

**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

**CRA 18 of 2020
With
CRAN 1 of 2021**

**Ujjal Debnath
VS.
State of West Bengal**

For the Appellant : Mr. Kallol Mondal,
Mr. Krishan Ray,
Mr. Souvik Das,
Mr. Shamsheer Ansari,
Mr. Ayan Mondal, Advocates

For the State : Ms. Anasuya Sinha,
Mr. Pinak Kr. Mitra, Advocates

Heard on : February 1, 2023 & March 16, 2023

Judgement on : March 16, 2023

DEBANGSU BASAK, J.:-

1. The appeal is directed against the judgment of conviction dated June 28, 2018 and order of sentence dated June 29, 2018 passed by the learned Additional District and Sessions Judge, 1st Court, Barasat, North

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24 Parganas in Sessions Trial No. 904 of 2014 [S.T. 2(8) 2013] arising out of Sessions Case no. 03(5)2013.

2. By the impugned judgment of conviction dated June 28, 2018, the appellant was found guilty under Section 302 of the Indian Penal Code, 1860. By the impugned order of conviction dated June 29, 2018, the appellant was sentenced to suffer rigorous imprisonment for life and to pay a fine of Rs.10,000/- and, in default, to suffer simple imprisonment for one year on his conviction to the charge under Section 302 of the Indian Penal Code, 1860.

3. Police received a written complaint dated September 27, 2012 from prosecution witness (P.W-1), with regard to the murder of Biplab Adhikary by the appellant at around 10 P.M. on September 26, 2012. In such written complaint, P.W.-1 claimed that, the appellant chopped at the neck of the victim with a sharp weapon from behind with the intention to kill him. As a result, the victim received deep cut injury on his neck. After the incident, the elder brother of the victim and some other local people took the victim to the Habra Hospital where, the Doctor on duty transferred the victim to Barasat Hospital. After he was taken to Barasat Hospital, the Doctor there declared the victim dead. P.W-1 stated in the written complaint that, it was his firm belief that the appellant was standing at the place of occurrence to kill the victim in the manner he did so.

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4. On the basis of the written complaint, police registered Habra Police Station F.I.R. no. 761 of 2012 dated September 27, 2012 under Section 302 of the Indian Penal Code, 1860. On conclusion of the investigations, police filed the charge sheet.

5. Charge under Section 302 of the Indian Penal Code, 1860 was framed as against the appellant on August 5, 2013. The appellant claimed to be not guilty to such charge and he was tried.

6. At the trial, prosecution examined 24 witnesses and relied upon various documentary and material evidences. On the conclusion of the evidence of the prosecution, the appellant was examined under Section 313 of the Criminal Procedure Code. The appellant claimed to be falsely implicated. He adduced one defence witness in support of his defence.

7. Learned advocate appearing for the appellant submits that, the prosecution did not examine any person claiming to be the eye-witness to the incident. He submits that, there are anomalies with regard to the First Information Report. The time of occurrence as mentioned in the written complaint is different from the one mentioned in the formal portion of the First Information Report. In the written complaint, P.W.-1 as the informant mentioned time of occurrence as 10 P.M. on September 26, 2012 whereas, in the formal portion of the F.I.R. the time of occurrence was mentioned as 8 P.M.

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8. Learned advocate for the appellant submits that, there are discrepancies in the deposition of the prosecution witnesses. He submits that, although, initially an endeavour was made to project the prosecution witnesses as eye-witnesses, however, on scrutiny, it will be revealed that none of the prosecution witnesses are eye-witnesses to the incident. He refers to the various discrepancies in the depositions of the various prosecution witnesses with regard to the incident. He submits that, P.W.-1 and P.W.-2, claimed themselves to be present at the place of occurrence, but did not take the victim to the hospital. P.W.-24 took the victim to the hospital.

9. Learned advocate for the appellant submits that, although, P.W.-1 and P.W.-2, P.W.-3, P.W.-4 and P.W.-12 were all relatives of the victim, the endeavour to project that the victim made a dying declaration to them was misplaced as it was P.W.-23 and P.W.-24 who arrived at the place of occurrence for the first time and not the other prosecution witnesses. P.W.-23 and P.W.-24 did not claim anything about any dying declaration being made by the victim. Therefore, according to him, the so-called oral dying declaration is thoroughly unreliable, with no credence and of no consequence.

10. Learned advocate for the appellant relies upon a judgment of the Hon'ble Supreme Court reported in **(2009) 4 SCC 271 [State of Uttar Pradesh vs. Banne alias Baijnath & Ors.]** in support of the contention

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that, where there are discrepancies in the oral deposition of prosecution witnesses with the statements recorded under Section 161 of the Criminal Procedure Code, no reliance should be placed on the oral testimony of the prosecution witnesses.

11. Learned advocate appearing for the appellant submits that, prosecution failed to establish motive for the murder. Prosecution failed to complete the chain of circumstances so as to implicate the appellant on the basis of circumstantial evidence. Therefore, he submits that, the impugned order of conviction and the order of sentence should be reversed and the appellant be acquitted of the charges framed.

12. Learned advocate appearing for the State submits that, the victim made dying declaration to P.W.-1 and P.W.-2. She submits that, the victim was alive till being declared dead by the Barasat Hospital. The victim after suffering the injuries, was initially removed to the Habra Hospital where, the victim was not pronounced as dead. He was referred from Habra Hospital to the Barasat Hospital. Apparently, the victim succumbed to his injuries at Barasat Hospital. Therefore, the victim was in a position to make the oral dying declarations as claimed by P.W.-1 and P.W.-2.

13. Referring to the written complaint lodged by P.W.-1, learned advocate for the State submits that, the written complaint contains the name of the appellant as the assailant. It describes the manner in which

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the injury was inflicted. The injuries found on the dead body of the victim corroborate the claim of P.W.-1 in the written complaint. In fact, all the prosecution witnesses are consistent in their stand with regard to the nature of injury inflicted upon the victim by the appellant and the weapon used. So far as the weapon of assault is concerned, learned advocate for the State submits that, such weapon of murder was recovered on the leading statements made by the appellant and tendered in evidence and marked as Exhibit-27.

14. Learned advocate appearing for the State submits that, the contents of the written complaint, inquest report and oral testimony are consistent with regard to the role played by the appellant in the assault on the victim and ultimately, the murder of the victim. She submits that P.W.9 and P.W.24 are post occurrence eye witnesses. P.W.9 as the wife of the victim, saw the appellant to flee away from the place of occurrence with a sharp cutting weapon. So also the P.W.24 saw the appellant to flee away from the place of occurrence with the sharp cutting weapon. She refers to the cross-examination of P.W.9 and P.W.24 and submits that they were not shaken during such cross-examination by the defence.

15. Referring to the deposition of D.W.1, learned advocate appearing for the State submits that, the error in recording of the time of the incident by the hospital authorities was explained by P.W.24 in his deposition. P.W.24 explained that, the recording of the time as 8 p.m. was incorrect

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as the incident actually happened at 10 p.m. on September 26, 2012.

16. In such circumstances, learned advocate appearing for the State submits that, the impugned judgment of conviction and the order of sentence be upheld.

17. P.W.1 is the maker of the written complaint to the police. P.W.1 is also relative of the victim. He is the cousin brother of the victim. He stated that, the victim was murdered on September 26, 2012 at about 10 P.M. at the place of occurrence by the appellant. He said that, he was taking rest in his home at the material point of time when he heard shouting from outside and on hearing the same, he came out of his house and saw the victim lying in injured bleeding condition. He found bleeding injuries on the back of the neck, and on the back and various other parts of the body of the victim. Blood was oozing out from the body of the victim. He was lying on the road in front of the gate of the house of Bireswar Mallick. Bireswar Mallick also came out of his house and wrapped the injured portion of the victim with napkin.

18. P.W.1 stated that, the victim was fully conscious. On being asked by him, the victim told him that the victim was assaulted with a sharp cutting weapon by the appellant. At the time of making such statement, Bireswar Mallick was also present. Immediately thereafter, other persons joined them. The victim was taken to the Habra Sub Divisional Hospital. The doctor at Habra Sub Divisional Hospital referred the victim to

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Barasat District Hospital. The victim died sometime on his arrival at Barasat District Hospital.

19. P.W.1 stated that, on September 27, 2012, at about 2 a.m. he lodged the written complaint with the police regarding the incident. He tendered the written complaint and his signature which was marked as Exhibit-1/1. He claimed that, after lodging the complaint, police examined him and he narrated the incident as also named the appellant as an accused in the First Information Report.

20. In cross-examination, P.W.1 stated that, he did not state in the FIR that the victim told him about the accused. He also stated that he did not mention in the First Information Report that he came out from the house after hearing the shouting.

21. P.W.2 is another cousin brother of the victim. He stated in his deposition that, on September 26, 2012 at about 10 P.M., he was present in his house and after hearing shouting, he came out from the house and ran to the spot and found the victim in a bleeding condition. He noticed bleeding injury on the back side of the neck portion and other portion of the body of the victim. He identified the persons, he found on reaching the place of occurrence. P.W.1 was one of the persons whom he found at the place of occurrence. He stated that, the victim was conscious and when he asked the victim who caused the injury the victim told him that, the victim was assaulted by the appellant with a sharp cutting weapon.

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He corroborated the statement of the P.W.1 with regard to the removal of the victim to the two hospitals. He stated that after completion of the Post Mortem examination of the body of the victim, he took the deadbody of the victim. He stated that on January 27, 2013, police asked him to accompany him to the house of the appellant. He is a witness to the seizure of the sharp cutting weapon which was seized by the police on the leading statement made by the appellant. The seizure list was tendered in evidence and marked Exhibit-3.

22. P.W.3 is a neighbour of the victim. He is the person who is identified by P.W.1 and 2 to have responded to the shouting of the victim. P.W.3 stated that, he found the victim lying on the road with bleeding injury in between his house and the house of Anil Debnath. He stated that in between 9:30 P.M. to 10 P.M., when he went to the shop of Abani Das, he found that appellant was standing on the road in between his house and the house of Anil Debnath. Thereafter, he returned to his house when the victim was lying on the road with bleeding condition. He asked the victim about the incident. The victim told him that the appellant assaulted the victim.

23. P.W.4 is a hawker by profession. He is witness to the seizure list dated September 27, 2012. He identified his signature on such seizure list which was tendered in evidence and marked as Exhibit-4. The mobile phone of the appellant was seized in such seizure from the place of

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occurrence, which was tendered in evidence and marked as Material Exhibit-I.

24. P.W.4 stated that, on hearing a hue and cry, he came to the place of occurrence and found the victim to be lying with a bleeding injury on the road, at that point of time, victim told his elder brother that the appellant injured him. The victim was taken to the Habra Sub Divisional Hospital and thereafter shifted to Barasat Hospital.

25. A vegetable seller of the locality deposed as P.W.5. He is the uncle of the victim. He stated that, at the time of the incident he was in his house and after hearing the hue and cry, he went to the place of occurrence and found the victim to be lying on the road with bleeding injury. He identified the appellant in Court. He is a witness to the seizure list dated September 27, 2012. He identified his signature on such seizure list.

26. A neighbour of the victim deposed as P.W.6. He claimed that the appellant murdered the victim. He identified the appellant in Court. He stated that on September 26, 2012, at about 10 at night, he was returning home from his regular job when he found that the appellant was standing in front of the house of Anil Debnath. After returning home when he was sitting for dinner, he heard a hue and cry and came out from his house and went in front of the house of Anil Debnath where he found victim lying with bleeding injury.

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27. P.W.7 is a neighbour of the appellant. He stated that on September 26, 2012, he was studying in his room on that date, the appellant came to his shop to purchase cigarette and after a short while, he heard some clamours from the roadside and on being scared, he closed the shop and thereafter, he came out from the house and arrived at the place of occurrence and found the victim lying there with bleeding injury.

28. The mother of the victim deposed as P.W.8. She stated that, on September 26, 2012 at about 9 to 9:30 p.m. the victim was returning home and that when he reached near the house of Bireswar Mallick and Anil Debnath at that time, the appellant assaulted the victim with a sharp cutting weapon on his back, neck and other portions of the body. On hearing the clamours she went to the spot and found her son was lying with bleeding injury. She found the appellant to be leaving the place of occurrence by holding sharp cutting weapon in his hand in the street light. Thereafter, she asked the victim about the incident when the victim replied that the appellant assaulted him with a sharp cutting weapon. She corroborated the statement of the other prosecution witnesses with regard to the transfer of the victim to the two hospitals.

29. P.W.9 is the wife of the victim. She stated that, when the victim was returning home, he was assaulted by the appellant with a knife on his head, neck and back. She found the appellant to be fleeing away from the place of occurrence in the light of the post. She corroborated the

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other prosecution witnesses with regard to removal of the victim to the two hospitals.

30. P.W.10 is a police personnel who made the inquest of the deadbody of the victim. He tendered the inquest report which was marked as Exhibit-2/1. He tendered deadbody challan which was marked as Exhibit.5. He also tendered the challan with regard to the disposal of the deadbody which was marked as Exhibit-6 and the challan dated September 27, 2012, along with the copies of the inquest report, corpse disposal certificate, deadbody challan and other documents which were tendered in evidence and marked as Exhibit-7.

31. A neighbour of victim deposed as P.W.11. He stated that, when the victim was returning home, the appellant assaulted him with a sharp cutting weapon, whereupon, the victim died. He stated that after hearing the hue and cry, he went to the place of occurrence and found the victim to be shifted to the two hospitals. He is a witness to the seizure list with regard to the recovery of the murder weapon. He identified his signature in such seizure list. He also identified the Material Exhibit-II. He identified the appellant in Court.

32. Another uncle of the victim deposed as P.W.12. He stated that on September 26, 2012 at about 9 to 10 p.m. he heard a hue and cry and came out of the house and found the victim lying in a bleeding condition. He stated that on being asked, the victim told him that appellant

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assaulted him with a sharp cutting weapon. He corroborated the statement of other prosecution witnesses with regard to the shifting of the victim to the two hospitals.

33. P.W. 13 is a doctor, who performed the post mortem on the dead body of the victim. He described the injuries he found on the dead body of the victim. He tendered the post mortem report in evidence, which was marked as exhibit 8. He stated that, in his opinion, the death was due to effect of injuries noted in the post mortem report, ante mortem and homicidal in nature.

34. P.W. 14 is a brother of the victim. He stated that the appellant stabbed his brother near their house.

35. P.W. 15 is a nephew of the victim. He stated that, after the death of the victim, he went to Barasat Hospital. He identified his signature in the inquest report, which was marked as exhibit 2/3.

36. A police personnel, in presence of whom the blood stained wearing apparel of the victim were seized deposed as P.W. 16.

37. P.W. 17 is a seizure list witness of the seizure made on February 13, 2013. He identified his signature on such seizure list, which was tendered in evidence and marked as exhibit 9/1.

38. P.W. 18 is a police personnel, who received the police complaint of P.W. 1. He identified his signature on written complaint, which was marked as exhibit 2/1. He stated that he prepared the formal First

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Information Report, which was tendered in evidence and marked as exhibit 10.

39. The forensic expert deposed as P.W. 19. She stated that, she examined the request sent for forensic examination. She stated that, blood was detected on the sharp cutting weapon. She tendered the report, which was marked as exhibit 11.

40. The Investigating Officer deposed as P.W. 20. He narrated about the investigations. He tendered various documents as evidence and marked as exhibits.

41. The police officer, who obtained the Forensic Science Laboratory Report was examined as P.W. 21. P.W. 22 is the another police personnel, who took up the investigations subsequently and who seized the wearing apparels of the victim. He submitted charge-sheet against the appellant.

42. On conclusion of the evidence of the prosecution, the appellant was examined under Section 313 of the Cr.P.C. where, the appellant claimed to be innocent and falsely implicated. He stated that, he would adduce evidence on his behalf.

43. Defence produced a doctor of the Habra Hospital as D.W. 1. The doctor stated that, he was posted at Habra Hospital on September 26, 2012 and that, at about 10.30 p.m., the victim was brought to the hospital in emergency ward for medical treatment with a history of

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assault at 8 p.m. on September 16, 2012. The victim was attended at the emergency at about 10.30 p.m. He tendered the emergency register as evidence which was marked as exhibit A.

44. Prosecution examined two other witnesses subsequent to the defence witness being P.W. 23 and P.W. 24. They were not named in the charge-sheet as prosecution witnesses.

45. The person, who accompanied the victim to the hospital deposed as P.W. 23. He stated that, he was coming from market to his house when he saw the victim was lying down in bleeding condition on the road at about 9.30/9.45 p.m. He along with other villagers took the victim to the Habra Hospital. He reached the Habra Hospital at about 10.30 p.m. From Habra Hospital, the victim was taken to the Barasat Hospital. He identified his signature on exhibit A.

46. P.W. 24 is the post occurrence eye witness. He stated that, when he was returning to his house, he saw the appellant fleeing away holding a sword. He asked the appellant where he was going, the appellant told him to leave the place. After walking a little distance, he saw the victim lying down with bleeding condition. He accompanied the victim to the Habra Sub-Divisional Hospital by ambulance. He stated that, in the hospital when the doctor asked him about the time of incident, he inadvertently told the doctor that the incident occurred at 8 p.m. instead

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of 9.30 p.m. He brought the victim at about 10.15 to 10.20 p.m. at the hospital.

47. On conclusion of the examination of P.W. 23 and P.W. 24, the appellant was examined once again under Section 313 of the Code of Criminal Procedure where he reiterated his stand of innocence.

48. The victim died on September 26, 2012. The post-mortem report of the victim in Exhibit-8 states that the death was due to the effects of injuries noted in Exhibit-8 ante-mortem and homicidal in nature.

49. The post-mortem doctor being P.W.13 described the injuries he found on the dead body of the victim while performing the post-mortem. The injuries noted on the body of the victim are as follows:

“1. One chop wound spindle in shape measuring about 6” X 1/2” X skin into fascia, muscles, vessels, nerves was placed more or less transversely on the posterior aspect of the neck placed 3” below from external occipital protuberance and 2 and 1/2” above from the prominence of the seventh cervical spine. On dissection and cleaning the wound, it was found to have cut on skin fascia muscles, vessels and nerves of the corresponding area and then terminated on the body of the third cervical vertebra by making cut fracture 1/3”X1/3” into substance. Tract of the wound forward and medially converted

2. one chop wound feature as described above: 6 and 1/2” X 1/2” was placed 3 and 1/2” below from external occipital protuberance and 2” above from seventh cervical spine and cut fracture 1/3”X1/3” into substance into fourth cervical spine

3. one chop wound as like before. 5 and 1/2”X 1/2” was placed 4” below from external occipital protuberance and 1 and 1/2” above from seventh

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cervical spine. The margins of the wound was regular and even and placed 4" below from external occipital protuberance and 1 and 1/2" above from seventh cervical spine. Margin of the wound was regular and even and extravasation of blood in and around.

4. One incised wound 5"X 1/3" X muscles placed more or less horizontally over the upper border of left scapula.

5. One incised wound 8" X 1/3" X muscles placed 1/2" below the previous wound.

6. One incised wound 5 an 1/2" X 1/3" X muscles placed 1" below from previous wound. The margins of the incised wounds (4,5 and 6) were regular and even and little extravasation of blood in and around. All three incised wounds are 2 and 1/2" left posterior mid line and direction more or less horizontal forwards and laterally convergent.

7. Lacerated wound 1/2"X 1/2" X 1/3" left pina."

50. Reading Exhibit-8 and the deposition of the doctor, who performed the post-mortem on the dead body of the victim, being P.W.13, it can be held that the victim was murdered by a sharp cutting weapon.

51. The prosecution did not produce any witness who saw the appellant assaulting the victim leading to his death. The event of assault occurred on September 26, 2012 at about 10 pm in the night.

52. P.W.1, 2, 3, 8 and 12 stated that, the victim made an oral dying declaration to them stating that the appellant assaulted the victim. P.W.4 stated that he heard the victim making an oral dying declaration to P.W.2.

53. P.W.1 lodged the written complaint. In the written complaint, he stated that the appellant was the person who assaulted the victim. He

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described the injuries suffered by the victim. The inquest report, being Exhibit-2, also records the claim of the witnesses to the inquest that the appellant assaulted the victim.

54. It is the contention of the appellant that, since the written complaint being Exhibit-1, lodged by P.W.1 did not contain the claim of oral dying declaration, the claim in the testimony of P.W.1 that there was an oral dying declaration should not be relied upon.

55. A written complaint or the First Information Report need not be the encyclopedia of all evidences. All that is required is that the written complaint should disclose commission of a cognizable offence. In the facts of the present case, the written complaint being Exhibit-1 contains necessary details with regard to the victim, the person who assaulted the victim, and the nature of injuries suffered by the victim.

56. In his oral dying declaration, the victim stated that the appellant assaulted him. Oral dying declaration made by the victim to P.W.1 is corroborated by oral testimonies of P.W.2, 3, 4, 8 and 12. All of these prosecution witnesses, who stated about the oral dying declaration during their examination before the trial court are not relatives of the victim. P.W.3 is a neighbour and the victim made the same dying declaration as made to other prosecution witnesses. P.W.4 is a hawker who heard the victim making the dying declaration to P.W.2.

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57. P.W.9 and 24 can be said to be post-occurrence eye-witnesses. They saw the appellant to flee away from the place of occurrence with the sharp cutting weapon.

58. P.W.3, 6 and 7 are prosecution witnesses who saw the appellant in the vicinity of the place of occurrence just prior to the time of occurrence of the incident. P.W.3, 6 and 7 cannot be said to be interested witnesses or witnesses who are relatives to the victim so as to falsely implicate the appellant.

59. Exhibit-4 establishes that, the mobile phone of the accused was seized from the place of occurrence. The seizure was made on September 27, 2012 immediately after the police arrived at the place of occurrence. Therefore, this is another piece of evidence to place the appellant at the place of occurrence. In his cross-examination under Section 313 of the Code of Criminal Procedure, the appellant failed to explain the presence of his mobile phone at the place of occurrence.

60. Exhibit-17 is a statement made by the appellant while in custody. The portion of his statement, which led to the discovery of the murder weapon, was marked as Exhibit-17. The murder weapon seized by the seizure list dated January 27, 2013 being Exhibit-3/2 was sent for forensic examination. The forensic expert by the report dated June 23, 2014 being Exhibit -12 read with the oral testimony of P.W.19 established that, there was blood on the murder weapon seized.

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61. Appellant, therefore, was found in the vicinity of the place of occurrence immediately prior to the incident by P.W.3, 6 and 7. Appellant was seen fleeing away from the place of occurrence by P.W.9 and 24. Mobile phone of the appellant was seized from the place of occurrence. P.W.1, 2, 3, 4, 8 and 12 stated that, the victim made a dying declaration to them stating that the appellant assaulted him. Therefore, in our view, the chain of circumstances embroiling the appellant into the incident of murder stands completed on behalf of the prosecution. Significantly, the murder weapon was recovered on the leading statement made by the appellant. The murder weapon contained bloodstain.

62. In **Banne alias Baijnath & Ors. (supra)**, the Hon'ble Supreme Court considered a trial of murder. In the facts of that case, the Hon'ble Supreme Court found that the prosecution witness were not totally independent witnesses as the defence filed documentary evidence to show that there was a police complaint lodged against the father of one of the witnesses. Therefore, the Hon'ble Supreme Court deduced that, such witnesses were somewhat inimical to the accused persons and, therefore, the evidence of such witnesses were given due weightage. The facts and circumstances of the present case herein are absolutely different. Apart from the relatives of the victim, other persons also stated that, the victim made oral dying declarations to them. The defence did

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not establish any police complaint to be pending as against any of the prosecution witnesses.

63. The defence cross-examined the prosecution witnesses at length including the prosecution witnesses who claimed that the victim made oral dying declarations to them. The defence could not shake such prosecution witnesses with regard to the oral dying declaration part.

64. The defence did not cross-examine the Investigating Officer as to whether or not the prosecution witnesses claimed that there was oral dying declaration made by the victim at the relevant point of time.

65. An oral dying declaration can form the basis of a conviction provided, such dying declaration is found to be trustworthy, made truthfully and not suffering any infirmities. A dying declaration cannot be said to be weaker kind of evidence than any other piece of evidence. A dying declaration stands on the same footing as that of any other piece of evidence. A dying declaration is required to be evaluated as any other piece of evidence brought at the trial.

66. In the facts and circumstances of the present case, we find no ground to doubt the dying declaration that the victim made to the prosecution witnesses.

67. It is contended on behalf of the appellant, that there is a time difference between the time of the incident recorded in the written complaint and in Exhibit-A when the victim was admitted. With the

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deepest of respect, such contention cannot be accepted in the facts and circumstances of the present case, since, P.W.23, in oral testimony explained that, he gave an incorrect time of the happening of the incident to the doctor who recorded it as such in Exhibit-A. In any event, the prosecution witnesses, in unison stated that, the incident occurred between 9.30 to 10 p.m. The victim was taken to Habra Sub-divisional Hospital and was treated at around 10.30 p.m. on September 26, 2012 itself which will appear from the testimony of DW-1 also.

68. In such circumstances, we do not find any material discrepancy in the delineation of the time line of the events, as sought to be claimed on behalf of the appellant so as to warrant an interference with the impugned judgment of conviction and the order of sentence.

69. In view of the discussions above, we find no reason to interfere with the impugned judgment of conviction and the order of sentence passed by the learned Trial Judge.

70. CRA 18 of 2020 is **dismissed**.

71. The period of detention prior to the trial, during the trial and subsequent to the trial will be set off from the period of sentence awarded by the learned Trial Judge.

72. A copy of this judgment and order along with the trial court records be transmitted to the appropriate Court forthwith.

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73. In view of the dismissal of the appeal, the appellant is not entitled to any relief in IA No.: CRAN 1 of 2021 and the same is also dismissed.

74. Urgent 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.)

75. I Agree.

(Md. Shabbar Rashidi, J.)