Form No. J(1)

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

Present :
The Hon'ble Justice Rajasekhar Mantha
And
The Hon'ble Justice Reetobroto Kumar Mitra

CRA (DB) 10 of 2022

Nirmal Sarkar and Ors.
Vs.
The State of West Bengal

For the Appellants	:	Mr. Abhishek Sarkar Mr. Sudip Guha Ms. Debopriya Ghosh Ms. Sayantani Das Ms. Ankita Nag
For the State	:	Mr. Jagriti Mishra, AAAG Mr. Govinda Ghosh Ms. Madhushri Dutta
Heard on	:	28.09.2026 and 01.10.2026
Judgment on	:	01.10.2026

Rajasekhar Mantha, J.:

1. The subject appeal is directed against judgment and/or order dated 23rd February, 2022 and order of conviction dated 24th February, 2022 passed by the learned Additional Sessions Judge, Mathabhanga in Sessions Case No.08 of 2016 and Sessions Trial No.16(05) of 2016. The appellants were sentenced to suffer rigorous imprisonment for eight years each and also to pay a fine of Rs.5,000/- each in default simple

imprisonment for another six months under Sections 304 (Part-I)/34 of the Indian Penal Code.

THE PROSECUTION CASE:

2. The prosecution case in brief is that on 7th September, 2014 the victim one Kush Sarkar had gone to the house of one Dinesh Sarkar his nephew to watch television. He was returning home between 10:30 & 11 pm. The appellants and each of them accused the victim of theft, tied his hands and legs and mercilessly beat him up. The weapons used were lathi, a sharp cutting agricultural instrument called 'Daa' and a longish knife. The police arrived shortly after the incident and took the victim to the Mathabhanga Hospital where he was declared dead on arrival.

3. The appellants were taken into custody and enlarged on bail. Inquest was conducted on the body at the Mathabhanga Hospital and post mortem thereafter.

4. The seized weapons and bloodstained wearing apparel of the victim were sent for the FSL examination. The report of the FSL is on record. The bloodstained vest of the victim sent for serological report. The serologist opined that the blood samples not in a condition for appropriate identification i.e. disintegrated. Investigation was undertaken by the Mathabhanga Police Station. FIR No.393/2014 dated 08.09.2014 was registered on the complaint of **PW-1, Jasada Sarkar**, mother of the victim.

5. The statements of **PW-1, Jasada Sarkar** and **PW-2, Dinesh Sarkar**, were recorded before the Magistrate under Section 164 of the Code of Criminal Procedure. Several witnesses were examined by the police. Charge sheet was filed. Charges against the appellants were framed by the Trial Court on 19th May, 2016 under Sections 302 read with 34 of the Indian Penal Code.

THE TRIAL AND ANALYSIS OF THIS COURT:

6. **PW-1** was **Jasada Sarkar**. **PW-2** was **Dinesh Sarkar**, **PW-3** was **Joysundar Biswas**. The rest of the prosecution witnesses namely **PW-4, Anjana Sarkar**, **PW-5, Mukul Sarkar** and **PW-7, Nibhuranjan Sarkar** also deposed in favour of the prosecution. PW-1, PW-2, PW-3 and PW-4 were eyewitnesses to the incident.

7. **PW-1, Jasada Sarkar** deposed that she heard the cries of her son shouting for help around 10:30 and 11 pm on the fateful night and rushed to the place of occurrence. She found the victim's hands and legs were tied and was being brutally assaulted and beaten up by the accused persons. On PW-1 trying to intervene, she was also assaulted by the appellants. She also tried to give water to the victim and was prevented by the accused.

8. Each of the other eyewitnesses namely PW-2, PW-3 and PW-4 confirmed in no uncertain terms the participation of each of the accused persons albeit with mild differences. Each of them independently corroborated the evidence of PW-1.

9. The presence of PW-2 and PW-3 was confirmed by PW-4. PW-5 and PW-7 were seizure witnesses of the weapons used in the assault and the bloodstained earth collected by the investigating officer, respectively.

10. The complaint was written by **PW-9, Haripada Sarkar** who had read over the instructions of PW-1, who read over the same to PW-1 on which the later put her LTI.

11. **PW-11, Dr. Niranjan Das** was the post mortem doctor, who found the following injures on the victim, which is set out hereinbelow and opined that as regards the cause of death :-

> "on examination I found following external injuries:
>
> 1. 2"X1/2"X1/2" wound with abraded margin present over vault of scalp,
>
> 2. One abrasion measuring $1^{1}/_{2}$X1/2 over front of left leg,
>
> There was blood staining over whole scalp and back of the neck.
>
> There was peri-would haematoma over the scalp.
>
> There was an internal injury i.e. intra-cranial hemorrhage extending up to ventricles and base of the brain.
>
> There was partially digested food in the stomach.
>
> The probable time of death keeping all factors including observations at inquest was 12-15 hours back from the time autopsy examination.
>
> Blunt heavy weapon along with sharp cutting edged might have been used to cause the above noted injuries.
>
> In my opinion, the death was due to shock due to head injuries which are ante-mortem and homicidal in nature.
>
> Further more, more than one assailants may be involved."

12. The evidence of the post mortem doctor is clearly confirms the weapons used by the appellants to assault the victim.

13. Based on the evidence on record, duly corroborated by the statements of PW-1 and PW-2 recorded under Section 164 of the Code of Criminal Procedure, the Trial Judge convicted the appellants as indicated above under Sections 304 (Part-I)/34 of the Indian Penal Code as opposed to the charge under Section 302 read with Section 34 of the Indian Penal Code.

14. Learned counsel for the appellants has submitted that the **appellant No.3**, namely **Naresh Sarkar** has died during the pendency of the appeal. The other appellants are on bail allowed by a coordinate Bench on 16th September, 2022.

15. Mr. Sarkar, learned counsel for the appellants has vehemently argued before this Court that there is embellishment and/or change in the version of PW-1 with that made in the compliant to what she has stated before the Magistrate under Section 164 of the Code of Criminal Procedure and what she has deposed in Court.

16. The nature of the weapons carried by each of the appellants has been differing. The evidence of PW-2, PW-3 and PW-4 as regards the nature of the weapon carried by each of the appellants is also differing with the evidence of PW-1 and PW-2.

17. This Court is of the view that the incident of which PW-1, PW-2, PW-3 and PW-4 were eye-witnesses, occurred late in the night around about 10.30 to 11.00 pm. In a melee where the five assailants were

assaulting the victim, it could be difficult for any eye-witness to exactly identify which of the accused was carrying what weapon.

18. The argument as regards omissions and contradictions between the aforesaid witnesses are minor in the nature and cannot water down the eye-witnesses' accounts of PW-1, PW-2, PW-3 and PW-4 of the incident.

19. Mr. Sarkar, learned counsel for the appellants next argued that the witness nos. 1 to 7 were all related to one another. They should be declared as interested witnesses. Their evidence should not have been given any credence by the Trial Court. In addition thereto, it is argued that the appellants were complainants in proceedings drawn up against some of the prosecution witnesses. Their motive, behind deposing against the appellants, was a personal vendetta or revenge.

20. This Court, however, notes that irrespective of whether any proceedings were taken out by the appellants against the prosecution witnesses, the incident as narrated by PW-1 to PW-4 and the death of the victim at the hands of the appellants, duly corroborated by the evidence of the P.M. Doctor has clearly established the assault by the appellants beyond any reasonable doubt. The argument of the learned counsel for the appellants, therefore, cannot be accepted.

21. It further transpires from the evidence of PW-1 to PW-4 that, while they may be related to one another, their evidence is not a carbon copy of one another. Their evidence cannot be deemed by any stretch of

imagination as parrot like. The aforesaid evidence of PW-1 to PW-4, even with minor contradictions and omissions, cannot be brushed aside as was rightly accepted by the Trial Court.

22. Learned counsel for the appellants next argued that three of the appellants had stated uniformly that the incident occurred on the 7th of September, 2014. Each of the three witnesses, namely, PW-2, PW-3 and PW-4 have stated that the incident occurred on a Saturday whereas the 7th of September was a Sunday.

23. This Court notes that the deposition recorded by the Trial Court of PW-1 to PW-4 was nearly three years after the incident had occurred. A difference between the actual day of the week on which the said incident had occurred could be attributed to the passage of time and a minor memory lapse. The same by itself would, however, not water down the unimpeachable eye-witnesses' account of the said witnesses.

24. Learned counsel for the appellants next argued that the weapons used by the appellants though seized by the police and the evidence of the seizure witnesses was duly recorded before the Trial Court, such weapons was not produced in the Trial Court. This Court is reminded of the dicta of the Supreme Court in several decisions where non-production of the weapons used in a crime would not by itself be fatal to a prosecution case in the case of clear unimpeachable eye-witnesses' account.

25. Mr. Mishra, learned counsel for the State, however, points out that the weapons were duly exhibited by the Trial Court and marked by Exhibit-'3/1'.

26. Learned counsel for the appellant has next argued that while PW-1 and PW-2 stated that there were no other persons present at the place of occurrence, PW-3 and PW-4 had deposed that about 10 to 15 local villagers had assembled at the place of occurrence.

27. This according to learned counsel for the appellant, is a major contradiction between the eye witnesses to the incident. The appellants should have been given the benefit of doubt. This Court notes that PW-2 had deposed in the Trial Court consistent with the statement recorded under Section 164 of the Cr.P.C that he was threatened by the appellants to leave the place and so left out of fear and went back to his house. This is not out of the ordinary. A person threatened by five persons armed with weapons, can definitely fear for his own life. The difference in the version of the PWs as regard the assembling of local villagers can at best be categorized as a lapse of memory or with the passage of time.

28. Learned counsel for the appellants has lastly argued that the Court should consider the sentence imposed on the appellants from a more lenient point of view. The appellants were provoked by the theft that occurred of which the victim was accused of. The appellants who are all villagers and below the poverty line, were enraged by the alleged

theft and the offences in question at best could have been a result of a sudden rage and provocation.

29. This Court, however, notes that the manner in which the victim was assaulted was rather gruesome. His hands and legs were tied up by the appellants and he was brutally assaulted with sticks and sharp cutting weapon. There is also evidence on record that one of the accused had pushed a stick inside the mouth of the victim. No theft has in any event been established in this case. Irrespective of the rage and anger even if provoked by a theft committed by the victim, cannot justify the gruesome assault inflicted on the victim by the appellants. The appellants could not have inflicted injuries that would be life threatening and in the instant case that has ended the life of the victim, for a petty offence of theft if at all.

30. PW-1 who wanted to intervene to save her son was not only assaulted but also prevented from giving water to the victim who is crying for the same.

31. In the facts and circumstances of the case, this Court is of the view that the sentence imposed by the Trial Court was the least of punishments that could have been imposed on the appellants. This Court does not wish to go any further on this issue since there is no appeal from either the victim or the State from the impugned judgment.

32. For the reasons stated hereinabove, the impugned order of conviction and sentencing dated 24th February, 2022, passed by the

learned Additional Sessions Judge, Mathabhanga, Cooch Behar in the aforesaid trial, calls for no interference.

33. Accordingly CRA (DB) 10 of 2022 shall stand dismissed. Consequently all connected pending applications, if any, shall also stand dismissed.

34. The appellants are on bail. Their bail bonds shall stand cancelled forthwith and they shall be taken into custody to undergo the sentence imposed by the Trial Court, minus of any period of incarceration that they had already suffered.

35. Lower Court records along with copy of this judgment be sent down at once to the learned Trial Court for necessary compliance.

36. Urgent Photostat certified copy of this judgment, if applied for, be furnished to the parties expeditiously.

(Rajasekhar Mantha, J.)

I agree.

(Reetobroto Kumar Mitra, J.)