

**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.A. No. 141 of 2020

Sri Nandadulal Ghosh & Anr.

Vs.

The State of West Bengal

With

C.R.A. No. 239 of 2020

Ananda Mohan Ghosh & Ors.

Vs.

The State of West Bengal

For the appellants (in CRA 141 of 2020) :

: Mr. Pulak Ranjan Mondal, Adv.

: Ms. Bandana Mandal, Adv.

For the appellants (in CRA 239 of 2020) :

: Mr. Milon Mukherjee, Id. Sr. Adv.

: Mr. Biswajit Manna, Adv.

For the State : Mr. Swapan Banerjee, Adv.
: Mr. Anindya Sundar Chatterjee, Adv.
: Ms. Purnima Ghosh, Adv.

For the de facto complainant

: Mr. Malay Bhattacharyya, Adv.
: Mr. Pradip Paul, Adv.
: Ms. S. Mondal

Heard on : 15.12.2022

Judgment on : 13.01.2023

Md. Shabbar Rashidi, J:

1. Both these appeals are directed against the judgment of conviction dated 11.02.2020 and order of sentence dated 12.02.2020 passed by learned Sessions Judge, Pashcim Medinipur, in Sessions Trial No. 9 of April 2017 convicting the appellants under section 302/341/34 of the Indian Penal Code. The two appeals are taken up together as they emanate from one and the same judgment and order.
2. One Shymal Ghosh, a resident of Korongapote within Anandapur police station lodged a written complaint on September 03, 2012 alleging, inter alia,

that his father Purna Chandra Ghosh was returning from the fields in the afternoon at about 04.30 p.m. At that time, the de facto complainant could see that his third paternal uncle Anand Mohon Ghosh, his wife Parbati Ghosh, their daughter Smapti Ghosh, second paternal uncle of the de facto complainant Nanda Dulal Ghosh and his wife Pushparani Ghosh grabbed his father at a little distance from his house with a plan to kill him. The de facto complainant rushed there and saw that all the aforesaid persons were inflicting torture upon his father in different ways. Uncle of de facto complainant Ananda Mohan Ghosh and his daughter Smapti Ghosh were shouting for killing the stupid (sala) completely. The de-facto complainant also stated that Ananada Mohan Ghosh, Parbati Ghosh, Smapti Ghosh were assaulting his father by axe near the neck and head of his father causing severe bleeding injuries. On alarm being raised by the de-facto complainant, local people started assembling. Seeing this, the aforesaid persons fled away

leaving the father of the de facto complainant. With the help of local people, the father of de facto complainant was taken to Medinipur hospital with bleeding injuries where he was declared dead. It was also stated by the de facto complainant that Anando Mohon Ghosh, Parbati Ghosh, Smapti Ghosh, Nannda Dulal Ghosh and Pushpa Rani Ghosh killed father of the de facto complainant Purnachndra Ghosh on account of the family disputes.

- 3.** On the basis of such written complaint, Anandapur Police Station Case No. 70 of 2016 dated 29.11.2016 under sections 341/302/120B/34 of the Indian Penal Code was started against the accused persons including the appellants.
- 4.** The police took up investigation and on completion of investigation submitted charge-sheet under sections 341/ 302/120B/34 of the Indian Penal Code.
- 5.** Upon appearance /production of the accused persons and on compliance of the provisions under

section 207 of the Code of Criminal Procedure, the case was committed to the Court of Sessions for trial. In consideration of the materials in the case diary, charges under sections 302/34 and 341/34 of the Indian Penal Code were framed against all the five accused persons.

6. In order to substantiate the charge-sheet, the prosecution examined 12 witnesses. In addition, the prosecution also adduced documentary material evidences.

7. The de facto complainant Shymal Ghosh deposed as PW1. He identified the accused persons in Court. He stated that on 28.11.2016 at 04.30 pm, he was going out from his house. At that time, he found that while his father Purna Chandra Ghosh was returning from the fields, all the five accused persons caught hold of him and laid him down on the ground. All of them were shouting to kill him. PW1 also stated that Parbati Ghosh and Shymal Ghosh caught hold of the legs and hands of his father. Accused Ananda Mohon Ghosh assaulted his

father with an axe. The incident occurred at a distance of twenty/twenty-five feet from his house. Seeing the incident, PW1 shouted for help and at his alarm, neighbors rushed to the place of occurrence. PW1 has named Sushanta Ghosh, Tushar Ghosh and Ranajit Ghosh who came to the place of occurrence upon his alarm. Thereafter, Ananda Mohan Ghosh left the place with the accused followed by the remaining accused persons. Upon a close scrutiny, PW1 found his father unconscious with active bleeding injuries. The victim was taken to Medinipur Medical College and Hospital where his father was declared dead. PW1 has also stated that on the relevant date, his elder brother was not in the house as he used to reside at Datan being a school teacher. His mother was also not present having gone to Ghatal in connection with delivery of child of elder sister of PW1. PW1 also stated that he informed the matter to the police station accompanied by his brother who had arrived in the hospital upon being informed by PW1. The

written complaint was scribed by the elder brother of PW1 as per his instructions and he signed on it. PW1 proved the written complaint (Exhibit 1).

- 8.** One of the co-villagers deposed as PW 2. He identified the accused persons in the court. He stated that Kartick, son of his sister Rekha, was married to the daughter of accused Ananda Mohan Ghosh. He further stated that he knew Purna Chandra Ghosh who was murdered about 8 months ago (from 04.9.2017) at about 4.30 pm. He stated that hearing the hue and cry, he rushed to the place of occurrence and was reported that injured Purna was moved to Hopital and that he died. He was murdered with an axe over land disputes. He further stated that he was interrogated by the police. The witness was declared hostile and in his cross-examination by the prosecution, he denied making any statement before police to the effect that there were land disputes between Purna Ghosh and Ananda Ghosh and that on the date of incident when Purna was returning from fields, all the

accused persons, in a body, attacked and killed him over previous grudge or that all the accused persons were inflicting blows on the head of Purna with an axe and seeing the local people, they fled away.

9. Another villager deposed as PW 3. He stated that the accused persons and the victim were residents of his village and his house was at a distance of 2/3 minutes walk from that of the accused persons. He further stated that Purna Ch. Ghosh was murdered about 8/9 months prior to his deposition at about 4.30 pm. At that time, PW 3 was going towards his husking mill when he heard the shouts of 'save me, save me'. He rushed to the place and found accused Ananda Mohan Ghosh inflicting blows on the neck and head of Purna Ch. Ghosh with an axe and accused Smapti Ghosh and Parbati Ghosh holding his legs and hands. Accused Puspa and Nanda Dulal were shouting 'kill the brother-in-law'. Purna Ch. Ghosh sustained bleeding injuries. PW 3 also saw Shyamal Ghosh, son of Purna Ch. Ghosh and others coming to the

place of occurrence. Thereafter, the accused persons fled away. Purna Ghosh was taken to Medinipur Hospital. Police was informed and PW3 was interrogated by police. He also made a statement before learned Magistrate. He proved his signature on his statement recorded by the Magistrate (Ext.2). PW 3 was cross-examined at length by the defence.

10. PW 4 is one of the residents of the village of accused persons and the victim. He stated that about 8/9 months ago, the accused persons (identified on dock) killed Purna Ghosh. He was interrogated by the police in connection with the incident. Police seized some bloodstained soil and fresh soil from the place of occurrence. He signed on the seizure list along with the witnesses Bablu Ghosh and Alope Ghosh. He proved his signature on the seizure list (Ext.3).

11. PW 4 further stated that the police also seized the offending axe from inside of a bamboo cluster as shown and led by the accused Ananda Ghosh and Parbati

Ghosh. The said axe was seized by the police under a seizure list which was signed by him and the other witnesses. He signed on the seizure list along with the witnesses Bablu Ghosh and Alope Ghosh and accused Ananda Ghosh also signed on it. He proved his signature (Ext. 4). PW4 also identified the seized soils and the axe in court (Mat. Ext. I, II & III respectively). This witness was also cross examined at length by the defence.

- 12.** PW5 is one of the seizure list witnesses. He identified all the five accused persons in the dock and stated that they killed Purna who was of his village. He was interrogated by the police. Police seized controlled and bloodstained soil from the place of occurrence in his presence. On another occasion, police seized an axe recovered from the bamboo clusters, as per the statement of the accused Ananda Ghosh. He signed on both the seizure lists. He proved his signatures thereon (Ext. 3/1 & 4/1). Besides PW 5, the said seizure lists were also signed by Arun Bera and Bablu Ghosh. Accused Ananda

Ghosh also signed on the seizure list. PW5 also identified the seized axe and soils in the court. This witness was cross-examined by the defense.

- 13.** Another son of deceased Purna, deposed as PW 6. He is a hearsay witness. He stated that his father was murdered on 28.11.2016. He further stated that he was a school teacher posted at Dantan and used to reside at Dantan at the relevant time. On 28.11.2016 at about 5.00 pm, he was informed over phone by PW1 that the five accused persons, Ananda Mohan Ghosh, Samapti Ghosh, Nanda Dulal Ghosh, Parbati Ghosh and Pusparani Ghosh attacked and assaulted his father with an axe causing bleeding injuries. He was moved to Midnapore Hospital in unconscious condition. PW 1 requested him to come soon. On reaching Midnapore, he went to hospital and came to learn that his father was dead. Upon enquiry, PW1 reported to PW6 that on the date of incident at about 4.30 p.m. while his father was returning from fields, all the accused persons attacked

him. They pushed him down on the ground. Accused Ananda inflicted blows on his neck and head, whereas Parbati and Samapti caught hold of his hands and legs. Brother of PW6 raised alarm whereupon, local people assembled. Seeing the neighbours, accused Ananda fled away carrying the axe followed by the other accused persons. PW6 also stated that on the following day, police visited the Hospital and conducted inquest on the dead body of his father. He signed on the inquest. He proved his signature (Ext.5). Thereafter, post mortem examination on the dead body was conducted and the dead body was brought to the house of PW6. PW 6 accompanied PW1 to Anandapur police station and lodged the written complaint. The written complaint was scribed by PW 6 as narrated by PW1 who signed on it. PW 6 also signed on the written complaint as the scribe. PW 6 tendered and proved the written complaint (Ext. 1). PW 6 was interrogated by the police. He also recorded his statement before learned Magistrate. He proved his

signature on such statement (Ext.6). PW 6 was also cross-examined on behalf of the accused persons at length.

- 14.** PW 7 is another co-villager. He has stated that his villager Purna Chandra Ghosh was murdered at about 4.00 p.m. one year ago in front of his house. He also stated that on the said day he was working with Purna Ghosh in the fields and after completing their work, they were returning to their houses. Reaching the house, they parted their ways to their respective houses. Immediately thereafter, he heard the screams of Shayamal Ghosh (PW1) that his father was killed. Turning back, PW 7 could see Purna Ghosh lying on the ground and accused Ananda Mohan Ghosh was inflicting blows upon him with an axe. He could also see that Parbati and Smapti were catching hold of the hands and legs of Purna Chandra Ghosh. Nanda Dulal Ghosh and Pusparani Ghosh were standing beside, abetting the other accused persons by saying 'kill the brother-in-law'. PW7 and son

of Purna Chandra Ghosh (PW1) rushed to the place of occurrence, whereupon the accused persons fled away. Accused Ananda Mohan Ghosh fled away carrying the axe. PW 7 further stated that Susanta Ghosh reached the place of occurrence prior to him followed by PW7 and Ranjit Ghosh and few others. Purna Chandra Ghosh was taken to Medinipur Hospital by a hired Maruti van. He was then wearing a Lungi and Shirt and PW7 noticed profuse bleeding from the neck and head of Purna Ghosh. Later on, he came to know that Purna Ghosh died of the aforesaid injuries. He was interrogated by police in connection with the case and also recorded his statement before learned Magistrate. He proved his signature on the statement (Ext.7). PW 7 was cross-examined by the defence, However, nothing favourable appears to have been extracted during such cross-examination.

15. PW 8 is the police officer who conducted inquest on the dead body of Purna Chandra Ghosh. He proved the inquest report prepared by him (Ext.5/1).

16. PW 9 is another villager of the deceased and the accused persons. He has stated in his deposition that Purna Chandra Ghosh of his village was murdered at about 4.00 p.m. At that time, he was working in his farm. He heard the shouting of Shyamal Chandra Ghosh that 'his father was killed'. PW 9 saw that accused Samapti Ghosh and Parbati Ghosh were holding the hands and legs of Purna Chandra Ghosh who was lying on the ground whereas, Ananda was inflicting blows on the person of Purna Chandra Ghosh with an axe on his head and neck. Accused Nanda Dulal and Pusparani were abetting by saying 'kill him'. He sustained bleeding injuries and was in a critical condition. PW 9 along with Shyamal Ghosh, Susanta Ghosh, Tushar Kanti and others assembled there. Purna Chandra Ghosh was taken to Hospital by a Maruti Van. PW 9 also stated that

he was interrogated by police and also recorded his statement before learned Magistrate. He proved his signatures on the statement so recorded (Ext.8). This witness was also cross-examined at length but nothing favourable could be elicited by the defence.

17. The autopsy surgeon deposed as PW 10. He stated that he had sufficient experience on conducting post mortem examinations. On 29.11.2016, he conducted post mortem on the dead body of Purna Chandra Ghosh aged 56 years in connection with UD Case No.758/2016. He found the dead body with bloodstained white shirt and greenish Lungi. Upon such examination, he found the injuries on the dead body that's to say:

- i. Scalp Haematoma 10 inches x 6 inches over left Temporo-Parieto-Occipetal Region.
- ii. Depressed Comminuted fracture 6 inches X 3 1/2 inches involving squamous part of left Temporal Bone, left Parietal & Left Side of occipital bone.

- iii. Fissured fracture 2 1/2 inches long placed transversely over left middle cornial fossa.
- iv. Subdural Haematoma 8 inches X 7 inches over both Cerebral Hemispheres.

18. PW 10 opined that all those injuries were sufficient to cause death of a healthy person and that the aforesaid injuries could be caused by blunt side of an axe like the one shown to him in the court (Mat. Ext.III). He also opined that the nature and distribution of injuries suggested it to be homicidal. In the opinion of the doctor, the injuries found on the person of Purna Chandra Ghosh could be inflicted if one falls on a blunt object from a height of 20 to 25 feet and were unlikely if someone falls on the ground while working. He tendered and proved the post mortem report prepared by him (Ext.9).

19. PW 10 is the police personal who accompanied the dead body from Medinipur Hospital to morgue under a Challan which he signed. He proved his signature on the

dead body challan (Ext. 10). He also identified the dead body to the autopsy surgeon. Defence declined to cross examine the witness.

- 20.** The investigating officer deposed as PW 11. He stated that on 29.11.2016, he received a written complaint from Shyamal Ghosh by endorsing the receipt on it. He proved the endorsement (Ext. 1/1). On the basis of such written complaint, he started Anandapur Police Station Case No. 70/2016 dated 29.11.2016 by filling up the formal First Information Report. He proved the same (Ext. 11). He took up investigation of the case and in course of investigation, he visited the place of occurrence and prepared rough sketch map with index thereof (Ext. 12). He also seized bloodstained soil and controlled soil from the place of occurrence under a seizure list (Ext.3/2). He also recorded the statement of the witnesses and arrested the accused persons and prayed for police custody of accused Ananda Mohan Ghosh and Parbati Ghosh. As per leading statement of the accused

Ananda Mohan Ghosh, PW 11 recovered the offending axe in presence of witnesses under a seizure list prepared in his pen (Ext. 4/2). PW 11 also proved the relevant portion of the statements of accused Ananda Mohan Ghosh and Parbati Ghosh leading to recovery of offending weapon (Ext. 133 & 14). He also arranged for recording the statements of witnesses under section 164 of the Code of Criminal Procedure. He further recorded the statement of witnesses and collected post mortem report and inquest report. He also sent the viscera for chemical examination, the report of which was later received in the court (Ext. 15). On completion of investigation, he submitted Charge-sheet against all the five accused persons.

- 21.** In his cross-examination, PW 11 stated that PW 3 did not state before him that Ranjit Ghosh and Tushar Ghosh arrived at the place of occurrence and that he had noticed that Samapti Ghosh and Parbati Ghosh were holding hands and legs of Purna Chandra Ghosh. He also

stated that the witnesses examined till 25.12.2016 did not state the name of Ranjit Ghosh as the person present at the place of occurrence. He further stated that PW 4 did not state before him that all the five accused persons killed Purna Chandra Ghosh.

22. Upon completion of the evidence on behalf of the prosecution, the accused persons were examined under section 313 of the Code of Criminal Procedure. The accused persons pleaded innocence, however, declined to adduce any defence witness. No positive case in defence was pleaded by the appellants/accused persons.

23. It has been argued on behalf of the appellants that there was unexplained delay in lodging of First Information Report. The occurrence is said to have taken place on 28.11.2016 at 4.30 p.m. whereas the case was reported on 29.11.2016 at 12.25 hrs. No explanation in this regard was advanced and as such the implication of the appellants was an outcome of afterthought for which, the case of the prosecution is not believable. It has also

been contended that there has been embellishment and material contradictions in the statements of the prosecution witnesses vis-à-vis the written complaint rendering the prosecution case untrustworthy and, thereby, a conviction based on such evidence is not tenable. The appellants have also challenged the prosecution case that the prosecution has withheld vital witnesses named by the other witnesses to be present at the place of occurrence. Moreover, the testimony of witnesses are not supported by medical evidence in so far as the narration of the manner of occurrence coming out from the mouth of the ocular witnesses does rule out the possibility of the injuries found on neck and back of the victim. It has also been contended that the alleged recovery of the weapon of offence on the statement of appellant Ananda Mohan Ghosh, is highly doubtful as the same did not bear any label attached to it as also the land owner and one of the seizure list witness were not examined by the prosecution. Learned advocate for the

appellant also submits that since there was enmity between the parties, testimony of interested witnesses cannot be safely relied to secure conviction of the appellants. There were contradictions in the description of the place of occurrence as well. For the aforesaid reasons, it has been contended on behalf of the appellants that their conviction is liable to be set aside.

24. On the other hand, it has been submitted on behalf of the State of West Bengal that PW 1 has fully supported the case made out in the First Information Report. The testimony of other witnesses specifically PW 3, 5, 7 and 9 are quite in consonance with that of PW1 so far as the manner and conduct of the occurrence is concerned. As such, it has been contended that the judgment of conviction and order of sentence passed by learned trial court are well founded and liable to be upheld.

25. Learned advocate for the de-facto complainant also supported the case of the prosecution on similar counts

and submits that the conviction of the appellants is well founded and requires to be affirmed.

26. In the case, the accused persons/appellants were charged with the offence of committing murder of Purna Chandra Ghosh, the father of the de-facto complainant. According to PW 1, the de-facto complainant, being injured in the incident on 28.11.2016, his father was moved to Medinipur Hospital where he was declared dead. Inquest over the dead body was conducted. The inquest report (Ext. 5) testifies that the victim Purna Chandra Ghosh was admitted in the hospital on 28.11.2016 at about 7.02 p.m. and was declared dead at about 7.40 p.m. in course of treatment with severe injuries on the back side of the head. From the testimony of the doctor who conducted post mortem examination (PW 10) and tendered the post mortem report (Ext.9), it is evident that Purna Chandra Ghosh had found several injuries on his person that's to say:

- i. Scalp Haematoma 10 inches x 6 inches over left Temporo-Parieto-Occipetal Region.
- ii. Depressed Comminuted fracture 6 inches X 3 ½ inches involving squamous part of left Temporal Bone, left Parietal & Left Side of occipital bone.
- iii. Fissured fracture 2 ½ inches long placed transversely over left middle cornial fossa.
- iv. Subdural Haematoma 8 inches X 7 inches over both Cerebral Hemispheres.

27. The autopsy surgeon opined that the injuries found on the person of Purna Chandra Ghosh, were sufficient to cause death of a healthy person. The testimonies of the prosecution witnesses including that of the PW 10 & PW 12, together with that of Exhibit 5 and Exhibit 9, go to establish that Purna Chandra Ghsoh died out of the injuries inflicted upon his person and that the death was an unnatural one.

28. As regards the person/persons responsible for the injuries inflicted on the person of the victim Purna Chandra Ghosh, it is the case of the prosecution that while the victim was returning back from the fields, the appellants attacked and assaulted him with an axe, near his house, inflicting the injuries which ultimately resulted in his death. PW 1, the son of the victim happens to be an eye witness. He has claimed to have seen the occurrence. He stated in unambiguous terms that while his father was returning home from the fields, he was attacked by the appellants conjointly. They pushed his father down on the ground. The accused Parbati Ghosh and Samapti Ghosh held the legs and hands of his father while accused Ananda Mohan Ghosh assaulted him with an axe. He has also stated that all the accused persons/appellants were shouting, 'kill the brother-in-law (**Prane mere phel salake**)'. PW1 could see the occurrence of his own eyes and shouted for help. Upon his screams, several villagers like Susanta Ghosh,

Tushar Ghosh (PW7) and Ranajit Ghosh (PW9) assembled at the spot. Seeing this, the accused persons fled away carrying the offending weapon. PW2 was though, declared hostile, but his testimony goes to support the case of the prosecution in so far as he has stated that the victim Purna was murdered at 4.30 p.m. in his village and that he was murdered with an axe over land disputes. He rushed to the place of occurrence after hearing hue and cry. PW 3 is an eye witness. He has fully supported each and every description of the incident as narrated by PW 1, so far as it relates to the manner of perpetration of the incident or the words used by the appellants at the relevant point of time or the specific part performed by each of the perpetrators. It is also consistent with the narration of events set out in the First Information Report. Another eye witness has deposed as PW 7. He in fact was working with the deceased in the fields and returned to the village together. On reaching the village, they parted and took

respective paths to their houses. A little farther, he heard the shouting of PW 1. Looking back he could see appellant Ananda Mohan Ghosh inflicting injuries on the person of Purna Chandra Ghosh, who was lying on the ground, with an axe. He also noticed that appellant Parbati and Samapti were catching hold of his legs and hands and appellant Nanda Dulal and Puspa Rani were shouting abetting the crime 'Mar Salake' (kill the brother-in-law). PW 7 went there followed by the son of the victim whereupon the appellants fled away carrying the offending axe. PW 7 also stated that one Susanta Ghosh (PW3) arrived at the place of occurrence prior to him.

- 29.** PW 9 is another eye witness. He has narrated the incident which is in quite consonance with that of PW1, 3, 5 and 7. Like PW 7, he also was attracted to the incident at the shouting of PW 1. The words he heard from the mouth of PW1 are also the same that was heard by PW7 'Babake Mere Dilo' (meaning in English they are killing my father).

30. The narration of incident is also consistent with the other eye witnesses. He also saw appellant Samapti Ghosh and Parbati Ghosh catching hold of the legs and hands of victim Purna Chandra Ghosh while appellant Ananda Ghosh was inflicting blows upon his neck and head with an axe. He also saw appellant Nanda Dulal and Puspa abetting the offence by saying kill him (Mere phel oke).

31. Therefore, the narration of events coming out from the evidence on record exhibits that the deceased Purna Chandra Ghosh was attacked near his house. He was so attacked by none other than the appellants. The appellants attacked him, threw him down and caught hold of him by hands and legs and assaulted him with an axe. There are consistent statements that the victim was caught hold by appellant Samapti Ghosh and Parbati Ghosh and was assaulted by appellant Ananda Mohan Ghosh. It was also consistently reiterated that appellants Nanda Dulal and Puspa were abetting the commission of

crime by the other appellants and they were standing at the place of occurrence sufficiently close for such abetment. All the prosecution witnesses, specially the eye witnesses have given the account of commission of the offence by the appellant in unambiguous terms. The narration of the incident by the prosecution is convincing, consistent and unambiguous so as to rule out any doubt or proposition suggesting the innocence of the appellants. There appears no ambiguity in the identification of the date, time and place of occurrence, the manner in which the offence was committed, the weapon used in the crime and the part played by each of the appellants in furtherance of the commission of such offence. The averments so made by the prosecution witnesses also get supported by the medical evidence. The autopsy surgeon (PW 10) coupled with the post mortem report (Exhibit 9) and also the inquest report (Exhibit 5), are quite explicit about the nature of injuries found on the person of the victim. The doctor had opined

that the injuries found on the person of the victim might have been caused by a weapon like that Mat. Exhibit shown to him during his deposition and were sufficient in the ordinary course of nature to cause death of a healthy person. In the cross examination also PW9 opined that the nature of injury found on the person of the victim could be inflicted if someone fell from a height of 20-25 feet. However, no such case was made out nor evidence was led at the trial in support of such proposition on the part of the defence. Mere speculation cannot make out a case to disbelieve the prosecution.

32. So far as the contention of delay in lodging the First Information Report is concerned, the offence is said to have been committed on 28.11.2016 at about 4.30 pm and it was reported at 12.25 hrs on 29.11.216 following which, an inquest over the dead body of the victim was conducted.

33. It has consistently come out from the evidence that just after the occurrence at about 4.30 pm, the victim

was moved to Medinipur Hospital and there the victim was declared dead in course of treatment. PW1 has stated that he took his victim father to the hospital and informed the incident to his elder brother over phone who was then posted and residing at Dantan. He arrived at the hospital in the evening where after, PW1 returned to his house with some of his co-villagers. His said brother returned with the dead body on the following day i.e. on 29.11.2016. The brother of PW1 has deposed as PW6. He, in his deposition, has corroborated the statement of PW1 to the effect that he was informed about the incident by his brother at about 5.00 p.m. over phone while he was at Dantan. Being so informed, he arrived at Medinipur Hospital and came to know that his father expired in the meantime. PW6 also testified the statement of PW1 that when he reached Medinipur Hospital, the condition of his brother was not good for which he sent him back to the house with some villagers. On the following morning, police came to hospital and conducted

inquest over the dead body of his father. He is an inquest witness (Exhibit 5) as well. Thereafter, the dead body was carried to the house following which a police complain was lodged. Such narration of happenings, to our opinion sufficiently explains the delay in lodging in the First Information Report.

- 34.** As regards the worthiness or otherwise of the testimony of interested witnesses, PW1 and PW6, the two sons of the victim are closely related to the appellants. There is a story coming out that there were family feud for which they could have deposed against the appellants. As a matter of fact, previous enmity has not been pleaded at the trial on behalf of the prosecution or the defence in support of partisan nature of witnesses. At the same time, the co-villager witnesses PW 3, 5, 7 and 9 are all independent witnesses. There is nothing on the record to justify an aspersion of them being partisan witnesses. All the aforesaid witnesses have vehemently supported the case of the prosecution as evident from the

First Information Report or narrated by PW 1. Nothing has been brought forth as to for what conflict of interest, there was the possibility of false implication of the appellant in the offence on the part of the complainant party. Therefore, we do not find much force in the submissions of the appellant to the effect that their conviction on the basis of interested witnesses cannot be sustained.

35. We are not unmindful of the proposition that the offending weapon was recovered as per the statement of the appellant Ananda Mohan Ghosh. Such weapon was recovered from the midst of a bamboo clamp. The witnesses to the seizure list (PW4 and PW5) have testified such facts. They have categorically and equivocally stated that the offending axe was brought out by Ananda Mohan Ghosh from the midst of a bamboo clamp. PW4, PW5 as well as the accused Ananda Mohan Ghosh, signed the seizure list besides other witnesses. They also identified the said axe in the court (Mat. Ext. III). The

recovered article was seized under proper seizure list (Exhibit 4/2). The relevant portion of the statements of the appellants which lead to recovery of offending axe were proved and admitted in evidence (Ext.13 and 14). The seized axe was marked by the investigating officer by a label. The investigating officer (PW12) identified the seized axe as well as the tag attached to it bearing his signature, in the court.

- 36.** The aforesaid offending axe was recovered from the midst of a bamboo clamp brought out by appellant Ananda Mohan Ghosh. The midst of bamboo clamp was not a public place frequently and easily accessible to any person. The recovery of the axe from the place, it was recovered together with the testimony of Exhibit 13 and Exhibit 14, sufficiently proves the special knowledge of the appellant Ananda Mohan Ghosh with regard to its existence at the particular place. Though, the label attached to the seized axe was not found at the time of deposition but PW12 has identified the tag attached to it

with his signature thereon. The witnesses to the recovery and seizure, PW 4 and PW5 have also identified the said weapon with sufficient clarity. We must not lose sight of the fact that the said weapon was sent for chemical examination was handled by the chemical examiner and assigned separate identification mark to it. No suggestion whatsoever, was confronted to PW4, PW5 and PW12 that the axed identified by them was not the same that was recovered and seized in course of investigation. There appears extensive cross examination on the part of the defence in reference to the chemical examination of the offending axe and marks found thereon. In such circumstances, mere missing of the label attached to the seized article cannot be taken to cast a doubt upon the identification of the same.

37. Learned advocate for the appellants has also contended that as per the allegations made out in the First Information Report and coming out from the evidence on record, the acts done on the part of the

appellants does not bring the case in the purview of murder as defined under section 300 of the Indian Penal Code punishable under section 302 of the said Code. Rather, at best, the appellants can be held to be guilty of the offence punishable under section 304 of the Indian Penal Code, 1860.

38. In support of his contention learned advocate argued that the appellant had no intention to kill the deceased Purna Chandra Ghosh in so far as inspite of having an axe in his possession the blunt side of the axe was used to inflict the injuries on the person of the victim. The appellants having the option to use the blade of the axe deliberately used its blunt end as such, there was no intention to kill.

39. Intention as fact may not be proved on the basis of positive evidence. It is an abstract thing which can be deciphered from the attending circumstances. The circumstances under which the offence was committed, the nature of injuries inflicted and the nature of weapons

used are some of the factors with the help of which existence or otherwise of intention can be worked out in a given circumstance. It is a well-settled proposition of law that the intention to cause death with the knowledge that the death will probably be caused, is a very important consideration for coming to the conclusion that death is indeed a murder with intention to cause death or the knowledge that death will probably be caused.

- 40.** In the instant case, the evidence on record goes to suggest that the appellants were, in an assembly, waiting for the victim to return, they being close relatives. They were armed with an axe. In furtherance of their common intention, they overpowered the victim brought him down onto the ground and assaulted with the axe they were armed with, inflicting sever injuries on his person. Each and every appellant played a vital part in the commission of the crime. The nature of injuries, include at least two fractures and haematoma. According to the opinion of the autopsy surgeon, all those injuries were sufficient to

cause death of a healthy person. Therefore, to our consideration, there is nothing on the record to suggest that the appellants lacked the intention to kill the victim.

- 41.** Section 299 of the Indian Penal code, 1860, defines the offence of culpable homicide in following terms, that's to say:

299. Culpable homicide.—whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.

- 42.** Whereas, the offence of murder has been defined under section 300 of the said Code which runs as follows:

300. Murder.—Except in the cases hereinafter excepted, culpable homicide is murder, if the

act by which the death is caused is done with the intention of causing death, or

2ndly. If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or

3rdly. If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or

4thly. If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death, or such bodily injury as is likely to cause death, and commits such act without any

**excuse for incurring the risk of causing death
or such injury as aforesaid.**

43. The circumstances emanating from the evidence on record do suggest that the appellants while assaulting the victim with an axe, were quite conscious of the nature of injuries likely to be sustained by the victim out of the blows dealt by the appellant. The evidence also proposes that this was preceded by a plan chalked out by the appellant to intercept the victim on his way or wherever he was to be found. He was overwhelmed by the appellants by forcefully holding him down to the ground in order to prevent the victim from any probable escape and then dealing vital blow with an axe inflicting severe injuries which according to the doctor, were sufficient to cause death of a healthy person in ordinary course.

44. The words like ‘prane mere phel salake’ meaning kill the brother-in-law. The words ‘mar’ ‘maro’ might be taken to mean ‘kill’ or ‘murder’ and ‘beat’ as well. But ‘prane mere phel’ or ‘jan se mardo’ can only denote murder.

- 45.** The utterance of the words like ‘prane mere phel salake’ meaning kill the brother-in-law not only connotes the intention to kill but at the same time, it also encompasses and exhibits the common intention shared by the assailants and his associates towards the commission of the crime.
- 46.** The case at hand, to our opinion surely, seems to fall under 3rd provision of section 300 of the Indian Penal Code and has a resemblance with *illustration (c)* appended to section 300 of the Code of 1860.
- 47.** The appellants, as evident from the evidence on record, after overpowering the victim, caught hold of his legs and hands and inflicted injuries on his head and neck. The injuries so inflicted were of such magnitude that resulted in depressed comminuted fracture as well as fissured fracture of considerable size with expulsion of brain matter. The blow dealt by the appellant also resulted in large haematoma on scalp and both the cerebral hemispheres. All these injuries were on the vital

organs of the body. and were opined by the doctor to be sufficient to cause death of a healthy person. In fact, the autopsy surgeon (PW10) had opined in his deposition that “all these injuries were sufficient to cause death of a healthy person.” The phrase used by the autopsy surgeon at his deposition denotes that each of the individual injuries were sufficient to cause death in ordinary course of nature.

48. The nature of the weapon, the manner of its use and the frequency of the injuries found on the person of the victim and its extent seems to be sufficient to rule out any possibility of a sudden or free fight. Repeated blows were administered on the victim to result in such injuries.

49. Repeated blows on vital parts of the person of the victim with such an impact that each of such injury was found to be sufficient to cause death in the ordinary course of nature. The appellant appears to have gone with repeating the blows without exhibiting any apparent

sense of remorse or repentance. The injuries apparently were so grave that it resulted in the expulsion of brain matter, nevertheless, the appellant showed no clemency to the victim. The evidence shows that they left the victim when local people assembled there instead of a demonstration of regret to what was perpetrated on their part, had it been done out of sudden passion and zeal. All the appellants conjointly performed their part consistently until they left the place of occurrence for the intervention of the local people. Such circumstances, clearly displays the quantum of culpable state of mind all of them shared at the relevant point of time.

50. Thus, on the basis of the evidence led at the trial, together with the nature and extent of the injuries inflicted, it can be said that the acts done by the appellants were done with the intention of causing such bodily injury which were sufficient to cause death in the ordinary course of nature. The action on the part of the appellants can, at no stretch of imagination, be restricted

to intention or knowledge that his act was likely to cause death or likely to cause such injury as was likely to cause death. Therefore, the case at hand surely comes within the purview of offence defined under section 300 of the Indian Penal Code, 1860, punishable under section 302 of the Indian Penal Code, 1860 and not under section 304 of the said Code.

51. Similarly, the evidence goes to show that the victim Purna Chandra Ghosh was intercepted on his way back to his home while he was returning from the fields. He was overwhelmed and attacked by the accused persons and thereby, he was restrained from lawfully proceeding to his house which he had intended. Such an act on the part of the appellants surely attracted the provisions of section 341 of the Indian Penal Code.

52. In the light of the discussions made hereinbefore, we find no reason to interfere with the judgment of conviction and order of sentence passed by learned trial court.

53. The appellants in CRA No. 141 of 2020 remaining unrepresented, a Rule was issued upon the appellants therein by order dated December 01, 2022. However, the said Rule was discharged in consideration of the affidavit submitted by the aforesaid appellants in response to such Rule, by order dated December 15, 2022.

54. Accordingly, the judgment of conviction dated 11.02.2020 and order of sentence dated 12.02.2020 passed by learned Sessions Judge, Pashcim Medinipur, in Sessions Trial No. 9 of April 2017 are affirmed.

55. Period of detention already undergone by the appellant during investigation, enquiry and trial shall be set off in terms of the provisions of section 428 of Code of Criminal Procedure.

56. Trial court records along with copies of this judgment be sent down at once to the learned trial Court as well as the Superintendent of Correctional Home for necessary compliance.

57. The appellant, if on bail, shall surrender to the learned trial court to undergo the remaining part of his sentence within 2 weeks from the date. In default, the jurisdictional court will take appropriate steps to secure their presence.

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

59. Consequently, both the appeals being **CRA 141 of 2020** and **CRA 239 of 2020** are dismissed.

60. Connected applications, if any, shall also stand disposed of.

[MD. SHABBAR RASHIDI, J]

61. I agree.

[DEBANGSU BASAK, J.]