of her mother in the test identification parade. She proved her signature on the test identification report. She also identified the recovered articles in court. She also identified the appellants in Court.

20. The live-in partner of victim Gouri Majhi namely Rupak Bairagya deposed as PW4. He used to reside as a tenant in the house of Rekha Rani Roy. He further stated that both the victims were murdered in the house where he used to reside as a tenant at about 8.00/8.30 p.m. He further stated that he used work in a cloth

shop which he closed at about 9.15/9.30 p.m. He returned home and found the main door closed from inside. He entered the house by scaling the wall, opened the gate and put the lights on. He found the dead body of Rekha Rani Roy with her neck slit lying in the kitchen and that of Gouri Majhi in the Thakurghar. The necks of both the victims were slit and the places they were lying at were full of blood. He came down shouting and called his mother-in-law Tulsi Majhi. She came along with Shibani and another person at about 10.30 p.m.

21. PW4 further stated that thereafter police arrived there. His mother-in-law handed over a complaint to the police written by someone. Police also conducted inquest over the dead bodies. He signed on the inquest reports which he proved. PW4 also stated that on October 1, 2011 he came back to his house to fetch water. At that time he saw two persons Krishna and Buro were talking to Rekha Rani Roy over letting out of her premises. PW4 was called by Rekha Rani Roy upstairs. He identified the appellants Krishnakanta Dhar and Buro in Court. PW 4 also stated that on October 5, 2011 he made a statement under Section 164 of the Code of Criminal Procedure. He proved his signature on such statement. He also identified the appellants in Court except accused Soumitra Pal.

22. The son-in-law of the victim Rekha Rani Roy was examined as PW 5. He stated that Rupak Bairagya and Gouri Majhi used to

recite as tenant in the house of his mother-in-law. His mother-in-law and the tenant Gouri Majhi were murdered on October 1, 2011 at about 8/8.30 p.m. and dacoity took place in her house. The incident was reported over telephone to the wife of PW 5. He accompanied his wife to his in-laws house and saw police personnel present there. He further stated that he went to the first floor of the house and noticed that his mother-in-law was lying dead with slit throat in the kitchen whereas Gouri Majhi was found lying in Thakurghar with her throat slit open. He also saw the mother of Gouri Majhi, another woman called Shibani Majhi, Rupak and some dispersal. His sister in law also came there with her husband.

23. PW 5 also stated that police conducted inquest over the dead bodies and prepared a report. Thereafter the dead body was taken by the police in the following morning. He further stated that on October 5, 2011 police brought all the accused persons namely Krishna, Biplab @Buro, Rajesh Hajra, Bimal Saha, Narayan Thandar and Astam to his in-laws house when the scene of crime was recreated. He further stated that on October 6, 2011 at about 8.30 a.m. he along with others accompanied the police personnel and the accused persons to the house of accused Krishna Kanta Dhar. Such accused led the police personnel and others to his bedroom from where one blue jeans and a shirt was recovered. A gold chain fixed with a locket and Motar Bala was recovered from

one pocket and from the other pocket wristwatch was brought out by accused Krishna. One sharp cutting weapon (Da) was recovered from below the cot. The recovered articles were seized by police under a seizure list to which PW 5 signed.

24. Thereafter, the police party along with the witnesses went to the house of Rajesh Hazra. At his house accused Rajesh Hazra brought out gold ornaments and a knife which was seized by police under a seizure list. PW 5 and his brother-in-law signed on such seizure list. He also identified the seized articles in Court. Thereafter the police team accompanied by the witnesses proceeded to the house of Biplab Saha @ Buro. The appellant produced one pair of gold plated bangle and one ring embossed with the name 'Rekha' from over a shelf as well as one knife about 8/9 inches long from under his bed. The said articles were also seized by police under a seizure list which PW 5 signed. After that, the team went to the house of Narayan. Accused Narayan handed over gold plated iron bangle from a shelf of his bedroom and one knife under his bed. Such articles were also seized under a seizure list. Similarly one gold ring, one mobile phone of Motorola Company and a 12 inch knife were brought out by accused Bimal Saha from his bedroom. A silver ring plated with gold and studded with pearls, one copper made ring and a 3 inch iron rod were produced by accused Astam. The aforesaid recovered articles were seized by police under

separate seizure lists to which PW 5 and his brother-in-law signed. He proved his signatures. He also identified the articles recovered as shown by the appellants. PW 5 also identified the appellants in Court.

25. The scribe of the written complaint was examined as PW6. He stated that he scribed the written complaint at the instructions of PW1 about two years from the date of his deposition, at about 10.30 a.m. at village Kandra sitting in the house of one Sadhan Roy. He further stated that the written complaint was in respect of the death of the daughter of the de facto complainant and her landlady. PW6 read over and explained the contents of the written complaint and after being satisfied, PW1 put her left thumb impression on such complaint. PW6 also signed on the written complaint. He proved the written complaint and his signature thereon.

26. PW6 also stated that he was a goldsmith by profession having a jewellery shop under the name and style of 'Rudra Jewellers' at Ketugram. He was called upon by the police to Ketugram Police Station to identify the metal of 11 ornaments. He examined the ornaments and submitted a report to that effect which he proved (Exhibit 13). He also identified the ornaments examined by him in Court.

27. A police constable deposed as PW7. He stated that on October 2, 2011, he accompanied the police officer and other force

to the house of Rekha Rani Roy at about 12.30/1.00 a.m. in respect of murder of two ladies. The officer conducted inquest over the dead bodies which were lying in separate rooms on the first floor in the house of Rekha Rani Roy. PW 7 brought the dead bodies to Katwa Subdivisional Hospital. He proved the dead body Challans bearing his signature. He identified the dead bodies before the autopsy surgeon. He further stated that after the post-mortem examination, he was handed over the dead bodies which he in turn handed over to their relatives. The wearing apparels of the victims were handed over to a police officer which were seized under a seizure list. PW 7 proved his signature on such seizure list. He also identified the wearing apparels of the victims.

28. A sub- inspector of police was examined as PW 8. He stated that on October 1, 2011 he along with police force had been to Kandra village in pursuance of an information regarding mother of two ladies. Going there, he saw some persons assembled there. On the first floor in the Thakurghar, he found the dead body of Gouri Majhi. The dead body of Rekha Rani Roy was found in the kitchen. PW 8 also stated that PW 1 handed over a written complaint to the Inspector in charge who directed PW 8 to hand over the same to the duty officer which he did. He further stated that on the following day at about 6 PM one police constable handed over some wearing apparels of the deceased women to SI Joyjit Lodh who seized the

same under a seizure list. He signed on the seizure list along with a police constable. PW8 proved his signature on such seizure list. He also identified the seized articles i.e. wearing apparels of Rekha Rani Roy and Gouri Majhi.

29. A police constable deposed as PW 9. He stated that on October 2, 2011, he signed on a seizure list in the evening. At that time another constable of police namely Golam Bakkar brought some wearing apparels namely Sari, Saya and blouse of the victims after post-mortem examination and handed over the same to SI Joyjit Lodh. PW9 proved his signature on the seizure list. He also identified the seized wearing apparels of the victims.

30. An ASI of police was examined as PW 10. He stated that on October 3, 2011, he accompanied SI Joyjit Lodh and other police force to Kandra village at about 5.30/5.40 5 PM in connection with the two murders. The accused Krishna Kanta Dhar was also with them. PW 10 also stated that as per the statement of Krishna Kanta Dhar, the police party went to the bank of a tank on the back side of PWD office. As shown and identified by the accused, two handkerchiefs were recovered which were seized under a seizure list prepared by SI Joyjit Lodh. PW 10 signed on such seizure list (Exhibit 17/1). He further stated that the accused made a statement that after committing murder, he along with others washed their hands in the tank and then wiped their hands with the two

handkerchiefs. PW 10 also identified the seized handkerchiefs (Mat. Exhibit IX).

31. Another sub- inspector of police deposed as PW 11. He stated that on October 3, 2011 he went to Kandra PWD office in connection with Ketugram PS Case No. 259 of 2011 with SI Joyjit Lodh and ASI Swapan Hazra accompanied by the accused Krishna Kanta Dhar at about 5.30 p.m. As shown and identified by the accused two handkerchiefs were the recovered from the bank of a tank situated on the back side of the said PWD office. One of the handkerchiefs was whitish in colour and the other was blue. He further stated that the accused confessed that he along with others committed murder of two women and washed their hands in the tank and thereafter wiped their hands and faces with the said handkerchiefs. On such recovery, SI Joyjit Lodh seized the handkerchiefs under a seizure list to which PW 11 signed. He proved his signature on the seizure list and also identified the recovered articles.

32. Learned Judicial Magistrate was examined as PW 12. He stated that on November 5, 2011 he recorded the statement of Rupak Bairagya in his Court chamber. He proved the statement recorded in his pen and signature. Rupak Bairagya also signed on such statement. PW 12 further stated that on November 16, 2011 he held a property Test Identification Parade in connection with

Ketugram PS Case No. 259 of 2011 dated October 2, 2011 in his Court chamber. He prepared a report in this regard. PW 12 proved the said report (Exhibit 3). He further stated that during such test identification Parade, Ranu Bhattacharya and Ratna Roy were present and signed on such report in his presence. The test identification parade was in respect of some jewellery.

33. The autopsy surgeon was examined as PW 13. He stated that on October 2, 2011 he held post-mortem examination over the dead body of Rekha Rani Roy in connection with Ketugram PS UD Case No. 39 (A) of 2011 dated October 2, 2011 and Ketugram PS Case No. 259 of 2011 dated October 2, 2011. He further stated that on such post-mortem examination, he found cut throat injury in front and on either side of neck, transverse at the lower level exposing muscles, vessels with injury to trachea, larynx, thyroid and cricoid cartilages, another cut injury on right side of her scalp, cut injury on right side of her face, lacerated injury on right shoulder. He opined that the cause of death was due to the above-mentioned injuries which were ante-mortem and homicidal in nature. He proved the post-mortem report prepared in his pen and signature (Exhibit 18). He further stated that the injury found by him were sufficient in normal course to cause death of a major woman. PW 13 was also shown the seized weapons like knives, Daw

etc. He opined that the injuries found by him on the dead body might be caused by such weapon.

34. PW 13 further stated that on the same day he held post-mortem examination over the dead body of Gouri Majhi in connection with Ketugram PS UD Case No. 39 of 2011 dated October 2, 2011 and Ketugram PS Case No. 259 of 2011 dated October 2, 2011. On such examination, he found cut throat injury in front and on either side of neck, exposing muscles, vessels with injury to trachea, larynx, thyroid and cricoid cartilages and injury to sub-cutaneous tissues. In respect of the victim Gouri Majhi, PW 13 opined that the cause of death was due to the above-mentioned injuries which were ante-mortem in nature. He also proved the post-mortem examination report prepared in his pen and signature (Exhibit 19). He further opined that the injuries that were found on the dead body of Gouri Majhi were sufficient in normal course to cause death of a major woman. Being confronted with the seized weapons, PW 13 opined that the injuries found on the dead body of Gouri Majhi might be caused by such weapon.

35. A local person was examined as PW 14. He stated that he had a shop at Kandra village. Rupak Bairagya used to work in his shop on October 1, 2011. He also stated that Rupak Bairagya used to take break for lunch at 2 PM every day and used to come back within 3 PM. On October 1, 2011 he went to his house at about 6

PM to bring water and came back within 10 minutes. He went back home after closing the shop at 9 PM. PW 14 also stated that after 10 minutes of the closing of the shop, Rupak Bairagya rushed to him and informed that his wife and her landlady had been brutally murdered in the house where he used to live on rent.

36. Another co-villager deposed as PW 15. He stated that he heard some hue and cry in front of his house. He came down from the first floor and heard that Rekha Rani Roy and her tenant Gouri Majhi had been murdered. He however stated that he did not know who killed them. He identified the appellants in Court as his co-villagers.

37. PW 16 is another co-villager of the victim. He stated that he knew Rekha Rani Roy of his village. He further stated that on the date of incident he was not at his house and on the following day he heard that Rekha Rani Roy and her tenant Gouri Majhi had been murdered. He however could not say as to who killed them and why. He also identified the appellants in Court as his co-villager.

38. A photographer deposed as PW 17. He stated that he was a professional photographer having a photography shop under the name and style of Jagadhatri studio at village Kandra. About three years from the date of his deposition, as instructed by the police of Ketugram PS, on October 2, 2011, he went to the house of Sadhan Gopal Roy at Kandra village and took photographs of the dead

bodies of two women, one of whom was the wife of Sadhan Gopal Roy and the other was a resident of the same house. PW 17 proved the photographs taken and printed from a digital camera recorded on a memory card (Mat. Exhibit X collectively).

39. The inspector in charge of Ketugram PS deposed as PW 18. He stated that on October 1, 2011 at about 23.35 hours he received a written complaint from PW 1 at the house of Rekha Rani Roy at village Kandra. After receiving the same he sent the complainant through ASI Dinabandhu Ghosh to the PS for starting a case under Sections 448/302/34 of the Indian Penal Code. He further stated that SI Joyjit Lodh was present at the place of occurrence with him and he endorsed SI Joyjit Lodh with the investigation of the case. PW 18 also stated that he instructed the duty officer SI Joydeb Sannyasi to start a formal First Information Report. He proved his endorsement on the written complaint and his signature on the formal FIR.

40. A Sub-Inspector of police, i.e. the duty officer was examined as PW 19. He stated that on October 1, 2011 he received a written complaint sent by PW 18 through PW 8 as the duty officer of Ketugram PS at 12.15 a.m. PW 19 proved the endorsement of receipt as well as his signature on such complaint (exhibit 12/2). He also stated that he was instructed over phone that SI Joyjit Lodh was endorsed with the investigation of the case. Upon receipt of the

written complaint, PW 19 drew up the Formal FIR which he proved in his evidence (exhibit 20).

41. The investigating officer of the case deposed as PW 20. In his deposition, he described the various steps taken by him during investigation of the case. He visited the place of occurrence and prepared rough sketch map thereof with index. He also examined the dead bodies of Rekha Rani Roy and Gouri Majhi and prepared inquest reports. He proved the reports. He sent the dead bodies for post-mortem examination under dead body Challans. He also seized certain articles from the place of occurrence under a seizure list which he proved. He also examined the available witnesses under Section 161 of the Code of Criminal Procedure. On his return to the police station, wearing apparels of the two victims were handed over to him which he sees and a seizure list.

42. PW 20 also arrested the appellants. He further stated that on the leading statement of Krishna Kanta Dhar, he recovered and seized two handkerchiefs from the bank of a tank beside the BDO office of village Kandra. PW 20 also stated that the appellants were taken to the place of occurrence for the reconstruction of the scene of crime. On October 3, 2011 and October 4, 2011, the appellants made separate statements in respect of recovery of offending weapons and looted articles. Such statements were reduced into writing. On October 6, 2011 PW 20 accompanied by all the six

appellants together with witnesses namely Subroto Bhattacharya and Chandrashekar Roy went to the house of accused Krishna Kanta Dhar, Rajesh Hazra, Biplab Saha @ Buro, Narayan @ Babu Thandar, Bimal Saha and Astam Ghosh one by one. As per the leading statement of respective appellants, several looted articles belonging to the victim as well as the offending weapons were recovered from the houses of the appellants. The recovered articles were seized by PW 20 under separate seizure lists. He proved the said seizure lists. PW 20 also identified the recovered articles in Court which were admitted in evidence and marked as Mat exhibits. He also proved the statements of the appellants recorded by him under Section 161 of the Code of Criminal Procedure on the basis of which, recovery of the looted articles together with the offending weapons was made. Such leading statements were admitted in evidence and marked as Exhibit 33 to Exhibit 38.

43. PW 20 also stated that as per his instructions photographs of the dead bodies at the place of occurrence were taken by the photographer. He collected such photographs (Mat exhibit X). He also collected the report of the Goldsmith. He also arranged for recording statement of Rupak Bairagya under Section 164 of the Code of Criminal Procedure. He sent the recovered articles for forensic examination to FSL, Kolkata. He also applied for holding this identification parade in respect of the seized ornaments mixed

with dummy ornaments in the ratio of 1:5. He collected the report of this identification parade as well as the post-mortem reports. Ultimately, upon conclusion of the investigation, PW 20 submitted charge sheet against seven accused persons including the appellants under Sections 448/302/34/396/412/120B of the Indian Penal Code, 1860.

44. Upon conclusion of the evidence on behalf of the prosecution, the appellants were examined under Section 313 of the Code of Criminal Procedure, 1973. In such examination, the appellants pleaded innocence. They however, declined to adduce any defense witness.

45. According to the case made out by the prosecution, the two victims were murdered. The victim Gouri Majhi used to reside in the house of the victim Rekha Rani Roy as a tenant with one Rupak Bairaya. The said Rupak Bairagya used to work in a shop room and used to return to his house in the evening. On the date of incident, when she returned after closing the shop room, he found the doors of the house closed unusually. He however managed to enter into the house and discovered that the bodies of the two victims lying in the Thakurghar and kitchen. The said Rupak Bairagya deposed as PW 4. In his deposition he has described as to how he discovered the dead bodies lying in the house. Upon such the discovery, he informed his mother-in-law i.e. the mother of the victim. Thereafter,

his mother-in-law, PW 1 came to the place of occurrence with another lady. The matter was reported to the police. PW 1 also found the dead bodies in the condition narrated by PW 4.

46. Upon information, police arrived at the place of occurrence in the night itself. The police personnel who visited the place of occurrence on the date of incident have also corroborated the version of PW 1 and PW 4 so far as the condition of the dead body is concerned. The police conducted inquest over the dead bodies and prepared reports in this regard which have been proved by the police officer as well as the witnesses to such inquest. According to the narration of the prosecution witnesses and contents of the inquest report, the two victims were murdered by slitting their throats. They had other injuries on their person.

47. After such inquests, the dead bodies were sent for post-mortem examination was conducted over the dead bodies. The autopsy surgeon deposed as PW 13. In his deposition, PW 13 has stated that he found a cut throat injury in front and on either side of neck, transverse at the lower level exposing muscles, vessels with injury to trachea, larynx, thyroid and cricoid cartilages on the dead body of the victim Rekha Rani Roy. PW 13 also conducted post mortem examination over the dead body of another victim Gouri Majhi and found the injuries like cut throat injury on front and on either side of neck, exposing muscles, vessels with injury to trachea,

larynx, thyroid and cricoid cartilages with injury to subcutaneous tissues. Given the nature of injuries, PW 13 opined that the death of the two victims was caused due to the injuries found on their person as noted by him in his report Exhibit 19. He further opined that such injuries found on the dead body of the two victims were sufficient in the ordinary course of nature to cause death of a major woman.

48. Therefore, considering the case made out by the prosecution supported by the evidence of PW 13 together with the testimony of Exhibit 18 & 19, we have no hesitation to hold that the two victims namely Rekha Rani Roy and Gouri Majhi died of the injuries inflicted upon them as noted in Exhibit 18 & 19 which were sufficient in the ordinary course of nature to cause death of a major woman. According to the testimony of PW 13, such deaths were homicidal in nature. In that view of the facts, it is quite established that the two victims died unnatural death and were murdered.

49. So far as the persons responsible for the death are concerned, the First Information Report named the previous husband of victim Gouri Majhi as the suspected assailant. According to the suspicion raised in the written complaint, the victim Gouri Majhi was previously married to one Suraj Majhi five years ago and they had a daughter out of the aforesaid wedlock. It was also disclosed in the written complaint that due to matrimonial

discord with her husband, the victim Gouri money started residing with one Rupak Bairagya in a rented house under the other victim Rekha Rani Roy. The previous husband of Gouri Majhi allegedly had altercation with her previous husband whereupon she was allegedly threatened by her previous husband.

50. Be that as it may, the police took up investigation of the case and on completion of investigation it was unearthed that the present appellants committed dacoity at the house of the landlady i.e. the first victim Rekha Rani Roy. The investigation also exposed that in course of committing dacoity, the appellants committed murder of the two victims. Admittedly, there are no eyewitnesses to the incident of murder or dacoity and the case is entirely based on circumstantial evidence. We have gone through the evidence led at the trial on behalf of the prosecution to find out as to how far, the prosecution has been able to establish the circumstances in support of the proposition of the guilt of the present appellants to the exclusion of all others.

51. The incident was instantly intimated to the police at 00.15 hours on October 2, 2011 whereas the alleged incident is said to have occurred in the evening of October 1, 2011. In her deposition, PW 2 i.e. the daughter of victim Rekha Rani Roy had stated that when she got information of the murder of her mother and came to her mother's house, she found the dead body of her mother. She

however stated that astonishingly the gold ornaments worn by her mother were found missing from the dead body except an earring. She also found that the mobile phone and wristwatch used by her mother were also not found. She had further stated that she was informed by Rupak Bairagya that in the evening preceeding the date of incident, he had seen appellant Buro, Krishna Dhar, Bimal Saha and some to other persons talking to the mother of PW 2 with regard to letting out her premises.

52. PW 2 also stated in her deposition that on October 5, 2011 police came to her house accompanied by the appellants and told her that they were the persons responsible for the dacoity at her house and murder of the two victims. The investigating officer, PW 20 has stated that in course of investigation he took the appellants to the house of the victim for the purpose of reconstruction of the scene of crime. Later on, PW 2 was summoned in the Court premises of learned judicial magistrate where she participated as a witness in test identification parade for the purpose of identifying the lost ornaments belonging to her mother. In such parade, PW 2 and PW3 identified 11 jewelleries and other articles belonging to her mother out of some 70 dummy jewelleries. She identified such articles in Court as well. The defense could not imprint any dent upon the testimony of PW 2 in her cross-examination. PW 3 has also corroborated the testimony of PW 2. She also participated in

the Test Identification Parade conducted over the recovered articles and identified the jewellery and other articles belonging to her deceased mother.

53. PW 20 stated in his deposition that the appellants made statements which he recorded under Section 161 of the Code of Criminal Procedure. In such statement, the accused persons not only confessed having committed the offence of dacoity at the house of the Rekha Rani Roy and murder of the two victims but also gave out to lead recovery of the looted articles and offending weapons. On the basis of such statements, the police recovered the looted articles from the houses of the appellants as shown by such appellants. Relevant statements leading to recovery were admitted in evidence and marked as exhibits. The recovery of the looted articles and offending weapons were recorded by drawing up of respective seizure lists, which were also proved at the trial. The testimony of PW 20 was corroborated by PW 5. He testified that the looted articles including ornaments belonging to her mother were recovered by police, kept concealed and as shown by the appellants from their respective houses.

54. The recovered looted articles were identified in a test identification parade by PW 2 and PW 3 as that belonging to the victim Rekha Rani Roy. Such articles were also identified and proved at the trial as belonging to the victim and recovered on the

basis of leading statements by the appellants. The evidence regarding recovery of the seized articles on the leading statement of the appellant and its identification by PW 2 and PW 3 in the test identification parade, were specifically confronted to each of the appellant at the time of their examination under Section 313 of the Code of Criminal Procedure which visited with an answer 'I am innocent'. The appellants did not chose to offer a positive explanation as to under what circumstances, the ornaments and personal articles belonging to the victim Rekha Rani Roy came into their possession and were recovered from their houses. A necessary fallout of such omission on the part of the appellant gives rise to a strong and unimpeachable proposition that the appellants committed dacoity at the house of Rekha Rani Roy and in doing so, being resisted, they committed murder of the landlady and one of her tenant who came in the way. Such proposition is further bolstered by the evidence of PW 4 who had seen some of the appellants talking to the victim Rekha Rani Roy in the evening preceding the incident.

55. From the trend of cross examination of the prosecution witnesses it transpired that the defense had taken a plea that if the appellants perpetrated the incident with the motive of committing dacoity, they would not have left the earrings of the first victim

which she was wearing. In **Madhu** (supra), the Hon'ble Supreme Court noted that,

“70. The motive for the accused in committing the murder of Padmini Devi is stated to be theft of her gold ornaments. Madhu Accused 1 is a labourer, and Sibi Accused 2 is a toddy tapper. If the motive had been theft, so as to snatch away the jewellery of Padmini Devi, it is difficult to understand why the accused only took away the gold chain around the neck of the deceased, and the six bangles on her right arm, and forsook the earrings on the person of the deceased. It is relevant to mention, that the factum of the earrings found on the person of the deceased has been explained in a wishy-washy manner. P.J. Thomas PW 21, Circle Inspector of Police, has specifically deposed on the recovery, retention and return of the earrings to the family of the deceased. The statement of PW 21 reveals a sorry state of affairs in handling the investigation of the case in hand. According to the statement of PW 21, the earrings were removed from the dead body of Padmini Devi, by one of the policemen who was assisting him in the preparation of inquest report on 9-5-1998. There is no documentary record of this. The earrings were then (according to PW 21) retained by the writer at the police station. This again, without maintaining any record. On 11-6-1998, the said earrings are stated to have been returned to Ayyappa Kurup PW 2, husband of deceased Padmini Devi. It was also deposed by PW 21, that Ayyappa Kurup PW 2 had visited the police station to take back the earrings. Accordingly, the earrings were returned to him. Yet again, without maintaining any record.”

56. However, such observations by the Supreme Court in **Madhu** (supra) were premised on the fact that the factum of the earrings found on the person of the deceased had been explained in a wishy-washy manner. Moreover, the Hon'ble Supreme Court had also taken into consideration the circumstances under which the recovery was shown to have been made under Section 27 of the Indian Evidence Act, 1872. It noted that,

“54. The statements of PW 7, PW 11, PW 13 and PW 15, narrated (and relevant portions extracted) hereinabove, clearly lead to the positive conclusion that the fact that the stolen articles would be recovered from the premises of the accused was known before the accused were brought to the recovery site. These witnesses, as also the crowd present, were aware of the said factual position at around “noon” (as per the statement of Gopinathan, PW 13) but definitely before 2.30 p.m. (as per the statement of Madhu PW 7). But according to P.J. Thomas (PW 21), the confessional statements were recorded between 2 and 2.45 p.m.”

Thereafter, the Supreme Court further held that,

“72. For the reasons recorded by us hereinabove, we are of the view, that the evidence produced by the prosecution does not, in any way, establish the guilt of the accused. The prosecution had endeavoured to prove the allegations levelled against the accused on the basis of circumstantial evidence. As noticed above, the mainstay of the prosecution evidence is the recovery of the gold ornaments belonging to the deceased Padmini Devi at the instance of the accused Madhu and Sibi. We have concluded that the statements

made by the accused Madhu and Sibi (vide Exts. P-10 and P-9 respectively) cannot be proved against the accused, or to their detriment. This by itself removes the most vital link in the chain of events sought to be established by the prosecution against the accused. Evidence produced to establish the presence of the accused near the place of occurrence, at or about the time of the commission of the crime has also been found to be irrelevant. This is because, the accused were in any case neighbours of the deceased Padmini Devi. We have also found, that the theft of the gold ornaments worn by the deceased Padmini Devi was also doubtful. The explanation tendered by the prosecution of the earrings worn by the deceased Padmini Devi when her body was recovered, is also far from satisfactory. From the statement of Dr. Radhakrishnan PW 20, and the surrounding facts, it cannot be positively inferred that the deceased Padmini Devi was first smothered and then drowned as has been alleged by the prosecution. We have also found serious contradictions in the deposition of the prosecution witnesses. The prosecution has failed to establish an unbroken chain of events lending (sic leading) to the determination, that the inference being drawn from the evidence is the only inescapable conclusion. In fact in our view the prosecution has not been able to connect the accused with the alleged crime in any manner whatsoever.”

57. In the case at hand, however, no such discrepancy was demonstrated. The confessional statements of the appellants were recorded well before hand. There is no evidence on record that the witnesses to such recovery knew of such statement or recovery at the behest of the appellants. There is no incongruity shown in the

evidence inconsistent with the manner of commission of crime or infliction of death. Moreover, the handkerchiefs used by the appellants after committing murder were also recovered at their statement from a different place. It is well settled position of law that in criminal proceedings, each case has to be considered on the basis of specific facts obtained in that case. There are comprehensible dissimilarities between the facts of **Madhu** (supra) and that obtaining in the present case. In fact, no explanation, whatsoever, has been put forward by the appellants as to how they came into possession of the stolen articles belonging to the victim Rekha Rani Roy.

58. Therefore, on the basis of discussion made hereinabove, we find no reason to interfere with the impugned judgment of conviction and order of sentence. We affirm the same.

59. Consequently, all the three appeals being **CRA 367 of 2018, CRA 303 of 2018** and **CRA 47 of 2021** are hereby dismissed. Connected applications, if any, shall also stand disposed of accordingly.

60. Period of detention already undergone by the appellants during enquiry, investigation or trial shall be set off against the substantial punishment in accordance with the provisions of Section 428 of the Code of Criminal Procedure.

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

[MD. SHABBAR RASHIDI, J.]

62. I agree.

[DEBANGSU BASAK, J.]