

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 Ajay Kumar Gupta**

C.R.A. 645 of 2017

Saidul Answare @ Haque @ Momin
Versus
The State of West Bengal

For the Appellant: Mr. Navanil De,
 Mr. S. Ghosh,
 Mr. Shoumilya Mazumder

For the State: Mr. Madhusudan Sur, Ld. APP
 Mr. Manoranjan Mahata.

Hearing concluded on: 05.02.2026.

Judgment on: 05.02.2026.

Rajasekhar Mantha, J.:

1. The present appeal is directed against the judgment of conviction dated 05.09.2017 and order of sentence dated 06.09.2017 passed by the learned Additional District and Sessions Judge, Kandi, Dist, Murshidabad in Sessions Trial No. 01(07) of 2016 arising out of Sessions Sl. No. 169 of 2016.
2. The appellant was convicted under Section 302 of the IPC. The appellant was sentenced to suffer rigorous life imprisonment for life and directed to pay a fine of Rs 10,000 (Rupees ten thousand only). In

default of paying fine, the appellant was directed to undergo a rigorous imprisonment of 6 months.

THE PROSECUTION THE EVIDENCE ON RECORD AND THE ANALYSIS OF THIS COURT

3. In the middle of the night on 28th of September, 2015, the appellant got into a fight with his wife and inflicted cut injuries on her head and neck. The incident occurred about seven years after marriage. 2 months before the fateful night, the victim came to her brother's house along with her two minor children. The victim had a son and daughter. She came back after having faced immense torture at her in-laws place.
4. 15 days prior to the incident, the appellant is stated to have come to the parental house of the victim and requested the victim to come back with him to her matrimonial house. The victim declined. The appellant thus stayed with the victim at her paternal house. The appellant was residing with his wife and children in the parental house since thereafter until the fateful night. There are however some minor discrepancies between the days mentioned in the written complaint, the formal FIR and the inquest report between 28th and 29th September (the day after the incident).
5. What is, however, clear to this Court without any doubt is that the death occurred in the intervening night between 28th and 29th of September, 2015.

6. **PW-5, Rupsha Khatoon**, the minor daughter of the victim was an eye-witness. The villagers gathered around the body at dawn. They saw the minor daughter was crying. Police arrived and took away the victim's body for inquest. The appellant, escaped from the place after the incident. He was not apprehended until two months thereafter. Investigation commenced. The post-mortem was conducted.
7. The PM report found several cut injuries on the left and right side of the neck of the victim and her head. The injuries were found to be homicidal in nature and inflicted with the sharp cutting weapon. The trial commenced.
8. The complaint was written by **PW-14, Kabirul Islam** on the instruction of the brother of the victim **PW-1, Ijarul Sk**
9. **PW-1, Ansar Sk. and PW-2, Habibur Rahaman**, were the seizure witnesses of the Kabulinama, i.e., documents evidencing marriage between the victim and the appellant.
10. **PW-3, Bablu Sk. and PW-4, Delbahar Sk.** were the seizure witnesses to the blood stained earth at the place of occurrence.
11. **PW-8, Kankar Ali Sk. and PW-13, Nihar Kandi Biswas**, were the witnesses to the seizure of the weapon. The weapon was originally discovered based on the leading statement of the appellant recorded under Section 27 of the Evidence Act.
12. **PW-9, Ratan Sk.** was the surathal witness.

13. **PW-10, Goutam Biswas**, was the witness to the seizure of the blood stained clothes of the victim which was not produced in course of trial.
14. **PW-12, Dr. Dhiraj Nandi chowdhury**, who described the injuries on the victim in detail:-

On careful dissection of the dead body, I found Rigor Mortis present over the dead body. I found –

- 1. Lacerated injury on the scalp 2 inch X 2.5 inch depth up to the skull.*
- 2. Lacerated injury 2 inch X ½ inch depth up to the skull above the left eyebrow.*
- 3. Lacerated injury 2.5 inch X 1 inch depth up to the skull over Central forehead.*
- 4. One sharp cut throat injury low down in the neck 7 inch X 1.5 inch depth up to vertebra cutting down through and through Trachea and Esophagus and muscle vessel nerves fascia with bruise skin margin ante mortem would.*

Scalp findings:- Covered with long back hairs stained with blood lacerated wound as mentioned above.

Skull:- Healthy and intact.

Meninges, Meninges spaces, cerebral vessel:- Healthy and Pale.

Brain:- Pale and Healthy.

Orbital Nasal and aural cavities findings: Healthy.

Neck, Mouth, Pharynx:- Pale and Healthy Except cut injury as mentioned above.

Chest:- Healthy, Esophagus cut across corresponding level of cut throat.

Pleural Cavity:- Pale and dry.

Lungs:- Both right and left pale and healthy.

Heart:- Pale, Both Chamber empty.

Abdomen:- Abdominal wall Healthy, Peritoneum and Peritoneum cavity:- Pale and Healthy.

Stomach:- Pale, contained old food around 5 ouns.

Small Intestine including appendix: Pale and distended.

Liver: Pale, Healthy, and partly preserved.

Spleen:- Pale, partly preserved.

Pelvic Bone: Healthy.

Kidney both right and left: Healthy and left kidney preserved.

Urinary bladder: Urethra pale and empty.

Pelvic Cavity tissues:- healthy.

Genital Organs: healthy, dry. No stain and empty, no injury.

From the above findings, I opined that the death of the subject was due to cut throat injury, ante-mortem, homicidal in nature.

Final Opinion is kept for viscera report.

This is the post mortem report prepared by my hand writing on given proforma and it bears my signature with seal. It is marked Ext.7."

15. The star witness for the prosecution is **PW-5, Rupsha Khatoon**, minor daughter of the victim. She was 7 years old at the time of trial. On date the incident, she was around 5 and half years old. The Trial Court has duly assessed ability of PW 5 to depose. During the said assessment, the trial Court asked PW 5 about the name of her parents and the name of the place where she has come to depose. The answers thereto were correctly given by PW 5. The said questions were relevant to assess the capability of PW 5 to narrate her eye witness account of that fateful night.
16. PW 5 has deposed that she was lying on bed with her mother, the victim, after the incident. She has deposed that the appellant first caused injuries on the head of the victim with a bamboo as a result, the victim fell down. She has deposed that thereafter the appellant sat on the chest

of the victim and assaulted her on the neck and head with a knife. This happened in the paternal house of the victim. PW 5 identified the appellant in Court.

17. What the prosecution ought to have established in its examination-in-chief of PW 5 was in fact made up by the defense's cross-examination of PW 5. PW-5 in her cross-examination clearly stated that she was awake when her mother was killed. She remained laid beside her bleeding mother on the bed.
18. PW 5 has further deposed that her father, the appellant, after assaulting the victim locked the victim and PW-5 inside the first floor of the house by putting latches on the door. PW 5 has deposed that the entire wearing apparels of the mother were soaked in blood. She never visited her father's house. She deposed that her father did not look after her mother.
19. Learned Counsel for the appellant would argue that the discrepancy in the dates between the complaint, Surathal and the First Information Report belies the prosecution case.
20. This Court, however, finds that the discrepancies are minor and/or a result of typographical error. The said minor discrepancies as regards the time has not rendered the prosecution case unbelievable
21. It is next argued that the name of the Police Station in the FIR is not complete. This Court does not find the same to be of a very serious lapse. The FIR was duly signed by the officer-in-charge of Police Station. The investigation was duly conducted.

22. It is next argued that the leading statement of the appellant under Section 27 of the Evidence Act ought to have been exhibited in the Trial Court. It is submitted that in the absence thereof and in the light of the fact that the knife was not sent for forensic examination, the linking of the weapon to the murder by the Trial Judge was wholly erroneous.
23. This Court notes that while the argument is attractive, the other evidence available on record i.e. of the Post Mortem Doctor, inquest report and the evidence of PW-5 leaves little room for the appellant for maneuver. It is now well-settled that the minor discrepancy in a prosecution case cannot throw out well established evidence.
24. The Honorable Supreme Court of India in ***Perumal Raja @ Perumal V. State, Rep. By Inspector Of Police*** reported in **2024 INSC 13** has held that Section 27 of the Evidence Act should be pragmatically applied. Its application should be informed by the realities prevailing at ground zero. Therefore, strict insistence on the exhibition of the statement of the accused under Sec.27 is not called for when the eye witness account of recovery of the weapon is on record. Para no. 24 of ***Perumal Raja (supra)*** is set out below:-

24. Section 27 of the Evidence Act is frequently used by the police, and the courts must be vigilant about its application to ensure credibility of evidence, as the provision is vulnerable to abuse. **However, this does not mean that in every case invocation of Section 27 of the Evidence Act must be seen with suspicion and is to be discarded as perfunctory and unworthy of credence.**

Emphasis Applied

25. The knife has been seized in the presence of the PW 8 and 13. They have clearly deposed that they have seen the appellant showing to the police the place, from where the knife was ultimately recovered. PW 8 and 14 have identified the said knife during the trial. The location of the weapon and the appellant assisting in its discovery thus has been proved by substantive oral evidence of PWs 8 and 13.

26. A statement leading to discovery in terms of Section 27 of the Evidence Act is not a substantive piece of evidence. The oral evidence of the witnesses to the said recovery however is a substantive piece of evidence. Thus the non-exhibition of the statement under Section 27 has been well made up by the clear eye witness account of PW 8 and 13 to the recovery of the said knife. In ***Manoj Kumar Soni v. State of M.P* 2 2023 SCC OnLine SC 984**, it was held as follows:-

“22. A doubt looms: can disclosure statements per se, unaccompanied by any supporting evidence, be deemed adequate to secure a conviction? We find it implausible. Although disclosure statements hold significance as a contributing factor in unriddling a case, in our opinion, they are not so strong a piece of evidence sufficient on its own and without anything more to bring home the charges beyond reasonable doubt.”

27. It is lastly argued by the Counsel for the appellant that the star witness of the prosecution PW 5 being a minor witness must be a tutored witness. Ld. Counsel for appellant argued at the age of seven, PW 7 could not understand the requirement of maintenance being given by a husband to a wife. The evidence of PW 5 should not be believed. It is also argued that

since PW 5 was accompanied by her grandmother in the Court, the evidence of PW-5 must be deemed tutored and should be ignored.

28. This Court, however, notes that while there might have been some improvement in the evidence deposed by PW-5 in cross-examination, most of the evidence-in-chief and other part of the cross-examination clearly and undisputedly have established the crux of the prosecution case. A strong foundation is not affected by minor irregularities in the prosecution case and investigation.

29. PW 5 has deposed that the appellant, her father, did not look after her mother and her. She has deposed that the appellant did not pay maintenance to them. What is significant is that the said statement was made by PW 5 during her cross-examination by the defense. Therefore, it cannot be ruled out that the defense may have made a suggestion to PW 5 about the conduct of the appellant towards the victim and PW 5. PW 5 was therefore led by the defense to make the said statement.

30. PW 5 did not in the house of the appellant. She resided in the maternal home of the victim. She resided with the parents of the victim. Thus, she may be privy to any discussion about the neglect of the appellant towards the victim, his wife. The sense and understanding of PW 5 about the obligation of a husband to maintain his wife and children therefore cannot be ruled out

CONCLUSION:

31. Having regard to the aforesaid discussions, this Court is of the view that the impugned judgment dated 5th September, 2017 and the order of sentence dated 6th September, 2017 call for no interference. C.R.A. 645 of 2017 shall stand dismissed.

32. Before parting with this case, this Court would like to record its appreciation for very sincere and dedicated efforts put in by the learned counsel for the appellant in canvassing the case of his client.

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

34. Let the T.C.R. be returned to the Court below at once.

35. 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.)