

**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

C.R.R. 2810 of 2022

In

C.R.A. (DB) 50 of 2022

Chandan Sk. & Ors.

VS.

The State of West Bengal

For the appellants: Mr. Uday Sankar Chattopadhyay
Mr. Santanu Maji
Mr. Rajashree Jha
Mr. Debdipto Banerjee

For the State : Mr. Sudip Ghosh
Mr. Apurba Kr. Datta
Mr. Bitasok Banerjee

Heard on : December 13, 2022

Judgment on : December 13, 2022

DEBANGSU BASAK, J.:-

1. The appeal is directed against a judgment of conviction dated February 23, 2022 and an order of sentence dated February 24, 2022 passed by the learned Additional Sessions Judge, Fast Track Court, Katwa, in Sessions Trial No. 67(11)/2019 arising out of Sessions Case No. 125 of 2019.

2. By the impugned judgment of conviction and order of sentence, the appellants were sentenced under Sections 395/511/325/326/302 of the Indian Penal Code, 1860. They were directed to suffer simple imprisonment for seven years for offences under Section 395/511/325 and 326 of the Indian Penal Code, 1860. They were directed to suffer simple imprisonment for life for offences under Section 302 of the Indian Penal Code, 1860.

3. The appellants were tried for attempting to commit dacoity causing grievous hurt and murder in the police case being Ketugram Police Station FIR No. 137 dated June 18, 2018 under Sections 325/326/302/506/34 of the Indian Penal Code, 1860.

4. The wife of the victim was the de facto complainant. In her written complaint, she stated that while her husband was travelling by a motorcycle with two others, they were assaulted at the bent on a road in between village Ichhapur and Mahula under Ketugram P.S. where her husband died after suffering the injuries inflicted on him. She narrated in the written complaint that the incident occurred on June 14, 2018. She explained the delay in lodging the written complaint by stating

that, she remained busy in the performance of the last rites of her deceased husband.

5. Charges under Sections 395/511/325/326/302/120B of the Indian Penal Code, 1860 were framed as against the appellants by an order dated November 5, 2019. The appellants pleaded not guilty and claimed to be tried.

6. At the trial, the prosecution examined 14 witnesses tendered documentary evidence which were marked as Exhibits 1 to 19.

7. After completion of the evidence of the prosecution, the appellants were examined under Section 313 of the Code of Criminal Procedure. They pleaded not guilty and answered the questions in the negative. They did not adduce any evidence at the trial.

8. Learned Advocate appearing for the appellants submits that, the appellants were not named in the first information report. He draws the attention of the Court to the fact that, the wife of the deceased lodged the first information report. The wife stated in the first information report that the relatives of the husband were involved in murdering the husband.

9. Learned Advocate for the appellants submits that, the incident occurred on June 14, 2018 while the first information report was registered on June 18, 2018. The delay in lodgment was not explained in the first information report.

10. Referring to the written complaint, learned Advocate appearing for the appellants submits that, the narration of the incident in the written complaint differs from the case that the prosecution sought to establish at the trial. Therefore, in view of the divergence between the narration of the incident as contained in the written complaint lodged by the wife of the deceased, and the evidence led at the trial, the prosecution cannot be said to establish the charges beyond reasonable doubt.

11. Again, referring to the contents of the written complaint, learned Advocate appearing for the appellants submits that initially, the written complaint contained names of different persons as assailants. Those persons are the relatives of the deceased. He submits that the prosecution produced two persons who allegedly were injured in the incident being P.Ws. 2 and 4. Neither P.Ws. 2 and 4 divulged names of any appellants to be involved in the incident, during investigation.

The names of the appellants came into being on a statement recorded under Section 164 of the Code of Criminal Procedure of one Sabirul Sk. Such person was not examined at the trial.

12. Learned Advocate appearing for the appellants submits that, neither P.W. 2 nor P.W. 4 stated in their testimonies before the trial Court that they saw the faces of the appellants. Therefore, the prosecution failed to establish the identity of the appellants.

13. Learned Advocate for the appellants submits that, P.W.2 and P.W. 4 recorded statements under Section 164 of the Code of Criminal Procedure on October 1, 2018. Even there neither P.W. 2 nor P.W. 4 identified any of the appellants.

14. Learned Advocate for the appellants submits that, Abu Bakkar and Nasu Sk. were arrested on December 16, 2018. They were said to be identified in the Test Identification Parade on December 18, 2018. Chandan Sk. was arrested on December 23, 2018 and said to be identified on December 31, 2018. He submits that since none of the injured witnesses, being P.Ws. 2 and 4 saw the faces of the assailants, therefore, the so called identification of the appellants during the T.I. Parade is suspect. He submits that, the identification of the

appellants in the T.I. Parade in the given facts and circumstances of the case, particularly, taking into consideration the fact that, the faces of the appellants were admittedly covered, during the incident. The result of the T.I. Parade was unbelievable.

15. Learned Advocate appearing for the appellants relies upon **(2005) 9 SCC 200 (Umesh Kamar vs. State of Bihar)**, and **(2014) 13 SCC 408 (Thimmareddy & Ors. vs. State of Karnataka)** on the issue of T.I. Parade.

16. Learned Advocate appearing for the appellants submits that the prosecution failed to establish the charges beyond reasonable doubt as against the appellants. The appellants, therefore, should be acquitted.

17. Learned Advocate appearing for the State submits that, the contents of the written complaint lodged by the wife of the deceased, explained the delay in the lodgment of the first information report. He submits that, the delay was explained on the ground that, the de facto complainant, as the wife of the victim, was busy in the last rites of the deceased and, therefore, could not lodge the written complaint. He submits that such explanation is sufficient.

18. Learned Advocate appearing for the State submits that the assault was for the purpose of committing dacoity. Since one assaulted person raised hue and cry people in the locality intervened. However, the assault resulted in the death of the victim.

19. Learned Advocate appearing for the State submits that Sabirul Sk. approached the police with the information that the appellants were involved in the crime of dacoity, assault and murder. He refers to the statement of Sabirul Sk. recorded under Section 164 of the Code of Criminal Procedure, being Exhibit 7. He submits that the statement of Sabirul Sk. recorded under Section 164 of the Code of Criminal Procedure was tendered in evidence by the Magistrate before whom such statement was recorded being P.W.6. Exhibit 6 was allowed to be marked as an Exhibit without any objection being raised on the part of the appellants. Therefore, the prosecution did not find it necessary to produce Sabirul Sk. as an witness.

20. Referring to the contents of Exhibit 7, the learned Advocate appearing for the State submits that, Exhibit 7 identifies the names and gives the particulars of the assailants.

Prior thereto, the police recorded statements of the injured eye-witnesses being P.W.2 and P.W.4 under Section 164 of the Code of Criminal Procedure. Such statements were recorded on October 1, 2018. He refers to the deposition of P.W.s 2 and 4. He submits that, P.W.s 2 and 4 described the assailants and spoke about their distinctive features. Upon Sabirul Sk. making the statement under Section 164 of the Code of Criminal Procedure which was marked as Exhibit 7, the police became aware of the names and the details of the assailants pursuant to which, Abu Bakkar Khan and Nasim Sk. were arrested on December 16, 2018. They were produced for Test Identification Parade which was held on December 18, 2018 when they were identified Chandan Sk. who was arrested on December 23, 2018 was produced in Test Identification Parade on December 31, 2018. Chandan Sk. was also identified during such Test Identification Parade. He refers to Exhibits 8 and 9 which are Test Identification Parade reports. He refers to the statements of P.W.s 2 and 4 recorded under Section 164 of the Code of Criminal Procedure which was marked as Exhibit 3 and 6 at the trial. He submits that there was no deviation between such statements of two injured eye-

witnesses with those which two injured eye-witnesses deposed at the trial.

21. Learned Advocate appearing for the State refers to the deposition of the first investigating officer being P.W.13. He submits that P.W.2 and P.W.4 recorded statements under Section 161 of the Code of Criminal Procedure on December 12, 2018 describing the two assailants. He submits that the description contained distinctive features of the appellants. The appellants did not dispute the distinctive features as described by P.W.s. 2 and 4 in their statements recorded under Section 161 of the Code of Criminal Procedure. Neither the P.W.2 nor P.W.4 nor the first investigating officer being P.W.13 was confronted with the statements recorded under Section 161 of the Code of Criminal Procedure by P.W.2 and P.W.4.

22. Learned Advocate for the State submits that, the appellants did not take the defence of an alibi. The appellants also did not set up a defence of the death to be caused by an accident. The appellants did not take the defence that since the place of occurrence was located at such a place and that the incident occurred at such time it was impossible to identify the assailants. In such view of the matter, learned Advocate

for the State submits that the prosecution was able to establish the case beyond all reasonable doubt.

23. As noted above the prosecution examined 14 witnesses at the trial. P.W.1 is the wife of the victim and the maker of the police complaint. She deposed that on the date of the incident being June 14, 2018 her husband stepped down from Salar railway station along with P.W.2 and P.W.4. They were returning to their house at Anakhona village on a motorcycle. On the way, they were resisted by the appellants and another person at the bent of the road in between villages Ichhapur and Mahula. The appellants and another person assaulted the deceased with iron rod and also assaulted P.W.2 with a knife and assaulted P.W.4.

24. P.W.4 contacted with one Raju of Ankhona village who informed her about the incident. She stated that her husband along with the two injured, were brought to the Kandra hospital. The doctor at such hospital declared her husband to be dead.

25. P.W. 1 stated that the police examined the dead body of her husband, prepared a report thereon, which was signed. She identified the inquest report. The inquest report was

tendered as Exhibit 1. P.W.1 stated that, she lodged a written complaint before the Ketugram police station, She tendered the written complaint in evidence which were marked as Exhibit 2.

26. P.W.1 stated that her husband was murdered for snatching the money. She identified the appellants in Court. On the aspect of delay in lodgment of the written complaint, she stated that she was mentally disturbed due to the sudden death of her husband.

27. P.W.1 was cross-examined by the appellants in Court in details. In cross-examination, she admitted that in the written complaint being Exhibit 1 as also in course of investigation, she stated to the police that her in-laws family members murdered her husband.

28. P.W.2 is one of the injured eye-witness. He stated that at about 5/6 p.m. on June 14, 2018, he and P.W.4 went to Salar railway station on a motorcycle to bring the deceased from such station. After meeting the deceased, they started with the deceased for the village from Salar station in motorcycle. The deceased, P.W.2 and P.W.4 were on the same motorcycle.

P.W.4 was driving the motorcycle with P.W.2 being in the middle, the deceased being on the last seat.

29. P.W.2 described that on the way, near a bent at Icchapur and Mahula road, a person came forward and assaulted P.W.4 on his helmet with a bamboo stick. P.W.4 fell down. P.W.2 and the deceased also fell down from the motorcycle. P.W.2 was assaulted with a bamboo stick on the back side of his neck. The deceased came forward to save him. Then the persons assaulted the deceased with the bamboo stick on his head. The deceased fell down. P.W.2 started to make a hue and cry and at that time the persons who assaulted them fled away by crossing the field. Thereafter, P.W.2 made contact with one Raju of their village over telephone and informed him that the dacoits assaulted them. Thereafter, Raju came to the spot along with four wheeler and moved them to the hospital. At the hospital the victim was declared dead. He identified the appellants, in the Court, as the persons who assaulted them. P.W.2 was also cross-examined at length. In cross-examination, he stated that, he told the learned Magistrate that the accused persons covered their faces with napkin (Gamchha) at the time of the incident.

30. A neighbour of the de-facto complainant deposed as P.W. 3. He stated that, P.W. 2 contacted him over phone and stated that P.W. 4 was stabbed with knife and that the P.W. 2 and the deceased were assaulted with bamboo stick. P.W. 3 stated that, P.W. 2 asked him to come to the spot. After receiving such information, P.W. 3 intimated such fact to the wife of the deceased, P.W. 1 herein. Thereafter, P.W. 3 went to the place of occurrence along with the wife of the deceased. After arrival at the place of occurrence, he found that the deceased and P.W. 4 were lying on the ground with bleeding injuries and that P.W. 2 was making a hue and cry. Thereafter, they went to the hospital. P.W. 2 was released after primary treatment. The deceased was declared dead. P.W. 4 was referred to the District Hospital for better treatment. He is a signatory to the seizure list made by the police on the subsequent date. He was cross-examined at length. The defence could not elicit anything favourable to them.

31. Another injured victim deposed as P.W. 4. He stated that on June 14, 2018, the deceased contacted him over phone and stated that the deceased would be getting down from Salar Railway Station and asked him to bring the deceased from the

Salar Railway Station. P.Ws. 2 and 4 went to the Salar Railway Station by a motor cycle belonging to the deceased. P.W. 4 was driving the motor cycle, in which he arrived at the Salar Railway Station at about 7 to 7.10 p.m. Thereafter, the train arrived at the Salar Railway Station. The deceased and P.Ws. 2 and 4 thereafter started from Salar Railway Station at about 7.15 p.m. on the motor cycle. The motor cycle was being driven by P.W. 4. P.W. 4 was in front and the victim was at the back and P.W. 2 was in between P.W. 4 and the victim at that time.

32. P.W. 4 stated that when they arrived at bent at Ichhapur and Mahula, 3/ 4 persons were present and one of them assaulted him with bamboo stick on his head. He was wearing helmet on the head. After the assault, he fell down from the motor cycle. He stated that some person surrounded them and one of them assaulted with knife. He sustained injuries. The deceased came to rescue him when the persons assaulted the victim. His mobile phone was snatched away. P.W. 2 was also assaulted by them.

33. P.W. 4 stated that, the deceased was assaulted on the back of his neck. P.W. 4 sustained bleeding injuries. P.W. 2

contacted over phone with a person Rajesh Saha and the wife of the deceased came to the spot from the village. Thereafter, they were removed to the hospital. He identified the assailants, who assaulted them. P.W. 4 was cross-examined at length. He stated that, at the time of recording 164 Cr.P.C. statement, he said that the faces of the accused persons were covered with red colour napkin (gamcha).

34. The neighbour of the deceased deposed as P.W. 5. He was declared hostile by the prosecution. His deposition did not add any value to either the prosecution or the defence. The Judicial Magistrate, before whom, the P.Ws. 2 and 4 recorded 164 Cr.P.C. statement, deposed as P.W. 6. He also tendered the 164 Cr.P.C. statement of Sabirul Sk. on December 15, 2018, in evidence. Such statement was marked as Exhibit 7. The 164 Cr.P.C. statement of P.W. 2 was marked as Exhibit 3/1 while the statement of P.W. 4 was marked as Exhibit 6/1. All the three statements were marked exhibits without any objection.

35. The Test Identification Parade (TI Parade) of Chandan Sk. was held on December 31, 2018 in his presence. He prepared a report of T.I. Parade, which was tendered as evidence and

marked as Exhibit 8. The T.I. Parade of the other two appellants were held on December 28, 2018 in respect of which, he prepared a report and tendered such report which is marked Exhibit 9.

36. In the cross-examination, he was shown the 164 Cr.P.C. statement of the P.W. 2. He stated that, both those persons stated that the faces of the persons assaulting were covered with napkin (gamcha) at the time of the alleged incident. In fact, P.W. 6 was asked about all the statements recorded under Section 164 Cr.P.C. including that of Sabirul Sk. In view of the defence putting questions to P.W. 6 with regard to the Section 164 Cr.P.C. statements recorded before him of three persons, namely, P.Ws. 2, 4 and Sabirul Sk., the appellants cannot be allowed to urge that the 164 Cr.P.C. statements of such persons cannot be relied upon or their evidentiary value vitiated. The appellants on their own volition, asked questions on such statements to the P.W. 6 in cross-examination.

37. Another person known to the deceased deposed as P.W.7. He was declared hostile by the prosecution. He also did not add any value to the case of the prosecution or the defence.

38. The Medical Officer conducting the post mortem on the victim deposed as 'P.W. 8'. He described the injuries that he found on the body of the victim. He tendered the post mortem report, which was marked as Exhibit 10. He stated that, cause of death was due to massive intercerebral haemorrhage as noted in the report. He also stated that, if the person is assaulted with bamboo stick or iron rod, he may sustain such type of injury as evident from the body of the deceased. In cross-examination he stated that, such type of injuries may be caused when one fell down from the running vehicle. He stated that, the nature of injury depends on the nature of weapons used.

39. The Sub-Inspector of Police, who arrested Chandan Sk., deposed as 'P.W. 9'. He was cross-examined at length. The Assistant Sub-Inspector of Police, who accompanied Chandan Sk. during police custody for the purpose of recovering the weapon, deposed as 'P.W. 10'. He identified his signature in the seizure list. He also identified the knife recovered. He was cross-examined at length.

40. The police personnel, who went to Navi Mumbai to arrest Chandan Sk. deposed as 'P.W. 11'. He stated that, the knife

was recovered as per the leading statement made by Chandan Sk. He identified his signature on the seizure list. He was also cross-examined at length.

41. The police personnel, who went to Navi Mumbai along with the Investigating Officer to arrest Chandan Sk. deposed as 'P.W. 12'. The first Investigating Officer deposed as 'P.W. 13'. He described the manner of conduct of the investigations. He stated that, on his prayer, Section 164 Cr.P.C. statement of Sabirul Sk. was recorded. He collected a copy of such statement and on the basis of such statement, he arrested the appellant nos. 2 and 3. He was cross-examined at length.

42. The second Investigating Officer deposed as 'P.W. 14'. He tendered a copy of the Forensic Science Laboratory report as well as the name of the doctor conducting the post mortem. He was also cross-examined at length.

43. On conclusion of the evidence of the prosecution, the appellants were examined under Section 313 Cr.P.C., one after the other. The appellants pleaded to be not guilty during such examination. They declined to produce any defence witness at the trial.

44. The First Information Report (FIR) was registered on the basis of the written complaint lodged by P.W. 1 being Exhibit 2. The incident occurred on June 14, 2018. The written complaint, being Exhibit 2, was lodged on June 18, 2018. According to the appellants, the delay in lodgment of the FIR was not explained.

45. Exhibit 2 contains an explanation for the delay. Exhibit 2 being the written complaint, was lodged by the wife of the deceased. She stated that, she was busy in performing the last rites of her husband and, therefore, there was delay in lodging the complaint. The explanation for the delay is plausible and acceptable. In her deposition, P.W. 1, the de-facto complainant, stated that, she was mentally disturbed due to the sudden death of her husband and, therefore, delay was caused in lodging the complaint. Again, the causes shown to explain the delay is not contradictory to the one already shown by the de-facto complainant in the written complaints in Exhibit 2. The delay sought to be explained in her deposition is an additional ground and can and should be accepted as a plausible one.

46. In such circumstances, we do not find that there was any delay in lodging the police complaint on June 18, 2018 in respect of the incident dated June 14, 2018 vitiating the case of the prosecution.

47. The contention on behalf of the appellant that, there is a world of difference between the contents of the Exhibit 2 and the case the prosecution tried to establish at the trial, is without substance. Exhibit 2, being the written complaint, states that, the family members of the deceased husband were involved in the murder of the deceased, since, there were disputes with regard to immovable property. The appellants are not family members of the deceased. The police sought to charge the appellants with dacoity and murder. The charges are not related to any property dispute.

48. No doubt, the written complaint, that is, Exhibit 2 seeks to identify the family members of the deceased as the perpetrators of the murder. None of the appellants were named in the formal FIR or in the written complaint being Exhibit 2.

49. During investigations, the police recorded statements of the injured witnesses being P.Ws. 2 and 4. Such statements

were recorded on June 16, 2018 under Section 161 Cr.P.C. The injured witnesses recorded Section 164 Cr.P.C. statements on October 1, 2018. In the Section 164 Cr.P.C. statements, PWs. 2 and 4 described the assailants without being able to name them. No doubt, they acknowledged that, the faces of the assailants were largely covered but they were able to described specific features of the assailants. However, they were not able to give further or better particulars so as to enable the police to identify the appellants.

50. Sabirul Sk. recorded a Section 164 Cr.P.C. statement on December 15, 2018, which was tendered in evidence and marked as Exhibit 7. Exhibit 7 was tendered in evidence by P.W.6. Questions in cross-examination were put to P.W.6 regarding Exhibit 7 also. Exhibit 7 was marked as an exhibit without any objection on the part of the appellants.

51. In Exhibit 7, Sabirul Sk. stated that the appellant no.2 called him on his mobile. Appellant no.2 stated that appellant no.2 along with the two others appellants were going away to Mumbai after committing a murder. Appellant no.2 told him that they murdered the deceased and therefore, they were fleeing away. The appellant no.2 called him to Raipur railway

station and asked him to bring food for them. Pursuant thereto, he brought food for the appellants.

52. Police arrested the appellant nos.2 and 3 on December 16, 2018 and put them on T.I. Parade on December 18, 2018. Report of the T.I. Parade of the appellant nos.2 and 3 was tendered in evidence and marked as Exhibit 9 at the behest of P.W.6.

53. In Exhibit 9, after the appellant nos.2 and 3 were identified in the T.I. Parade, they claimed that they were shown to the witnesses while they were raising objection regarding the mode and arrangement of the T.I. Parade.

54. Appellant no.1 was arrested on December 23, 2018 and T.I. Parade with regard to him was conducted on December 31, 2018. P.W.6 conducted the T.I. Parade. Report was tendered in evidence and marked as Exhibit 8 with objection. In Exhibit 8, appellant no.1 stated that he was identified to the witness in police lockup. Both the Exhibit 8 and Exhibit 9 were marked with objection.

55. Learned Advocate appearing for the appellants did not bring to our notice any materials on the record to suggest why the objection raised with regard to such exhibits should be

upheld or what was the objection. In course of hearing of the appeal also, he did not raise any point with regard to those Exhibits marked with objection. Therefore, since the appellants did not press their point of objection either before the trial court or before this Hon'ble Court, the so-called objection raised while the documents were tendered at the trial is of no consequence.

56. The appellants were identified in the T.I. Parades being Exhibits 8 and 9. They were identified in Court at the trial also. P.W.s. 2 and 4 are injured eye-witnesses. They identified the appellants as the assailants in Court also.

57. The post-mortem report of the deceased was tendered in the evidence of the post-mortem doctor, P.W.8. P.W.8 described the nature of injuries suffered by the deceased. In his opinion, the deceased was assaulted with the bamboo lathi and/or an iron rod. He stated that the cause of death was due to the intercerebral hemorrhage .

58. P.W.s 2 and 4 in their testimonies stated that, the appellants assaulted the deceased with the bamboo stick by reason of which the deceased fell down on the ground suffering bleeding injuries. P.W.1 and P.W.3 who arrived at the spot,

subsequent to the incident, corroborated the evidence of P.W.s 2 and 4 to the extent of the deceased suffering from bleeding injuries when arrived at the place of occurrence. The deceased was declared dead at the hospital.

59. Therefore, in the facts and circumstances of the present case, there are cogent evidence to establish that the deceased died out of injuries inflicted on him by a bamboo stick.

60. P.W.s. 2 and 4 claimed that they saw the appellants as some of the assailants on them including the deceased. P.W.s 2 and 4 identified the appellants in the T.I. Parade. They also identified the appellants in Court. Prior to the recording of the statement of Sabirul Sk. under Section 164 of the Code of Criminal Procedure on December 15, 2018, P.W.2 and P.W.4 recorded statements under Section 161 of the Code of Criminal Procedure as well as under Section 164 of the Code of Criminal Procedure.

61. The Statement of P.W.2 recorded under Section 164 of the Code of Criminal Procedure was tendered in evidence and marked as Exhibit 3 while that of the P.W.4 as Exhibit 6. Exhibits 3 and 6 gives detailed description of the

distinguishing features of the appellants although, they were not named.

62. We should not loose sight of the fact that the appellants were being tried inter alia for attempting to commit dacoity. Their faces were covered, as admitted by the P.W.s.2 and 4, at the time of the incident. However, P.W.s 2 and 4 went on to describe the distinctive features of the assailants including that of the appellants. The appellants could not elicit anything favourable to them during the cross-examination of P.Ws.2 and 4 with regard to the distinctive features that the two witnesses described about the appellants for naming them in Exhibits 3 and 6.

63. Therefore, in the facts of the present case, the prosecution established by cogent evidence and beyond all reasonable doubt that the appellants were involved in the assault on the deceased and P.W.s 2 and 4. The deceased was murdered. Therefore, the appellants were actively involved in the murder of the deceased. They dealt blows on the deceased.

64. Significantly, one of the weapons used during the assault on P.Ws. 2 and 4 and the deceased was recovered on the leading statement made by the first appellant while in custody.

65. The recovery of stolen articles was not made from any of the appellants. The mobile phone belonging to P.W. 2 was sought to be snatched during the assault. Significantly, the appellants were facing charge of attempting to commit dacoity.

66. The charge against the appellants was also of murder.

Murder of the deceased was established both by ocular evidence of P.Ws. 2 and 4 and by the medical evidence led at the trial.

67. The involvement of the appellants in the murder of the deceased was established by the ocular evidence P.Ws. 2 and 4 as well as the medical evidence at the trial.

68. ***Umesh Kamar (Supra)*** deals with dacoity and murder under Section 396 of the Indian Penal Code, 1860. In the facts and circumstances of that case, there was no recovery of any looted property nor was there any corroborating evidence linking the accused to the crime. In the facts and circumstances of the present case, it cannot be said that, there was linking evidence between the crime and the appellants. The link was established by the prosecution at the trial. P.Ws. 2 and 4 as injured eye witnesses recorded statements under Section 164 of the Code of Criminal Procedure being Exhibits 3

and 6 describing the distinctive features of the assailant, Sabirul Sk. recorded statement under Section 164 of the Code of Criminal Procedure on December 15, 2018 giving names and descriptions of the assailants. Therefore, it cannot be said that there was no evidence linking the appellants to the crime.

69. ***Thimmareddy (supra)*** relates to the charge under Section 397 read with Section 120B of the Indian Penal Code, 1860. The testimony of the prosecution witnesses, were doubted therein. In the facts of the present case, the testimonies of P.Ws. 1, 2, 4 and 6 and the police personnel cannot be doubted.

70. Accordingly, the judgment of conviction dated February 23, 2022 and order of sentence dated February 24, 2022 are affirmed.

71. C.R.A. (DB) 50 of 2022 is dismissed.

72. A Rule was issued on July 29, 2022 against the first appellant. The first appellant is in custody. In such circumstances, Rule issued being C.R.R. 2810 of 2022 stands disposed of.

73. Period of detention suffered by the appellants during investigation, enquiry and trial shall be set off against the

substantive sentence imposed upon them in terms of section 428 of the Code of Criminal Procedure.

74. Trial Court records along with a copy of this judgement be sent down at once to the appropriate Court for necessary action.

75. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Debangsu Basak, J.)

76. I agree.

(Md. Shabbar Rashidi, J.)