

**IN THE HIGH COURT AT CALCUTTA
IN THE CIRCUIT BENCH
AT JALPAIGURI
CRIMINAL APPELLATE JURISDICTION**

Present:-

**The Hon'ble Justice Shampa Sarkar
and
The Hon'ble Justice Smita Das De**

D.R. 3 of 2025

**State of West Bengal
vs.
Sujit Dey Bhowmik**

With

C.R.A (DB) 32 of 2025

**Sujit Dey Bhowmik
vs.
State of West Bengal**

For the appellant in
D.R 3 of 2025

: Mr. Aniruddha Biswas, Adv.
Mr. Subham Chanda, Adv.
Mr. Monoj Saha, Adv.
Mr. Kanak Mishra, Adv.

For the Appellant in
CRA(DB) 32 of 2025

: Mr. Anirban Banerjee, Adv.

For the State

: Mr. Aditi Shankar Chakraborty
(erstwhile APP)
Mr. Abhijit Sarkar, Adv.
Dr. Arjun Chowdhury, Adv.

Reserved for Judgment on

: 14.08.2026

Judgment pronounced

: 28.08.2026

Judgment uploaded on

: 28.08.2026

Shampa Sarkar J. :-

1. The death reference and the connected appeal have been heard analogously as they arise out of the same impugned judgment of conviction dated April 10, 2025 and order of sentence dated April 21, 2025, passed by the learned Additional Sessions Judge, 3rd Court, Jalpaiguri in connection with Sessions Case No. 11 of 2024 [Sessions Trial No. 2(12) 24], (CIS No. 11 of 2024) arising out of G.R. Case No. 3151 of 2023 corresponding to Maynaguri Police Station Case No. 237 of 2023 dated June 20, 2023 under Sections 498A, 307, 326, 302 of the Indian Penal Code, 1860 (in short IPC).
2. By the impugned judgment, the appellant was found not guilty of the offences punishable under Sections 498A/326 of the Indian Penal Code and he was acquitted from those charges under section 235(1) of the Code of Criminal Procedure, 1973(in short Cr.P.C). The said appellant was found guilty for commission of the offences punishable under Sections 307 and 302 of the IPC and accordingly he was convicted under the said charge under Sections 235(2) of the Cr.P.C. The learned Court awarded death penalty for commission of the offence under Section 302 and imprisonment for life with a fine of Rs. 1 lakh, for the offence punishable under Section 307, in default, rigorous imprisonment for 6 months. In the event the fine was realised, the same was directed to be given to the minor son of the victim for his education. The other two accused persons namely Dilip Dey Bhowmik and Sadhan Dey Bhowmik were found not guilty for the commission of the offence punishable under Section 498A of the IPC and

they were acquitted from the said charge under Section 235(1) of the CrP.C. Accordingly, they were released on respective bail bonds.

3. Learned Advocates Mr. Aniruddha Biswas and Anirban Banerjee represented Sujit Dey Bhowmik (the appellant) and submitted that the conviction and sentence were unsustainable. There were several inconsistencies in the evidence. The ocular evidence relied upon by the learned Trial Judge lacked credibility. The prosecution witness No. 1/ the defacto complainant claimed herself to be an eye witness to the alleged incident. Whereas, in her cross-examination she had admitted that she had gone to her neighbour's house to repair her mobile phone at the time of the incident. It was evident from her cross-examination that she was not present at the place of occurrence (PO) at the time of the alleged incident. The P.W 3 (Sayan Dey Bhowmick), the other eye witness was the minor child of the deceased and the appellant. PW3 in his examination in-chief stated that his 'masi' (maternal aunt) i.e. Chaitali Sarkar (defacto complainant) saw the incident, but the deposition of PW1 and PW3 were contradictory. Thus, the prosecution's contention that PW1 was an eye witness to the alleged incident could not be proved. The statement of the defacto complainant in the written complaint/FIR of being an eye witness was also not proved.

4. With regard to the recovery of the murder weapon on the basis of the statement of the appellant, it was submitted that although the prosecution examined two independent witnesses i.e. PW 4 and PW 7 to prove the purported recovery of the weapon used in the alleged crime, but the said recovery statement of the appellant was inadmissible, being contrary to the

provisions of Section 27 of the Indian Evidence Act, 1872. In this cross-examination, PW 4 had admitted that he did not know English, whereas, he signed the seizure list in English. He deposed that, he signed the said seizure list after recovery of the weapon, without reading the contents.

5. According to Mr. Biswas, the said independent witness could not prove the purported recovery, consequent upon the statement of the appellant while in custody of the police. The other witness to the recovery was PW 7, Kartick Sarkar. In his examination-in-chief, PW 7 deposed that after two or three days the police went to the house of Kalpana Sarkar (mother of the victim) and obtained his signature on a piece of paper. He did not see the police recover the axe. Though, the witness was declared hostile by the prosecution and was cross-examined, the testimony of a hostile witness could not be rejected in toto as per the legal principles. Reference was made to the decision of **C. Muniappan and Others vs. State of Tamil Nadu** reported in **(2010) 9 SCC 567**.

6. It was further submitted that PW 3 had stated that his father threw the axe and ran away from the room. PW 2 also stated that the appellant ran away from the room, leaving the axe. Thus, the inconsistency in the recovery statement and the deposition of PW 1 and PW 3 made the recovery doubtful and unreliable. Recovery of the weapon from the banana grove pursuant to the information given by the appellant to the police, was shrouded in doubt and was the concocted story of the prosecution. The entire process of recovery was staged by the prosecution with an intention to convict the appellant. The inconsistencies struck at the very root of the prosecution

case. The disclosure statement i.e. Exhibit 26 could not be relied upon. The same was not prepared as per the procedure laid down by the Hon'ble Apex Court in ***Bijender Alias Mandar vs. State of Haryana*** reported in **(2022) 01 SCC 92**. According to the Hon'ble Apex Court, in order to sustain the guilt of an accused on the basis of the disclosure statement and the resultant recovery of inculpatory material, the recovery should be unimpeachable and not shrouded with any element of doubt. The testimony and the trustworthiness of the attesting witnesses were relevant factors and in the present case, the evidence of PW 4 and PW 7 was not trustworthy. The prosecution failed to inspire confidence in the manner of recovery and the contents of recovery statement and the seizure list.

7. Reliance was placed on ***Sahaja Alias Shahajan Ismail Mohd. Shaikh*** reported in **(2023) 12 SCC 558**, in support of the contention that the panchnama was required to be read over to the Panch and only thereafter the same could be exhibited. Further reliance was placed on the decision of ***Babu Sahebagouda Rudra Goudar and Others vs. State of Karnataka*** reported in **(2024) 08 SCC 149**, in support of the contention that the statement of the accused recorded by the police was basically a memorandum of confession and only the part which led to the discovery of the fact was admissible. Thus, when the Investigating Officer stepped into the witness box to prove such disclosure statement, he was required to narrate what the accused stated to him. The decision of ***Subramanya vs. State of Karnataka*** reported in **(2023) 11 SCC 255**, was relied upon in

support of the contention that the accused was required to make the statement before two independent witnesses (**Panch witnesses**).

8. According to Mr. Biswas, Exhibit 26 i.e. the statement of the accused did not bear any endorsement as to the voluntariness of the accused. There was considerable delay between the disclosure statement and recovery. The recovery Memo did not bear the signature of the two independent witnesses in presence of whom the disclosure statement had been made. The purported recovery Memo did not bear the signature of the two independent witnesses in whose presence the disclosure statement had been recorded. None of the seizure witnesses i.e. PW 4 and PW 7 stated that they were aware of any kind of previous statement/disclosure statement at all. The PW 4 and PW 7 failed to state the contents of the Panchnama. The object recovered was easily available in the market. None of the witnesses saw the appellant sign the seizure List/ Panchnama. The PW 14 (I.O) confirmed that he did not find any label on the Material Exhibit 1 (murder weapon), although labelling had been done by him. Thus, the prosecution failed to prove the recovery, in accordance with the prescribed legal procedure.

9. It was submitted that benefit of doubt should be given to the appellant as the prosecution had failed to prove the commission of the offence beyond reasonable doubt. Without prejudice to such contention, it was further submitted that, several relevant factors were not considered by the learned Judge before sentencing death penalty. Placing reliance on the affidavit-in-chief of PW 3 and PW 5, it was submitted by Mr. Biswas that the alleged offence was not premeditated. It was the result of a quarrel leading to

provocation. The appellant and other eye witnesses had tea and breakfast together. The offence was committed 30 minutes thereafter, which ruled out commission of a premediated and cold blooded murder. Death penalty is awarded only in rarest of 'rare' cases. In this case the learned Judge had imposed the death penalty very casually, as a matter of course. The judgment impugned was silent about the specific cross-examinations, contradictions, omissions etc. which would go to core of the prosecution case, thereby, making the prosecution case weak. The guidelines to be followed for imposition of death penalty as laid down by the Hon'ble Apex Court had not been adhered to. Rather, there was blatant violation of those conditions laid down by the Hon'ble Apex Court. The scope of rehabilitation and reformation were not discussed. Rather, the learned Trial Judge relied on the meaning of marital love and the implication of the vedic mantras in a Hindu Marriage and decided the case in hand to be rarest of the rare. Reliance was placed on the decision of ***Bacchan Singh vs. State of Punjab*** reported in **(1980) 2 SCC 684**, ***Machhi Singh and Others vs. State of Punjab*** reported in **(1983) 03 SCC 470**, ***Swami Sharddananda alias Murali Manohar Mishra vs. State of Karnataka*** reported in **(2008) 13 SCC 767**. While citing the above decisions, Mr. Biswas put great emphasis on the mitigating circumstances. It was submitted that a certificate of behaviour was not obtained from the correctional home and the mitigating circumstances were not taken into consideration, although at the sentence hearing the appellant had made such statement. The appellant was 37 years of age. He had a minor child and an aging mother. The opinion of the

Probation Officer later submitted before the coordinate Bench mentioned that there was a possibility of reform. Most importantly, the appellant did not have any criminal antecedent.

10. The then learned APP rebutted the submissions of Mr. Biswas and submitted that the judgment of conviction and sentence did not call for any interference. The prosecution relied upon four eye witnesses. Two of whom were injured witnesses. Injured witnesses would never lie. The evidence of the son, who saw the entire incident was corroborated by other witnesses. Although, the son was a minor, the credibility of his evidence could not be doubted. His testimony was unshaken during cross-examination. There was not a single contradiction in his oral testimony before the court and his statement recorded under Section 164 of the Cr.P.C. PW 1 was the de facto complainant, sister of the victim and the sister-in-law of the appellant. All the relatives had gathered in the house of the PW 5, the mother of the victim on the occasion of Shraddha of the father (husband of PW 5). The proximity of the de facto complainant with the PO and the incident, was available from the written complaint/FIR and also the deposition of the other eye witnesses. There were no material contradictions. She was present in the house when the quarrel started. She had gone next door to repair her mobile, but when she heard the hue and cry, she returned and saw the victim lying on a pool of blood and the appellant suddenly leaving. She deposed that she saw the entire assault on her sister, mother and grandmother. She also stated that she did not come forward to rescue them, as she was afraid that the appellant would inflict injury on her, just like he

assaulted the family members. PW 1 identified her signature on the written complaint/FIR. She identified the axe. She stated that the complaint was typed at a computer shop as per her narration. It was also read over and explained to her by the person who had typed the same. The written complaint was marked as Exhibit 1, after identification by the de facto complainant. The argument of the defence, based on the cross-examination of PW 1, to contend that she was not an eye witness was misconceived. The PW 1 clearly stated in her cross-examination that she saw the quarrel. Then, she went to the neighbour's house to repair her mobile, but when she heard the hue and cry, she came back. She found her sister, mother and grandmother in an injured condition and the appellant was standing there with the axe and he left. She had stated clearly that she had seen the entire incident of the assault. The testimony of the PW1 inspired confidence.

11. With regard to the process of recovery of the weapon, it was submitted that Sri Ram Kumar Roy, PW 14 (I.O) had recovered the axe on the basis of the statement of the appellant recorded under Section 161 of the Cr.P.C. The statement of the appellant was marked in red ink and was exhibited as Exhibit 26. The IO made a G.D Entry, at the time of recording the statement, which was marked as Exhibit 27. Thereafter, the weapon was recovered in presence of Atul Sarkar and Kartick Sarkar, PW 4 and PW 7. The appellant and the eye witnesses signed the seizure list. The seizure list was marked as Exhibit 3/1 and the offending weapon was also labelled and signed. The statements of the seizure witnesses were recorded under Section 161 of the Cr.P.C. The said axe was labelled as Material Exhibit I. After the

weapon was recovered, the same was kept in the 'Malkhana' and another G.D was lodged. The certified copy of the said G.D was marked as Exhibit 28. The statement of eye witnesses were recorded before the learned Additional Sessions Judge under Section 164 of the Cr.P.C. The entire process of recovery was photographed in presence of Anadi Roy. The footage was transferred to a pen drive. Certificate was given by Anadi Roy and the contents of the photograph was proved as per the provisions of Section 65B of the Indian Evidence Act. The pen drive was marked as Material Exhibit IV. The envelope containing the pen drive was marked as Material Exhibit IV/I. The camera which was used for the photograph was also seized and was kept in the custody of 'jimmanama'. The said 'jimmanama' was given to Anadi Roy and the same was marked as Exhibit 31. In the cross-examination of the said IO, no questions with regard to the mode and manner of recovery had been made and no suggestions had been put with regard to the alleged non-compliance of the legal procedure leading to such recovery. It was further contended that the injured witnesses, the injury report as also the testimony of the doctor who treated the injured witnesses corroborated each other and as such, the judgment impugned and the sentence imposed should be upheld. Further, PW 3 (eye witness), had narrated the nature of injury on the victim (blows on the head and hand). The same finds corroboration in the post mortem report and also in the evidence of the doctor who prepared the post mortem report. Thus, the credibility of the evidence of PW 3 was beyond doubt.

12. Considered the submissions of the respective parties.

13. PW 1 (de facto complainant), is the sister of the victim, sister-in-law of the appellant and the daughter of the PW 5 (injured witness and the mother of the victim) and grand-daughter of Hiranbala @ Dhiranbala Sarkar i.e. PW 6 (injured witness and grandmother). The contents of the written complaint/FIR was corroborated by the evidence of PWs 1, 3, 5 and 6. The nature of the injury sustained by the victim and PWs 5 and 6 finds corroboration in the evidence of the doctors, i.e. PWs 8, 9 and 10. The post mortem and injury reports were admitted and marked Exhibits without objection. The Inquest Report and the Post Mortem Report corroborate each other. After the PW 7 was declared hostile by the prosecution, he was cross-examined by the prosecution, when he stated that the weapon was recovered in his presence. The evidence of PW 14 (I.O) with regard to recovery of the weapon was corroborated by PW 4 and PW 7 (panch witnesses).

14. We proceed to discuss the evidence briefly, which would establish that the prosecution case was proved beyond reasonable doubt. The PW 1, FIR maker deposed as follows:-

“On 20.06.2023 at about 10:00 a.m. quarrel was going on between Mitali Dey Bhowmick and Sujit Dey Bhowmick. Sujit Dey Bhowmick suddenly brought a axe and started hitting Mitali Dey Bhowmick on her head and other parts of her body. Due to assault on the head, brain matter came out from the skull. Mitali Dey Bhowmick at that point of time raised gagging by saying ‘babare, maare’. Hearing the said gagging, my mother Kalpana Sarkar and my maternal grandmother rushed to the bedroom from the kitchen. They tried to save Mitali Dey Bhowmick from the hand of Sujit Dey Bhowmick but he also assaulted them by the said axe. When my mother tried to rescue my said sister Mitali Dey Bhowmick, Sujit Dey Bhowmick assaulted her by the axe on her neck and chest. When my maternal grandmother tried to rescue my mother, Sujit Dey Bhowmick also assaulted her by axe on her back. I saw the entire incident of assault of my sister, mother and grandmother but I did not came forward to rescue them as there was every possibility to

receive injury by Sujit Dey Bhowmick. After assaulting my family members, Sujit Dey Bhowmick ran away from the spot. I raised hue and cry. People assembled there and Mitali Dey Bhowmick, Kalpana Sarkar and Hiranbala Sarkar were taken to Maynaguri Hospital. Doctor of Maynaguri Hospital released Hiranbala after treatment. My mother Kalpana Sarkar and my sister Mitali Dey Bhowmick were referred to Jalpaiguri Hospital. The doctor of Jalpaiguri Hospital declared Mitali Dey Bhowmick as dead and my mother was admitted in the said hospital.

On 20.06.2023 I lodged complaint over the said incident at Maynaguri P.S. I read upto Class- XII. This is the said complaint which I lodged. I put my signature on it. The complaint was typed in a computer shop near to the P.S. but I cannot recollect the name, who typed the complaint. The complaint was typed under my instruction and say. It was read over and explained to me by that person and thereafter I put my signature. The signature of the witness appearing on the written complaint be marked as Exbt. 1.”

15. The written complaint/FIR was proved by the PW 1 and she identified her signature.

16. PW 2 was an independent witness and neighbour. His testimony has been corroborated by the injury report, the post mortem report, the inquest report. Relevant portion thereof are quoted below :-

“Mitali Dey Bhowmick was murdered by Sujit Dey Bhowmick on 20.06.2023 at about 10:00 a.m. at the bedroom of her father’s house. On 20.06.2023 at about 10:00 a.m., Mitali Dey Bhowmick, Kalpana Sarkar, Sujit Dey Bhowmick, Chaitali Sarkar, Sayan Dey Bhowmick and mother of Kalpana Sarkar were present in the said house. At that point of time I had been in my house. Little before 10:00 a.m. I heard hue and cry from the house of Kalpana Sarkar. On hearing the hue and cry, I went to the said house and saw that Mitali Dey Bhowmick is lying in the pool of blood on the bed and her brain matters came out from the head. I also saw Kalpana Sarkar and her mother was lying on the floor with bleeding injury. Neighbouring people also assembled there. Chaitali Sarkar then told that accused Sujit Dey Bhowmick murdered Mitali Dey Bhowmick and caused injury to Kalpana Sarkar and her mother by an axe. I also heard that Sujit Dey Bhowmick ran away from the room leaving the axe.

I heard that Mitali Dey Bhowmick was not happy in her matrimonial home as quarrel took place in her matrimonial home over the issue of money. I heard elder brothers of Sujit Dey Bhowmick demanded money from Mitali Dey Bhowmick. Sujit Dey Bhowmick and his elder brothers are present in the Court room (identified). I know the elder brother of

Sujit Dey Bhowmick personally. Sujit Dey Bhowmick resides at Charer Bari. Charer Bari and Dhawlaguri are adjacent villages.”

PW 2 did not contradict his statement, when he was cross-examined.

17. PW 3 is the son, Sayan Dey Bhowmik. His testimony is quoted below :-

“Mitali Dey Bhowmick was my mother. My mother was murdered by my father by axe on 20.06.2023 in the morning hours. The said incident occurred at my maternal grandmother's house. At the time of incident, my parents were inside the room and I was playing near the door of the said room.

Immediately before the incident there was a quarrel between my father and mother. The issue of the quarrel was that my father was talking over phone with a lady of Nadia. I do not know the name of the said lady. As my father was talking with the said lady over phone, my mother raised protest and quarrel started. I heard hue and cry of my mother and I looked inside the room and saw that my father was assaulting my mother by an axe. My father gave 4 blows on my mother by axe. He gave two blows on the head and two blows on the hand of my mother. I also raised hue and cry. Hearing the hue and cry my dida, namely, Kalpana Sarkar and baroma, namely, Hiranbala Sarkar rushed to the said room rescue my mother. Then my father gave a blow of axe on the chest of my dida and he also gave blow of axe on the back of my baroma. All of them sustained bleeding injuries. Then my father ran away from the room, throwing the axe.

After that, I rushed to my mother but my mother was unconscious and she was in a pool of blood. Brain matters of my mother came out from the head. My maternal aunt (masi) Chaitali Sarkar also saw the incident. My mother, maternal grandmother and baroma were taken to hospital. I also went to Jalpaiguri Hospital. After reaching the hospital, I came to learn that my mother died.

I have seen the axe by which my father murdered my mother and injured my maternal grandmother and baroma. I may identify the said axe if the same is shown to me.

(Witness is shown the Mat. Exbt. I)

This is the said axe by which my mother was murdered (Mat. Exbt. I is identified).”

18. In the cross-examination, no contradictions could be extracted. His deposition before the court was consistent with his statement recorded under Section 164 before the learned Chief Judicial Magistrate. Before his testimony, the court put general questions to the minor to understand whether he was capable of giving evidence. He answered the questions successfully and smartly. A certificate to that effect was given by the court

which indicated that the said witness had understood the questions and was capable of giving evidence in court.

19. PW 4 Atul Sarkar, deposed that the offending axe was recovered from a banana groove in his presence and that he had signed the seizure list. He identified his signature and the axe. His signature was marked as Exhibit 3.

20. PW 5 is the injured witness and the mother of the victim. Her examination-in-chief is quoted below :-

“Mitali was murdered by Sujit Dey Bhowmick on 20.06.2023 at about 10:00 a.m. in a bedroom of my house by axe.

In the morning of 20.06.2023 I prepared tea and took tea with Chaitali, Mitali, accused Sujit, Sayan Dey Bhowmick and my mother. Thereafter, I went to kitchen adjacent to the room of Mitali and started preparing food for ourselves. My mother Hiranbala assisted me in cooking.

While I was cooking, I heard hue and cry of Mitali coming out from the bedroom where she stayed. After hearing hue and cry of Mitali, myself and my mother Hiranbala rushed to the room of Mitali and I saw that Sujit Dey Bhowmick was giving blows on Mitali by an axe. I tried to rescue Mitali but Sujit Dey Bhowmick gave a blow of axe on my chest causing bleeding injury and I fell down on the floor.

(Witness has shown the injury mark on her chest which is visible.)

When my mother Hiranbala Sarkar tried to rescue me, the accused Sujit Dey Bhowmick also gave blow on her back and hand by axe. My mother also sustained injury on her eyes and she lost her vision in one of her eyes (with objection. After sustaining the injury I lost my sense and when I regain my sense I found that I was admitted at Jalpaiguri Superspeciality Hospital. We were taken to hospital by the villagers as I came to learn after regaining my sense.

After giving tea in the morning to Mitali and the accused Sujit Dey Bhowmick, quarrel started between them over the issue that the accused Sujit Dey Bhowmick had relation with one lady of Nadia (with objection).

I may identify the said axe if the same is shown to me.

(Witness is shown the Mat. Exbt. I).

This is the said axe by which my said daughter was murdered (Mat. Exbt. I is identified). (After seeing Mat. Exbt. I witness started weeping).

I may identify the bedsheet of the room of my daughter Mitali.

(Witness is shown Mat. Exbt. II.)

This is the said bedsheet of the bed of my daughter Mitali (Mat. Exbt.II is identified).

I may identify the pillow of the room of my said daughter.

(Witness is shown Mat. Exbt. III.)

This is the said pillow of the bed of my said daughter (Mat. Exbt.III is identified).

I was examined by the police after my discharge from hospital.

My statement was also recorded by the Magistrate at Jalpaiguri Court. I put my signature on the said statement after the same was read over and explained to me. This is the said statement recorded by the Magistrate. Let the statement recorded by Magistrate be marked as Exbt.4 and the envelope containing the said statement is marked as Exbt. 4/1.”

21. The evidence of the said witness remained unshaken in the cross-examination and could not be dislodged or contradicted in any particular material. The said witness deposed that she heard the screaming coming out of the bedroom which the victim was using. PW 5 and her mother PW 6 were cooking in the adjacent room and they ran to save the victim. She saw the appellant hurling blows on the victim with an axe. When she tried to rescue the victim, the appellant hurled one blow on her chest which caused bleeding injury and she fell to the ground. When Hiranbala @ Dhiranbala, her mother and grandmother of the victim (PW6) ran to rescue PW 5, the appellant also struck a blow on her back and hand with the axe. Hiranbala @ Dhiranbala sustained injuries on the eye and lost her vision. PW 5 had lost her consciousness and she regained her consciousness in Jalpaiguri Superspeciality Hospital, where she had been taken for treatment.

22. PW 6, another injured witness and grandmother of the victim deposed in the following manner:-

“At the time of incident I was standing on the veranda and Sujit Dey Bhowmick asked me to go to kitchen to cook food. Thereafter, I went to kitchen. When myself and my daughter Kalpana were preparing food at the kitchen, we heard hue and cry of Mitali. On hearing hue and cry of Mitali, Kalpana rushed to the room of Mitali and I followed her. After entering into the room-we saw that Sujit Dey Bhowmick was giving blow of axe on Mitali and her brain matters came out from the head. Thereafter, Sujit gave a blow of axe on the chest of my daughter Kalpana and she fell on the floor with bleeding injury. Thereafter, Sujit gave blow on my back by axe and I fell on the floor. He again gave blow on me by axe. I resisted that blow by my hands and I sustained injuries

on my hands and eye. My right eye was completely damaged due to said assault.

Thereafter, I do not know anything. I cannot say who took me to hospital. When I regained sense I found that I was admitted in Maynaguri Hospital.

I was examined by the police.

Sujit Dey Bhowmick did not like Mitali. My daughter gave money and other articles to Sujit but Sujit did not change his attitude to her.

Sujit Dey Bhowmick and his two brothers are present in the Court room (identified).

I may identify the said axe if the same is shown to me.”

The evidence of such witness, withstood the test of cross-examination, remained unimpeached and free from any material contradiction.

23. PW 8 was the doctor and Assistant Professor of Jalpaiguri Medical College and Hospital. He treated Hiranbala @ Dhiranbala i.e. PW 6. He deposed that PW 6 was admitted with a history of poly trauma which meant injuries on various parts of the body. Hiranbala @ Dhiranbala was in the emergency ward of the Hospital and was discharged on June 28, 2023. The treatment sheet, bedhead ticket and the injury report prepared by the doctor were numbered and marked as Exhibits 7, 8 and 9 and were proved. The nature of the injury which was mentioned in the injury report by the said witness corroborated the statements of the witnesses. The doctor also deposed that the abrasions on the back of Hiranbala @ Dhiranbala were likely to be caused by a blunt trauma. The trend of cross-examination did not dislodge the statements made by the doctor in his examination-in-chief.

24. PW 9 was the Doctor who performed the post mortem examination over of the victim. The following wounds were found :-

“On examination, I found the following wounds:-

(i) A sharp cut injury on right frontoparietal region of the scalp measuring 5 inch. x 2 inch. x 1.5 inch, the underlying bone is cut open with exposure of the brain matter.

(ii) A sharp cut injury in the right arm measuring 1 c.m. x 1 c.m. x ½ c.m.”

25. The nature of the injury noted in the post mortem find due corroboration from the ocular testimony of the prosecution witnesses as well as from the injuries recorded in the inquest report.

26. PW 10 is the doctor who treated PW 5 Kalpana Sarkar, the injured witness. The patient was treated by the said doctor between June 20, 2023 and June 25, 2023. The relevant portion of the deposition is quoted below :-

“During my examination, I found-Deep lacerated cut injury measuring 7 X 3 X 3 cm, over mid chest region and also deep mussel injury of that area. Operation was done by me along-with my team.

During admission of the patient under me, I used to visit the patient along with the doctors attached with me. These are the treatment sheet of the said patient containing 3 pages. Let the same be marked as Exbt. 13 (collectively).

This is the discharge certificate of the said patient. Let the same be marked as Exbt. 14.

I prepared the injury report as per requisition of police of Maynaguri. The nature and character of the injury was grievous. Patient stated to me that she was being assaulted by her son-in-law, Sujit Bhowmick, with axe. The injury report was prepared by me with my signature. Let the injury report be marked as Exbt. 15.

(witness is shown Mat Exbt -I)

The injury found in the patient can certainly be caused by this type of weapon.”

27. No significant contradictions could be extracted in the cross-examination of the said witness.

28. PW 11 prepared the Inquest Report at the Hospital.

29. PW 13 typed the written complaint/FIR under the instructions and narration of Chaitali Sarkar (PW1, de facto complainant). He deposed that he had read over and explained the contents of the said typed complaint and PW 1 signed the complaint after that. He also deposed that his name

and address were also typed in the written complaint/FIR. The written complaint/FIR was marked as Exhibit 1/1.

30. Defence tried to create a doubt with regard to the credibility of the said witnesses, as he did not have any trade licence and was not an income tax assessee. However, these are not relevant considerations. The said witness has proved that the written complaint/FIR was narrated by PW 1 and she was the FIR maker. He further corroborated the statement of PW 1 that the said written complaint/FIR was typed at a computer shop on the basis of her instructions and narration.

31. PW 14, IO S.I, Mr. Ram Kumar Roy, narrated the entire process of recovery in the following manner :-

“During P.C. period I recorded statement of the accused Sujit Dey Bhowmick under Section 161 of the Cr.P.C. During examination of the said accused under Section 161 of the Cr.P.C., he told that he would show the offending axe if he is taken to the spot. This is the said statement of the accused recorded under Section 161 of the Cr.P.C. Red mark portion of the said statement of the accused is marked as Exbt. 26.

On 22.06.2023 at 04:45 a.m. we took the accused to a particular place following his leading statement and at that time also I lodged G.D. being G.D.E No. 1168. This is the certified to be true copy of the said G.D.E. Let the same be marked as Exbt. 27.

Following the leading statement of the above accused, we went near to the P.O. and the said accused shown the offending axe and thereafter, I recovered the same under a seizure list in presence of witnesses, namely, Atul Sarkar and Kartick Sarkar. The said accused also signed on the seizure list. This is the said seizure list. The witnesses and accused signed on the seizure list. Let the seizure list be marked as Exbt. 3/1. I labelled on the offending weapon and signed on it. I also recorded statement of seizure witnesses under Section 161 of the Cr.P.C.

(Witness is shown Mat. Exbt.I.)

This is the said axe which I recovered leading to the statement of the accused (Mat. Exbt. I is identified).

I returned back to the P.S. with accused and recovered weapon. Kept the recovered weapon at Malkhana vide P.R. No. 214 of 2023 and lodged a return G.D.E No. 1170. This is the certified to be true copy of the G.D.E. No. 1170. Let the same be marked as Exbt. 28. I recorded the statement of eye witnesses and submitted a prayer before the Id. Chief Judicial Magistrate, Jalpaiguri to record their statement under

Section 164 of the Cr.P.C. and prayer was allowed. I collected the copy of the said statement under Section 164 of the Cr.P.C. from the Ld. Court.”

32. In the cross-examination, there was not a hint or a suggestion with regard to the mode and manner of recovery of the weapon. No material contradiction or omission could be elicited in the cross-examination.

33. The conviction in this case was not based only on the recovery statement of the appellant. In the examination of the appellant under Section 313 of the Cr.P.C, with regard to the recovery of the weapon, the appellant stated that the axe was recovered by the police as per his instruction and as he had led the police to the place of recovery.

34. Upon meticulously considering the medical evidence, the testimony of the eye witnesses including injured witnesses and other prosecution witnesses, we find that the prosecution case has been proved to the hilt. Exhibit 1, Exhibit 1/1, Exhibit 2 (statement of PW 3) under Section 164 of Cr.P.C, Exhibit 4 (statement of PW 5 under Section 164 Cr.P.C), Exhibit 7 (treatment sheet of PW 6), Exhibit 8 (emergency ticket of PW 6), Exhibit 9 (injury report of PW 6), Exhibit 10 (post mortem report of the victim), Exhibit 11 (emergency ticket of PW 5), Exhibit 12 (emergency ticket of PW 5), Exhibit 15 (injury report of PW 5), Exhibit 16 (inquest report of the victim), Exhibit 26 (red-marked portion of the statement of the appellant), have been perused. The prosecution has proved the documentary exhibits in accordance with law. The oral evidence of the witnesses find due corroboration from the documentary exhibits. These exhibits form an unbroken chain, which is consistent with the prosecution case. The

cumulative effect of the evidence clearly points towards the commission of the offences by the appellant, under Sections 302 and 307 of the IPC. He murdered his wife by hurling several blows with an axe and also hurled blows at PW 5 i.e. the mother of the victim on her chest, when she tried to save the victim. As per the deposition of the attending doctor such blow could be fatal. The appellant further hurled the axe at the 70 year old grandmother of the victim, PW 6, who tried to save PW 5. PW 6 was under treatment for more than 5 days. On careful scrutiny of the ocular account of the four eye witnesses, we find the same to be consistent, natural and in conformity with the medical and other evidence on record. Prosecution has relied upon eye witnesses, two of whom were injured witnesses.

35. Therefore, we are of the view that the learned Trial Judge had rightly convicted the appellant. The prosecution exhibits duly proved through competent witnesses, lend assistance to the ocular version and the medical evidence. The order of conviction is upheld. The challenge to the order of conviction fails. The next question is whether the sentence to be hanged until death was appropriate in this case and whether the nature of the crime had satisfied the rarest of 'rare' test which persuaded the learned Judge to hold that death sentence was the only befitting punishment.

In this case, the learned Trial Judge did not call for any report from the state relating to the conduct of the appellant in custody and the mental condition of the appellant. This was a significant procedural irregularity.

36. The learned Trial Judge did not call for the prison conduct report. Whether there was any chance of reformation or rehabilitation had not been

considered. The information of the Probation Officer produced before the Division Bench in the appeal, pursuant to a direction of a Co-ordinate Bench, indicates that the conduct of the appellant was satisfactory. There was a chance of reformation and the appellant was undergoing counselling. The appellant did not have any criminal antecedent. The appellant stated that he had a minor son who was very good in studies and he also had an old mother who he was responsible for. The son would be better looked after by him. The socio-economic background of the appellant was not considered. He is a villager with neither education nor wealth.

37. The learned Judge stressed on the Vedic Mantras chanted by the spouses at the time of marriage and arrived at the conclusion that, as the appellant did not hesitate to murder his wife and chose to forget the love, affection, contribution and sacrifice of his spouse, this was a rarest of 'rare' case to award death penalty. The fact that the appellant had brutally murdered his wife in her own father's house in broad daylight and in the presence of her family members, weighed heavily on the learned Trial Judge. The court held that the murder was extremely brutal, diabolical, cold blooded and a motivated act. The court was of the view that the nature of injury suffered by the victim, PW 5 and PW 6 would clearly indicate the criminal bent of mind and the brutality in the appellant's character. He hurled the axe at every person who tried to save each other, knowing very well that such act would cause fatal injuries to them. Thus, according to the trial court the appellant was a 'demon' and his mind could not be changed even if he was given training and spiritual lectures in the correctional home.

38. We do not agree to the death penalty. Every person guilty of commission of a grave offence can undergo transformation. The mitigating circumstances were ignored by the trial court. The fact that the victim, the appellant and the family members had together enjoyed morning tea at the house of PW5 and the crime took place half an hour after breakfast, indicates that the crime might not have been either pre-determined or premeditated. The evidence records that the victim and the appellant were unhappily married and a quarrel had preceded the crime. The court came to the conclusion that the appellant was a 'demon', without calling for any report from the correctional home. Admittedly, the appellant did not have any criminal antecedent and he has a minor child who had lost his mother. There was no adverse report against his behaviour in the correctional home. The Probation Officer also found that the appellant was capable of being reformed. The psychologist opined that he was undergoing counselling. Thus, important mitigating circumstances were ignored by the learned Trial Judge.

39. Rigorous imprisonment for life is the rule and death sentence is an exception. The manner in which the crime was committed in this case does not stand the test of being a rarest of rare case. Neither any prison conduct report, nor any psychological test reports were called for. The court did not extract mitigating circumstances from the evidence. The learned Judge was required to record special reasons for awarding death penalty and we find that the special reasons recorded by the learned Judge were entirely based on the rituals of a Hindu Marriage. The other factor which weighed heavily

on the learned Judge was that, the victim was killed in her own father's house in the presence of all her family members, which was indicative of extreme brutality and demonic nature of the appellant. We do not agree.

40. Death sentence is imposed only when life imprisonment appears to be altogether an inadequate punishment, having regard to the circumstances of the crime. In this case there are several mitigating circumstances and upon striking the balance between the aggravating and mitigating circumstances we are not in a position to confirm the sentence of being hanged until death. We find from the report of the Probation Officer that rectification is possible and the appellant was undergoing counselling at the correctional home. Upon taking into consideration the socio-economic backwardness of the appellant, his conduct in the correctional home, non-existence of any criminal antecedence and the possibility of reform, we do not confirm the death penalty imposed by the learned Trial Judge.

41. In ***Machhi Singh and ors. vs State of Punjab*** reported in (1983) 3 SCC 470, the Hon'ble Apex Court held as follows:-

“31. Having dealt with the appeals on merits from the standpoint of proof of guilt and validity or otherwise of the order of conviction, we now come face to face with the problem indicated when the curtain was lifted, namely, the application of the rarest-of-rare-cases rule to the facts of individual cases in the context of the relevant guidelines. Some reflections on the question of death penalty may appropriately be made before we tackle the said question in the perspective of the present group of appeals.

32. The reasons why the community as a whole does not endorse the humanistic approach reflected in “death sentence-in-no-case” doctrine are not far to seek. In the first place, the very humanistic edifice is constructed on the foundation of “reverence for life” principle. When a member of the community violates this very principle by killing another member, the society may not feel itself bound by the shackles of this doctrine. Secondly, it has to be realized that every member of the community is able to live with

safety without his or her own life being endangered because of the protective arm of the community and on account of the rule of law enforced by it. The very existence of the rule of law and the fear of being brought to book operates as a deterrent for those who have no scruples in killing others if it suits their ends. Every member of the community owes a debt to the community for this protection. When ingratitude is shown instead of gratitude by “killing” a member of the community which protects the murderer himself from being killed, or when the community feels that for the sake of self-preservation the killer has to be killed, the community may well withdraw the protection by sanctioning the death penalty. But the community will not do so in every case. It may do so “in rarest of rare cases” when its collective conscience is so shocked that it will expect the holders of the judicial power centre to inflict death penalty irrespective of their personal opinion as regards desirability or otherwise of retaining death penalty. The community may entertain such a sentiment when the crime is viewed from the platform of the motive for, or the manner of commission of the crime, or the anti-social or abhorrent nature of the crime, such as for instance:

I. Manner of commission of murder

33. When the murder is committed in an extremely brutal, grotesque, diabolical, revolting or dastardly manner so as to arouse intense and extreme indignation of the community. For instance,

(i) when the house of the victim is set aflame with the end in view to roast him alive in the house.

(ii) when the victim is subjected to inhuman acts of torture or cruelty in order to bring about his or her death.

(iii) when the body of the victim is cut into pieces or his body is dismembered in a fiendish manner.

II. Motive for commission of murder

34. When the murder is committed for a motive which evinces total depravity and meanness. For instance when (a) a hired assassin commits murder for the sake of money or reward (b) a cold-blooded murder is committed with a deliberate design in order to inherit property or to gain control over property of a ward or a person under the control of the murderer or vis-a-vis whom the murderer is in a dominating position or in a position of trust, or (c) a murder is committed in the course for betrayal of the motherland.

III. Anti-social or socially abhorrent nature of the crime

35. (a) When murder of a member of a Scheduled Caste or minority community etc., is committed not for personal reasons but in circumstances which arouse social wrath. For instance when such a crime is committed in order to terrorize such persons and frighten them into fleeing from a place or in order to deprive them of, or make them surrender, lands or benefits conferred on them with a

view to reverse past injustices and in order to restore the social balance.

(b) In cases of “bride burning” and what are known as “dowry deaths” or when murder is committed in order to remarry for the sake of extracting dowry once again or to marry another woman on account of infatuation.

IV. *Magnitude of crime*

36. When the crime is enormous in proportion. For instance when multiple murders say of all or almost all the members of a family or a large number of persons of a particular caste, community, or locality, are committed.

V. *Personality of victim of murder*

38. In this background the guidelines indicated in *Bachan Singh case* [(1980) 2 SCC 684 : 1980 SCC (Cri) 580 : AIR 1980 SC 898 : 1980 Cri LJ 636] will have to be culled out and applied to the facts of each individual case where the question of imposing of death sentence arises. The following propositions emerge from *Bachan Singh case* [(1980) 2 SCC 684 : 1980 SCC (Cri) 580 : AIR 1980 SC 898 : 1980 Cri LJ 636] :

“(i) The extreme penalty of death need not be inflicted except in gravest cases of extreme culpability.

(ii) Before opting for the death penalty the circumstances of the ‘offender’ also require to be taken into consideration along with the circumstances of the ‘crime’.

(iii) Life imprisonment is the rule and death sentence is an exception. In other words death sentence must be imposed only when life imprisonment appears to be an altogether inadequate punishment having regard to the relevant circumstances of the crime, and provided, and only provided, the option to impose sentence of imprisonment for life cannot be conscientiously exercised having regard to the nature and circumstances of the crime and all the relevant circumstances.

(iv) A balance sheet of aggravating and mitigating circumstances has to be drawn up and in doing so the mitigating circumstances have to be accorded full weightage and a just balance has to be struck between the aggravating and the mitigating circumstances before the option is exercised.

39. In order to apply these guidelines inter alia the following questions may be asked and answered:

(a) Is there something uncommon about the crime which renders sentence of imprisonment for life inadequate and calls for a death sentence?

(b) Are the circumstances of the crime such that there is no alternative but to impose death sentence even after according maximum weightage to the mitigating circumstances which speak in favour of the offender?

40. If upon taking an overall global view of all the circumstances in the light of the aforesaid proposition and taking into account the answers to the questions posed hereinabove, the circumstances of the case are such that death sentence is warranted, the court would proceed to do so.”

42. In ***Manoj & Ors. vs. State of Madhya Pradesh*** reported in **2022 INSC 606**, the Hon’ble Supreme Court laid down binding directions requiring that, in every case where death sentence falls for consideration, the Trial Court must —

- (a) elicit information from the accused and the State regarding the possibility of reformation and rehabilitation;
- (b) call for a report from the jail authorities on the accused’s conduct and behaviour in custody;
- (c) ensure that, materials bearing on the psychiatric and psychological evaluation, preferably collected close to the time of the offence, was placed on record; and
- (d) afford the accused a genuine and meaningful opportunity to lead evidence in rebuttal on all such material.

43. These directions have since been reiterated with greater emphasis in ***Aman Singh & Anr. v. State of Bihar*** reported in **2026 INSC 424**, where the Hon’ble Supreme Court held that the report on aggravating and mitigating circumstances must, as a matter of course, be called for by the Trial Court, immediately upon conviction and prior to the determination of sentence. When that had not been done, it becomes the mandatory obligation of the High Court, at the very stage of admission of the death reference, to call for such material before proceeding further.

44. **Bachan Singh** (supra) requires that a balance sheet of aggravating and mitigating circumstances be drawn, with full weightage accorded to the latter, before the option of death may be exercised. In **Ashok Debbarma v. State of Tripura** reported in **(2014) 4 SCC 747**, it was further held that, where even a single circumstance genuinely favours the accused, that circumstance alone may weigh decisively against the imposition of the extreme penalty.

45. The conduct of the appellant demonstrated an aggravated act of violence in killing his wife in front of the minor son who was only 7 years old and the intention to inflict fatal injury to the family members of the wife in broad day light in their own home is also evident. He knew the consequences of his actions. However, considering the other mitigating circumstances, we commute the death penalty awarded by the learned Trial Judge to one of rigorous imprisonment for life.

46. A copy of this judgment and order along with the trial court's record be sent down to the appropriate court forthwith. In view of the commutation of the death penalty, any warrant issued by the trial court stands modified in terms of this judgment. Concerned department will inform the correctional home where the appellant is lodged, about this judgment and order forthwith. The correctional home shall record the act of commutation of death penalty of the appellant to life sentence awarded by this judgment and order in their records. Period of detention already undergone by the appellant shall be set off against the substantive punishment as per Section 428 of the Code of Criminal Procedure.

47. D.R 3 of 2025 and CRA(D.B) 32 of 2025 are disposed of accordingly.

48. Urgent Photostat certified copies of this judgment, if applied for, be supplied to the parties upon fulfilment of requisite formalities.

(Shampa Sarkar, J.)

I Agree.

(Smita Das De, J.)