

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

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Ajay Kumar Gupta

C.R.A. 182 of 2015

Kanai Das @ Seru

-Vs-

The State of West Bengal

With

C.R.A 187 of 2019

Gobinda Sarkar @ Alu

Vs-

The State of West Bengal

With

C.R.A 241 of 2015

Ganesh Das @ Prosenjit Das

Vs-

The State of West Bengal

With

C.R.A 419 of 2015

Gautam Halder @ Bachcha & Anr.

Vs-

The State of West Bengal

Mr. Ayan Basu, Adv.
 Mr. Tanmay Biswas, Adv.
 Mr. Sumit Routy, Adv.
 ... for the appellant in CRA 187/19 & CRA 419/15

Mr. Navanil De, Adv.
 Ms. Ayantika Roy, Adv.
 Mr. R Chakraborty, Adv.
 Mr. S Ghosh, Adv.
 Mr. S Dey, Adv.
 ... for the appellant in CRA 241 of 2015

Mr. Uday Sankar Chattopadhyay, Adv.
 Ms. Singdha Saha, Adv.
 Mr. Santanu Maji, Adv.
 Ms. T Rakshit, Adv.
 Mr. G Roy, Adv.
 ... for the appellant in CRA 182 of 2015
 Mr. Sudip Ghosh, Adv.
 Mr. Bitasok Banerjee, Adv.
 ... for the State in CRA 241/15 & 419/15

Heard on : 15.09.2022 & 16.09.2022.

Judgment on : 16.09.2022

Joymalya Bagchi, J. :-

Appeals are directed against the judgment and order dated 27.02.2015 and 02.03.2015 passed by the learned Additional District & Sessions Judge, 2nd Court, Sealdah, South 24-Paraganas in Sessions Trial Case No.1(7)09 arising out of Sessions Case No.1(4)09 convicting the appellants for commission of offence punishable under Sections 302/34 of the Indian Penal Code and sentencing them to suffer rigorous imprisonment for life each and

to pay a fine of Rs.2,000/- each, in default, to suffer simple imprisonment for two months more.

Prosecution case:-

Prosecution case against the appellants is to the effect that on 1.9.2008 around 2.30 P.M. while the deceased namely Sk. Binod was taking tea in a tea stall situated below Beliaghata Bridge near Sealdah railway station appellants came to the spot and burst bombs. Hearing the sound of bomb, Binod tried to run away. The miscreants caught him and fired on his chest and other parts of his body. He fell down.

Receiving intimation of commotion in the locality, police officers attached to Sealdh GRPS arrived at the spot. At the place of occurrence, a number of persons used to sell second hand clothes. One of them was Parvin Bibi (PW 3). Her statement was recorded by SI Abdul Hai Sarder (PW 1) which was treated as FIR and Sealdah GRPS case no. 42 of 2008 dated 1.9.08 under section 302/34 IPC was registered for investigation. Sriram Singh (PW 2), uncle of the deceased was intimated. He came to the spot and identified the body. Inquest was held over the body by PW 1. Dead body was sent for post mortem examination. Investigation of the case was taken over by PW 14 who initially arrested one Arun Sarkar and Sankar Sapui. On their statements the appellants were arrested. On the leading statements of Gautam Halder @ Bachcha

and Kanai Das @ Seru one improvised pistol and a country-made double barrel pistol and cartridges were recovered. Seized arms and ammunitions were sent for examination by ballistic expert (PW 11). He found the arms were in working condition. He opined that the bullet recovered from the body of the deceased could be fired from the double-barrel gun.

In conclusion of investigation, charge sheet was filed against the appellants and co-accused Sankar Sapui and Arun Sarkar under sections 302/34 IPC. Supplementary charge sheet under section 25/27 of the Arms Act was also submitted.

Charges were framed against the accused persons under Sections 302/34 of the Indian Penal Code. They pleaded not guilty and claimed to be tried. In course of trial, prosecution examined 14 witnesses and exhibited a number of documents to prove its case. Defence of the appellants was one of innocence and false implication. In conclusion of trial, learned trial Judge by the impugned judgment and order dated 27.2.2015 and 2.3.2015 convicted and sentenced the appellants, as aforesaid. Co-accuseds Arun Sarkar and Sankar Sapui were acquitted of the charges levelled against them.

Nobody appeared for the appellant, Kanai Das @ Seru.

Mrs. Manasi Roy, empanelled lawyer with High Court Legal Services Authority was requested to represent the said appellant.

Arguments at the Bar:-

Mr. Ayan Basu for Saidul Molla (in CRA 419 of 2015)_ and Gobinda @ Alu (CRA 187 of 2015) submits registration of FIR is shrouded in mystery. There is delay in forwarding the FIR to the jurisdictional court. De facto complainant (PW 3) did not name the appellants in the FIR or before police. Hence, identification of Saidul by PW 3 in Court ought not be believed. PW 3 does not speak of presence of PW 4 at the place of occurrence. PW 4 is an unreliable witness. She cannot state the names of the garment sellers in the area. She admitted she did not sell garments on that day. PW 5 did not disclose the names of the appellants before police officer. Presence of PW 5 at the place of occurrence is doubtful. He is a porter who used to carry luggage in a different direction. He does not have licence. Both PWs 4 and 5 have criminal cases pending against them. They are pocket witnesses of the police. So called eye-witnesses are associates of one Kelo Vola and they falsely deposed at the instance of the police. Other local witnesses have not been examined One Sivam Yadav, an eye-witness examined during investigation but was not examined in Court. Autopsy surgeon (PW 13) noted an incised wound on the body of the deceased. This contradicts the ocular version of the witnesses.

Mr. Navanil De for Ganesh Das (in CRA 241 of 2015) adopts the submissions of Mr. Basu. In addition, he submits PW 4 was examined on 26.10.2008 i.e. 55 days after the incident. Delayed examination of the said witness casts doubt with regard to her truthfulness. His client is not named in the FIR. Only PW 4 speaks of his presence at the place of occurrence. Other witnesses have not corroborated her. He was arrested after two months from his place of business and falsely implicated in the case. He prays for acquittal.

Mr. Chattopadhyay for Kani Das @ Seru in CRA 182 of 2015 submits PW 3, the de facto compliant and the most vital witness has not identified his client. FIR was registered against unknown persons. Presence of PWs 4 and 5 at the place of occurrence is doubtful. Cases are pending against them. Apart from PWs 3, 4 and 5 no other person from the area was examined. Recovery of fire arms from the rented room of his client has not been proved. Nothing is placed on record to show PW 7 is the owner of the house. Tenancy agreement was also not been produced. PW 7 admitted his client was not a tenant at the time of recovery. Accordingly, he prays for acquittal.

Mrs. Roy adopted the submissions of Mr. Basu und Mr. Chattopadhyay. She further submits opinion of scientific expert PW 11 with regard to recovery of bullet is inconclusive. Autopsy

surgeon (PW 13) stated no identity card was placed before him and identification of the dead body to the doctor has not been proved. Incised wound on the body of the deceased has not been explained. She further submits recovery of the fire arms on the purported statement of his client is most artificial and ought not to be believed.

In reply, Mr. Sudip Basu submits incident occurred in a public place in the afternoon of 1.9.2008. PWs 3 and 4 were garment sellers who used to sell garments under the Beliaghata Bridge. They were present at the spot. PW 3 is also a signatory to the seizure list and inquest report. Out of trauma, PW 3 was unable to come out with the names of the accuseds in the FIR. In court she identified Saidul as one of the assailants. PW 4 identified all the appellants. PW 5 is a porter who used to carry luggage from the nearby railway station. He was drinking tea at the tea stall. His presence at the place of occurrence is most natural. He identified Gautam Halder @ Bachcha, Kanai Das @ Shaw and Gobinda Sarkar as the assailants. The appellants had come to the spot and hurled bombs. Most people fled. Witnesses who saw the incident were apprehensive of their own lives. Under such circumstances, PWs 3 and 5 may not have been able to identify all the appellants. This cannot improbabilise their versions. Autopsy surgeon found two gunshot injuries on the body of the deceased and opined death

was due to gunshot injuries. His opinion substantially corroborates ocular version of the eye-witnesses. On the leading statements of Gautam @ Bachcha and Kanai Das @ Seru two guns and ammunitions were recovered from the rented room of Kanai Das. PW 7, owner of the house, proved the recovery.

PW 11 (Ballistic expert) opined bullet recovered from the body of the deceased matched with one of the fire arms. From the aforesaid evidence, prosecution case against the appellants is fully established. Hence, the appeals are liable to be allowed.

Evidence on record:-

PW 3 used to sell garments under Beliaghata bridge beside Sealdah south railway station. There was a tea stall near her place of business. She deposed on the day of occurrence around 2.30 p.m. there was a bomb explosion. People ran away. Binod was sitting at the tea stall. He also tried to flee. 5/6 persons came and stopped Binod. They fired at Binod who fell on the ground. She identified Saidul who also ran business of selling old garments as one of assailants. Police came to the spot. They seized blood stained earth, identity card, two finger rings and a small note book. She signed on the seizure list. She made statement to the police. She also signed on the inquest report.

PW 2 (Sriram Singh) is the uncle of the deceased. He deposed on 1.9.2008 he received phone call at 3.30 p.m. informing

him that Binod Singh was murdered. Hearing this he came to the spot. He signed on the inquest report. He deposed. Binod stated that he had dispute with Saidul, Sankar, Seru, Bachcha, Jeetu. He had expressed apprehension they might kill him.

PW 1 is a police officer attached to Sealdah GRPS. He came to the spot. He held inquest over the body of the deceased. He proved the inquest report. He seized blood stained earth and other articles from the place of occurrence. He prepared seizure list. He recorded statement of Parveen Bibi (PW 3) which was treated as FIR.

PW 4 (Padma Dey) is another seller of old garments. She deposed she was at the tea stall when the incident occurred. Parveen Bibi was with her. She saw 5/6 persons come towards Binod. They shot at Binod who fell on the ground. He identified Bachcha, Saidul, Ganesh, Seru and Alu as the miscreants. Miscreants threw bombs. Thereafter they fled from the place. The tea stall owner was not present at the time of occurrence. Police interrogated her 2/3 days after the incident.

PW 5 (Bhuto Sardar) is a porter who use to carry luggage from Sealdah station to Koley market. He deposed he was drinking tea at the tea stall. Binod was sitting on a bench in the stall. 5/6 persons came to the spot and shot at Binod who fell on the ground. He identified Bachcha, Seru and Gobinda as the

miscreants. They threw bomb and ran away from the spot. He also stated PWs 3 and 4 were present at the spot.

PW 7 (Pintu Dutta) is a owner of a two storied building being 95 Nilachal at Birati. He deposed police came to his house with his tenant Kanai and his companion Bachcha. On the showing of Kanai two guns and two cartridges were recovered. He signed on the seizure list. He identified the guns in Court.

PW 10 is a constable who was attached to Sealdah GRPS. He carried the dead body to NRS morgue.

PW 13 held post mortem over the dead body which was identified by PW 10. He found two gunshot injuries on the body of the deceased and one incised wound measuring $\frac{1}{4}$ " x $\frac{3}{4}$ " deep chest below lateal end of left cavicle. He opined death was due to gunshot injury ante mortem and homicidal in nature. PW 13 found improvised bullet head in the abdomen of the deceased. He brought out the bullet head and handed it over to the police personnel.

PW 11 examined the seized arms (Exts. A and B) as well as the bullet (Ext. E) recovered from the body of the deceased. He opined that arms were in working condition. He further stated the bullet recovered from the body could have been fired from the country made double-barrel pistol (Ext. B).

PW 14 is the investigating officer of the case. He deposed on hearing information regarding disturbance near Beliaghata railway station, IC of railway GRPS Pranab Kr Mitra and others went to the place of occurrence. Prior to departure the information was diarized. They saw the victim lying near a tea stall. PW 1 prepared inquest report. On the statement of PW 3, FIR was registered. He was assigned the investigation. He arrested Arun Sarkar and Sankar Sapui. They disclosed involvement of Bachcha, Saidul and Seru. Eye-witnesses also disclose their involvement. Bachcha, Saidul and Seru were arrested on 23.10.2008 from Sandeshkhali. Seru and Bachcha made disclosure statements marked Ext 16 and 17. He took them to the house of PW 7 where they were staying as tenants. Kanai brought out two fire arms – an improvised pistol and a double barrel country made pistol and cartridges. He prepared seizure list. He received post mortem report. He sent the seized fire arms, ammunitions and the bullet recovered from the body of the deceased for examination by ballistic expert. He received report from ballistic expert. He filed charge sheet.

From an analysis of the evidence on record it appears that the prosecution case primarily hinges on-

- (a) Eye-witness version of PWs 3, 4 and 5
- (b) Recovery of fire arms on the leading statements of Gautam Halder @ Bachcha (Ext 17) and Kanai Das @ Seru (Ext 16)

(c) Opinion of autopsy surgeon PW 13 and

(d) Opinion of the ballistic expert (Ext 11).

Delay in forwarding FIR:-

It is argued recording of first information report is shrouded in mystery. There is delay in forwarding the report to jurisdictional magistrate. PW 14, SI, Sealdah GRPS, Satyajit Banerjee (investigating officer) deposed on 1.9.2008 they received information with regard to commotion beneath Beliaghata bridge due to throwing of bombs. IC, Sealdah GRPS with officers left for the spot after diarizing the information as GDE 42 of 2008 dated 1.9.2008. PW1, Md. Abdul Hai Sardar was one of the police personnel who accompanied IC. At the spot, they found the body of the deceased lying near a tea stall. PW1 held inquest over the dead body and prepared inquest report. Inquest report was signed by PW3, Parveen Bibi, PW2, Sriram Singh and one Rupsa Halder. Statement of PW3 was recorded by PW1 which was treated as first information report. He also drew up formal FIR, Ext.15.

The aforesaid evidence clearly establishes the circumstances in which police received information about the incident and upon coming to the spot had recorded the statement of PW3 which was treated as first information report. The FIR was sent to the jurisdictional Magistrate on 4.9.2008. In this backdrop, delay of three days in sending the first information report to the

jurisdictional Magistrate appears to be an act of remissness on the part of the investigating agency and does not affect the credibility of the prosecution case. That apart, nothing is placed on record that the delay had prejudiced the appellants or occasioned failure of justice.¹

Presence of PWs 3, 4 & 5 at the spot:-

PW3, Parveen Bibi, PW4, Padma Dey and PW5, Bhuto Sardar are the eyewitnesses. PWs 3 and 4 are sellers of old garments. Both the witnesses deposed a number of persons used to sell old garments under Beliaghata bridge. They also stated there was a tea stall at the spot. PW3 used to sell garments near the tea stall. On the fateful day, she was present at the spot and saw the incident. PW4 another seller of old garments also deposed she was drinking tea at the tea stall when the incident occurred. PW5 is a porter who used to carry luggage from Sealdah Railway Station. He had also come to the tea stall for drinking tea. He is a relation of PW4. He deposed he saw PWs3 and 4 at the spot.

Learned Advocates argued presence of PWs4 and 5 at the spot is unlikely. PW3 had spoken of their presence at the spot. During cross-examination PW4 could not disclose the names of other sellers of old garments. She admitted she did not sell garments on that day. PW5 used to carry luggage towards Koley

¹ Pala Singh And Another vs. State of Punjab, (1972) 2 SCC 640 (para 8)

market—which is in a different direction from the place of occurrence.

I have considered the aforesaid objections on behalf of the defence. Evidence has come on record that a number of persons used to sell old garments under the Beliaghata bridge. PW4 (Padma Dey) is one of such seller. On the fateful day, she had come to the spot around 12.30 PM and within a couple of hours the incident occurred. It is possible she had not been able to sell any garment prior to the occurrence. Failure of the said witness to name the other sellers in the locality is also not fatal. PW5 is a porter who used to carry luggage from the adjoining railway station had come to the tea stall to drink tea. He is a relation of PW4. He stated he had seen Padma Dey (PW4) along with Parveen Bibi (PW3) at the place of occurrence. Presence of PW5 (Bhuto Sarder) at the place of occurrence is quite probable. He used to stand outside the railway station and carry luggage. In view of the nature of job carried by PW5, it is not unnatural that he had come to drink tea from the tea stall. At that time he identified his relation Bhuto Sarder (PW5) and Parveen Bibi (PW3) at the spot.

Presence of the aforesaid witnesses at the spot is, therefore, most natural and probable and has been established beyond doubt.

Credibility of PWs. 3, 4 and 5:-

Learned Advocates for the appellants have emphatically deposed no reliance ought to be placed on PWs 3, 4 and 5. PW3 did not name the miscreants in the FIR. She admitted in cross-examination she did not disclose their names before police. In Court, she only named Saidul Mollah and no one else. PWs3 and 4 were beside one another. As PW3 did not name any one, it is contended identification by PW4 of the appellants is most unnatural. PW5 also did not identify all the appellants.

Hence, the witnesses ought not to be believed. PWs 3 and 4 who used to sell old garments in the area. They were at the spot when the incident occurred. Evidence has come on record Binod was a anti-social. Miscreants came in a body and threw bombs. There was a commotion. In the melee, the witnesses saw 5/6 persons confront Binod and shot at him. As a result, he fell down. Due to the suddenness of the incident and ensuing panic it is obvious PW3 was unable to name the miscreants in the FIR. In Court, she identified one of the miscreants as Saidul Mollah, who used to sell old garments with them. PW4 another garment seller, however, identified all the appellants as the miscreants. PW5, a porter who was drinking tea at the stall identified Gautam Halder @ Bachcha, Kanai Das @ Seru and Gobinda Sarkar as the miscreants.

Capacity of every individual to recollect and narrate an incident is not the same. Moreso, when an incident creates panic and fear in the mind of the witness. Under such circumstances, ability of every person to identify and name the perpetrators of violence would vary from one another. While some of them may be in a position to identify all the perpetrators, others may out of panic and shock fail to name any of them. Hence, variation in the number of persons identified by the eyewitnesses as miscreants do not improbabilise their presence. Nor does it affect their credibility. On the other hand, varying degrees of recollection regarding identity of the miscreants show a ring of truth in their depositions.

As discussed earlier, there was widespread panic and commotion due to throwing of bombs at the spot where Binod was murdered. Out of panic and shock and fearing danger to her life, PW1 may have kept quiet about the involvement of Saidul Mollah in the crime at the time of registration of FIR. But in Court she disclosed his involvement. PW4 also corroborated PW3 regarding role of Saidul Mollah in the crime. In this background, identification of Saidul Mollah by PW3 ought not to be discarded as an afterthought.

Hence, I am unwilling to discard the evidence of the aforesaid witnesses on the score that they did not identify all the appellants in court. I am also not willing to discard the identification of Saidul

Mollah by PW3 on the ground she was unable to state the names of the miscreants before police immediately after the incident.

Delayed examination of witnesses:-

Learned Advocates for the appellants argued PWs 4 and 5 ought not to be believed as there was delay in their examination by police. Drawing attention of this Court to the cross-examination of investigating officer (PW14), he submitted PW4 was examined on 26.10.2008 i.e. about two months after the incident and PW5 was examined on 6.9.2008 i.e. five days after the incident.

I am unable to accept such contention for the following reasons.

Firstly, PW4 in her chief stated she was examined by police 2/3 days after the incident. Harmonious, reading of PW2 with PW14 persuades me to hold that the said witness may have been examined orally by the investigating officer 2/3 days after the incident but her statement was formally recorded on 26.10.2008. Even otherwise, mere delay in recording statement of a witness does not improbabilise her version². No material is placed before this court to show that the deposition of PW4 is at variance with her earlier statement to the police. Examination of PW5 was within 5 days of the incident and such time gap cannot said to be an inordinate one. Referring to his cross-examination, it is contended

² Ganeshlal vs. State of Maharashtra, (1992) 3 SCC 106 (para 10)

PW5 admitted he stated the facts for the first time in Court. A solitary statement of a witness taken out of context is not sufficient to demolish his deposition. PW14 the Investigating Officer deposed he had examined PW5 on 6.9.2008. He also admitted that the eyewitness examined on 6.9.2008 gave out the names of Gautam Halder @ Bachcha and Kanai Das @ Seru. Hence, it is patently absurd to suggest that PW5 had not named the accused persons before police and had stated for the first time in Court.

Medical evidence on record:-

Autopsy Surgeon (PW13) deposed he found two gunshot injuries on the deceased as well as an incised wound. He opined death was due to gunshot injuries, ante mortem and homicidal in nature. Learned Advocates for the appellants argued eyewitnesses have not explained how the victim suffered incised wound. Hence, there is dichotomy between medical and ocular evidence. It is also argued that the identity of the dead body has not been established. PWs. 3, 4 and 5 deposed miscreants came in a body and threw bombs. Thereafter, they accosted Binod and shot at him. As a result, he fell on the ground. There was commotion in the area and most people fled away. Naturally, the witnesses were afraid and apprehensive of harm to them. Though they saw the gun shot injuries, it is possible that they may have failed to notice a further assault on the victim.

It is trite law ocular evidence of an eyewitness if reliable would prevail over medical evidence. Only, when the medical evidence wholly contradicts ocular evidence would the prosecution case be rendered vulnerable³. In the present case autopsy surgeon deposed that the victim had suffered gunshot injuries which were the cause of his death. Eye-witnesses have unequivocally deposed that the victim had suffered gunshot injuries. Hence, their ocular version is substantially corroborated by medical evidence. A number of miscreants had thrown bombs causing commotion. In the milieu they attacked the victim and fired at him. In this situation the witnesses may have failed to notice a further assault. This does not improbabilise the prosecution case that the victim had been accosted by the miscreants and fired at, resulting in his death.

Recovery of fire arms and ballistic report:-

Credibility of the prosecution case is further strengthened by recovery of two guns i.e. improvised pistol and country made double barrel pistol from the rented room of Kanai Das @ Seru. PW7 (Pintu Dutta @ Babu), owner of the house deposed Kanai Das @ Seru was a tenant in the house. Gautam Halder @ Bachcha also stayed with him. Police brought them to the house and Kanai Das

³ Anwar And Others vs. State of Haryana, (1997) 9 SCC 766 (para 10)

@ Seru brought out the arms and ammunitions from his belongings. He proved his signature on the seizure list.

PW 14 (Satyajit Banerjee), investigating officer, deposed after arrest of Kanai Das @ Seru and Gautam Halder @ Bachcha, they made statements before him marked as Exbts.- 16 and 17. On the basis of their statements they were taken to the house of PW7 and the aforesaid recovery was made. PW 14 proved the seizure list.

Learned defence Counsel submits no document with regard to tenancy was produced. Date of recovery is doubtful. Tenancy had been surrendered prior to the recovery of the fire arms. I find little substance in the aforesaid submissions. Seizure list has been marked as Exbt.-4/A. From this exhibit it appears that the recovery was made on 03.11.2008 at 1:15 hours. This finds corroboration from the oral deposition of PW 7. PW 14, by slip of tongue, stated recovery was made on 02.11.2008 which does not demolish the prosecution case which is established through the evidence of independent seizure witnesses (PW7) and the seizure memorandum. From the reading of the evidence of PW 7, as a whole, it is clear that the aforesaid appellants i.e. Kanai Das @ Seru and Gautam Halder @ Bachcha were occupying the room as tenants in the premises. After the incident, both of them absconded. However, their belongings remained in the room let out to them. They were arrested from Sandeshkhali on 23.10.2008

and the firearms were recovered from their belongings as per disclosure statements made by them.

In the light of the aforesaid evidence on record, I am of the opinion that recovery of the firearms and ammunitions, on the leading statements of the Kanai Das @ Seru and Gautam Halder @ Bachcha has been proved beyond doubt.

Seized firearms and ammunitions along with bullet recovered from the body of the deceased were seen for ballistic examination. Opinion of ballistic expert, PW 11 (Ardhendu Sengupta) marked as Exbt.-9 shows that the seized bullet head recovered from the body of the deceased (Exbt.-E) could have been fired from the double barrel improvised pistol marked as Exbt.-B. This circumstance further strengthens the prosecution case against Kanai Das @ Seru and Goutam Halda @ Bachcha from whom the offending firearm was recovered.

Non-examination of other witness:-

Another issue raised by the appellants is that other local witnesses have not been examined. It is contended, owner of the tea stall and other local witnesses including one Siva Yadav who was interrogated by the police have not been examined. Evidence has come on record that owner of the tea stall was not present on the day of occurrence. It is open to the prosecution to choose its witnesses to prove the case. Only when the best evidence is

withheld or non-examination of a witness affects the unfolding of the prosecution case an adverse inference may be drawn. PWs. 3, 4 and 5 have clearly proved the circumstances leading to the murder of the deceased. Hence, non-examination of Siva Yadav or other local witnesses do not affect the unfolding of the prosecution case.

Analysis of the eye-witnesses qua each of the appellants:-

Eye-witnesses PWs 3, 4 and 5 did not identify in Court. Saidul Mollah has been identified by PWs. 3 and 4. Kanai Das @ Seru, Gautam Halder @ Bachcha and Gobinda Sarkar @ Alu have been identified by PWs. 4 and 5. But Ganesh Das @ Prosenjit Das has been identified only by PW 4.

I have no doubt with regard to the presence of the aforesaid eye-witnesses at the place of occurrence. Their depositions also have a ring of truth. Arguments advanced that PWs. 4 and 5 had criminal cases and, therefore, were under pressure of the police to depose is of little substance. If they were tutored witnesses they would have narrated the incident in a parrot like manner and named all the appellants. Minor variations and/or discrepancies in their depositions are the hallmark of truthful witnesses since recollective faculty of every individual vary from one to another. It is also relevant to note there was commotion in the area when the miscreants fired at the victim. Most of the people had run away. In

this atmosphere of fear and trauma PWs 3,4 and 5 had seen the incident and deposed in Court. Hence, there is some variation with regard to the persons identified by them as the miscreants. As the chaotic circumstances prevailing at the spot may have affected the capacity of the witnesses to identify the miscreants, it may not be prudent to rely on the version of a sole witness to come to a finding of guilt. I am not unmindful that conviction may be recorded on the basis of the evidence of a sole eye-witness. To do so, the said witness must be of sterling quality and his/her deposition must be wholly reliable. Otherwise it is safe to look for some corroboration before one comes to a finding of guilt on the deposition of a sole eye-witness. Applying this proposition of law to the factual backdrop of the case which discloses widespread commotion prevailing at the place of occurrence, I am of the view it may not be safe to convict on the basis of identification by a sole eye-witness. Hence, I am inclined to extend the benefit of doubt to Ganesh Das @ Prosenjit Das who has been identified by PW 4 alone. No other incriminating circumstance has also come to the fore against the said appellant. No incriminating article was recovered from him and evidence on record shows he had not absconded and was arrested from his place of business. Accordingly, Ganesh Das is acquitted of the charge leveled against him.

On the other hand, the other appellants viz. Kanai Das @ Seru, Gautam Halder @ Bachcha, Saidul Mollah and Gobinda Sarkar @ Alu have been identified by two of the eye-witnesses. Firearm used for murdering the victim was recovered on the leading statements of Kanai Das @ Seru and Gautam Halder @ Bachcha.

In view of the reasons recorded above, I hold as follows:-

(i) Conviction and sentence of Ganesh Das @ Prosenjit Das are set aside;

(ii) Conviction and sentence of Kanai Das @ Seru, Gautam Halder @ Bachcha, Saidul Mollah and Gobinda Sarkar @ Alu are upheld.

(iii) Bail bonds of Kanai Das @ Seru, Gautam Halder @ Bachcha, Saidul Mollah and Gobinda Sarkar @ Alu are cancelled. They are directed to surrender forthwith and serve out their sentences in accordance with law, failing which, the trial Court shall issue appropriate processes for their apprehension and execution of sentence in accordance with law.

(iv) Ganesh Das @ Prosenjit Das shall stand discharged from his bail bond after expiry of six months in terms of Section 437A of the Code of Criminal Procedure.

The appeal being CRA 241 of 2015 is allowed.

The appeals being CRA 182 of 2015, CRA 187 of 2019 and CRA 419 of 2015 are dismissed.

Period of detention suffered by the convicted appellants during investigation, enquiry and trial shall be set off against the substantive sentences imposed upon them in terms of Section 428 of the Code of Criminal Procedure.

Let a copy of this judgment along with the lower court records be forthwith sent down to the trial Court at once.

Photostat certified copy of this judgment, if applied for, shall be made available to the appellants upon completion of all formalities.

I agree.

(Ajay Kumar Gupta, J.)

(Joymalya Bagchi, J.)