

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. 154 of 2018

Ganpat Ram

Versus

The State of West Bengal

For the Appellant	: Mr. Kallol Mondal, Adv.
	: Mr. Krishan Ray, Adv.
	: Mr. Souvik Das, Adv.
	: Mr. Samsheer Ansari, Adv.
For the State	: Mr. Sanjoy Bardhan, Adv.
	: Mr. Baisakhi Chatterjee, Adv.
Hearing concluded on	: January 03, 2023
Judgment on	: January 20, 2023

Md. Shabbar Rashidi, J.

1. The appeal is directed against the judgment of conviction dated December 21, 2009 and order of sentence dated June 19, 2015 passed by the learned 2nd Additional Sessions Judge, Fast Track Court, Barrackpore, North 24 Parganas in connection with Sessions Trial No. 101(12) of 2008 corresponding to Sessions Case No. 11 (07) of 2008.
2. In course of investigation on the basis of source information, police arrested some of the miscreants on February 25, 2008 and on the basis of the statement made by them some arms and ammunition were recovered. On April 21, 2008 the appellant Ganpat Ram along with other accused persons were arrested by the police and stolen properties and house-breaking instruments were recovered from their possession as well. During their custody the accused persons were interrogated and pursuant to their statements, the police further recovered other stolen properties, and

house-breaking instruments. Appellant Shisu Pal was arrested on April 21, 2008 from Badaun, U.P. and the stolen Samsung Mobile Phone belonging to the de-facto complainant was recovered from his possession. The accused persons were put on T.I. Parade and they were identified by the witnesses.

- 3.** The facts giving rise to the instant appeal, in a nutshell, is that the de-facto complainant Bimal Das, the P.W. 1 along with his son Bidyut Das (P.W. 5), the daughter Barsha Das (P.W. 4) and his wife Chandana Das, used to live together in the third floor of the premises No. 7, Lenin Sarani, Kanchrapara, within the jurisdiction of Bijpur Police Station. He was a jeweler by profession, and his shop room and workshop were situated in the ground floor of the said premises itself. One Abhijit Paul (P.W. 2) and Niranjan Paul @ Gosai (P.W. 3) were the employees of de-facto complainant and they were present in the workshop at the relevant time. On the fateful night at about 3

hours the de-facto complainant woke up from his sleep hearing the barking of dogs. Being attracted by some noises, when he opened the door of his room he found 5/7 young persons in bermuda pants trying to break open the collapsible gate of his bedroom. His wife Chandana Das also woke up with his son Bidyut Das (P.W. 5).

4. Seeing the dacoits, the de-facto complainant asked his wife to go to the balcony and seek help from the neighbours. Being so asked, when his wife, Chandana Das went to balcony looking for help from the neighbours, the miscreants who were already hiding there, threw her down from the verandah when she identified one of them and called "Surya Tui". Thereafter, the miscreants entered into the bedroom on the point of firearms, took the de-facto complainant and his son to the workshop at the ground floor. They forced the P.W. 2 and P.W. 3 who were inside the workshop to open the door and on the point of firearms keeping all of them

silent, looted away huge amount of ornaments and cash from the iron chest. They also snatched the Mobile Phone from the de-facto complainant and fled away from the spot.

5. The incident was reported to the police. Police arrived at the spot and after a written complaint over the incident, lodged by the de-facto complainant, P.W. 1 Bimal Das, started investigation of the case under sections 395/396/397/412 of the Indian Penal Code which ultimately ended in charge sheet against the appellant and others.
6. Accordingly, on the basis of materials in the case diary, charges under sections 395/396/397/412 of the Indian Penal Code were framed against the appellant and 11 others and they were put on trial for the aforesaid offences.
7. In order to substantiate the charges, prosecution examined as many as 34 witnesses. In addition, the

prosecution also relied upon certain documentary and material evidence adduced at the trial.

- 8.** The de facto complainant himself deposed as PW1. He stated that he used to reside at no. 7 Lenin Sarani, Workshop Road, Kachrapara. He had a jewellery shop under the name and style 'B. Das & Son' situated in the ground floor of his residence. There was also a workshop in the ground floor. He further stated that on 21.02.2008 at about 2.00 hrs. at the dawn some 16-17 dacoits broke the collapsible gate and shutter of his house. PW1 woke up and shouted. Thereafter, he asked his wife to seek help from the neighbours. She opened the side door of his house. At that time, 4-5 dacoits were present in the balcony and threw the wife of PW1 from the balcony. Thereafter, the dacoits entered into his house with fire arms and placed guns on his shoulder as well as that of his son. They demanded keys of the shop and house of PW1 and assaulted PW1 and his son. He further stated that the dacoits committed dacoity in his

house for about three hours and took up the gold and silver ornaments, duplicate and cash.

9. Over the incident, PW1 proved his signature on the written complaint (Exhibit 1).

10. PW1 also stated that there were two arms on the third floor of his residence. One room was occupied by PW1, wife and his son where as other room was occupied by his daughter Barsha Das. He also stated that on the date of incident his workers Niranjana Paul @ Gosai and Abhijit Paul were present in the workshop on the ground floor of his house. PW 1 also stated that out of fear, he handed over the keys to the miscreants. Thereafter, PW1 and his son were made to take the miscreants to the workshop on the ground floor. As asked by the dacoits, PW1 called Niranjana Paul. When he opened the gate at such call, he was asked by the miscreants to put on the lights. They entered into the workshop and opened all the drawers. PW1 was also made to go into the showroom. Going there, PW1 found

5-7 miscreants standing there and the gate of the showroom was broken. PW1 was made to put on the lights of the showroom. The miscreants were wearing bermuda and Pants and were carrying small lights. They were talking in Hindi and Bengali. As demanded by the miscreants to the PW1 handed over the keys of the chest. The miscreants opened the chest and took away all the gold and silver ornaments and cash from the chest in a plastic bag. PW1 also stated that he was taken to the front of his workshop and was threatened to be shot if he shouted. The Samsung Mobile Phone of PW1 and Tata Mobile phone of his wife were also taken by the miscreants. In his deposition, PW1 also stated that he saw the faces of sixteen-seventeen dacoits who committed dacoity in his house. He has also stated that he identified all the suspects who committed dacoity in his house in the Test Identification Parade. Besides, other than suspects, the appellant Ganpat Ram was also identified by PW1 in the Court as the person whom he

identified in the Test Identification Parade. PW1 also stated that the gold ornaments sold from his shop bore the markings as B.D., however no such marking was given on the silver ornaments. PW1 identified the bag and the gold of ornaments produced in the Court (MAT Exbt. I collectively, MAT Exbt. II collectively and MAT Exbt. III) PW1 also identified the Samsung Mobile Phone belonging to him, in the Court (MAT Exbt.IV).

11. PW1 was extensively cross-examined on behalf of the appellant and the other accused persons.

12. The employee of PW1 Abhijit Paul deposed as PW2. He stated that he was the worker under Bimal Das in his Jewellery shop under the name and style 'B. Das & Son'. On 21.02.2008, he was present in the shop along with the manager Nirranjan Paul @ Gosai and stayed there in the night in the workshop which was situated on the ground floor of the house of Bimal Das. PW2 further stated that on 21.02.2008, at about 21.30 hrs. Gosai Paul closed the shop under lock and key and

handed over the keys to Bimal Das. In the night, Bimal Das knocked the door of the workshop calling 'Gosai!', 'Gosai!'. PW2 and Gosai woke up and opened the door. Some ten/twelve persons with Bimal Das and his son Bidyut Das were found in front of the door. The aforesaid ten/twelve persons had placed one gun each upon Bimal Das and Bidyut Das. Four-Five persons out of the aforesaid person entered into the workshop and damaged the furniture. Upon being threatened by them, Gosai had to put on the lights in the workshop. Bimal Das and his son were brought inside the workshop. They were assaulted by the miscreants with PW2 and Gosai. PW2 also stated that he heard sounds of breaking of the shop. Some of the miscreants broke open the shop from the back of the shop and came inside the workshop. The miscreants took Bimal Das to the shop where PW2 and Bidyut Das were confined by them in the workshop by placing guns near their ears. Gosai remained in the workshop. PW2 has further stated that

after an hour the dacoits again came inside the workshop and threatened to shoot if he shouted and thereafter they fled away. After five/seven minutes, Bimal Das came inside the workshop and told that the dacoits had thrown his wife from the third floor. Hearing this, PW2 along with Bimal Das, Bidyut Das and Gosai came out of the house and saw the dead body of Chandana Das lying with bleeding injuries. Bimal Das started crying seeing the dead body of his wife. On query by PW2 to Bimal Das told him that his wife could identify one of the miscreants for which she was murdered. PW2 also claimed to have seen some of the dacoits very well with the help of light. PW2 identified seven suspects at the Test Identification Parade and he identified the appellant and other accused persons in the Court as the persons whom he identified in the Test Identification Parade.

- 13.** This witness was also cross-examined at length on behalf of the accused persons.

14. The manager of the de facto complainant deposed as PW3. He stated that he used to work in the shop of Bimal Das under the name and style of 'B. Das & Son' situated at Kachrapara workshop road. The shop and workshop of the business were situated in the ground floor of the four storeyed building of Bimal Das(PW1). PW3 also stated that on 21.02.2008, he was present in the workshop with another worker Abhijit Paul (PW2). At about 22.00 hrs. on 21.08.2008, he closed the shop and gates of the house under lock and key and handed over the keys over to Bimal Das. At about 3.00/ 3.30 at the dawn, Bimal Das called him by saying 'Gosai', 'Gosai'. PW3 woke up and opened the door of the workshop and saw 10-12 miscreants together with Bimal Das and his son Bidyut Das in front of the door. The miscreants had placed guns by the side of ears of Bimal Das and Bidyut Das. Four/five miscreants entered into the workshop and asked him to put on the light. PW3 also stated that thereafter the

miscreants took Bimal Das and his son inside the workshop and searched the drawers for gold ornaments. They also broke open the shutter place of the back of the shop. Bimal Das was dragged with keys to the shop. PW3 along with Bidyut Das and Abhijit Paul stayed in the workshop. He also stated that the dacoits were talking in hindi and Bengali and were wearing Bermuda, Ganji and some wearing full pant and shirt. Some of them were tall and some were of short height. According to PW3, one of the dacoits was like Nepalese and one of them had cut marks by the side of his left ear. PW3 also stated that in the light he could see all the miscreants very well. All of them remained with fire arms. The dacoits took away gold ornaments from the iron chest from the shop and silver ornaments from the showroom. PW3 has also stated that the gold ornaments manufactured by them bore B.D. Markings. He also stated that the incident of dacoity continued for about three hours. Thereafter, Bimal Das came to the

workshop where PW3 and other worker were present and disclosed that the dacoits had thrown his wife from the third floor. PW3 along with Bimal Das, Bidyut Das and Abhijit Paul went out of the house and saw the blood stained dead body of the wife of Bimal Das. He further stated that he identified nine accused persons at the Test Identification Parade. PW3 identified his signature on the five seizure lists (Exbt. 2, 2/1, 2/2, 2/3 and 2/4). On being asked, the PW3 identified the present appellant along with the other six accused persons in the Court as the persons involved in the incident whom he identified in the Test Identification Parade and as the persons involved in the incident of the dacoity.

15. The witness was also cross-examined at length on behalf of the accused persons.

16. The daughter of the de facto complainant deposed as PW4. She is a hear-say witness. She stated that on 21.02.2008, she was reading in her room up till

1.00 a.m. at night. On the following morning at about 5.30 /6.00 hrs. she woke up and her brother started crying by embracing her. She was told by her brother that the previous night, dacoits came to their house and threw her mother from the balcony of the third floor and due to the said fall, her mother died. She was also told that her mother could identify one of the dacoits. PW4 was cross-examined on behalf of the accused persons including the appellant.

17. The son of the de facto complainant was examined as PW5. He stated in his deposition that on 21.02.2008 a dacoity was committed at his house at about 3.00/3.300 hrs. He went to sleep at about 22.30 hrs and woke up in the midnight hearing shouts of his parents. PW5 saw his mother going to balcony. After opening door, his mother shouted by saying ‘Surjo! Tui eki korchis?’ (Surya! What are you doing this?). Then, the said miscreant threw down the mother of PW5 from the balcony of third floor. PW5 further stated that thereafter

the miscreant entered into the room and kept guns on his head and on that of his father. One of those persons demanded keys from his father. His father handed over the bunch of keys to the miscreants. PW5 and his father were taken by the miscreants to the door of the workshop and asked his father to call the persons inside the workshop. He has also stated that Gosai and Abhijit were then present inside the workshop. Being asked, his father called Gosai to open the door of the workshop. After opening of the door, the miscreants took the two hostages inside workshop and asked Gosai to put on the light. PW5 has also stated that the dacoits kept PW5, Gosai and Abhijit inside the workshop and took his father to the showroom. After an hour, the father of PW1 was brought back to the workshop and threatened to kill them if they shouted. Thereafter, all four went outside and saw the mother of PW5 lying dead. PW5 also stated that he attended Test Identification Parade in the jail and identified three suspects. PW5 identified the present

appellant and others whom he identified at the Test Identification Parade. He further identified the appellant and accused Babulal Singh as the persons who threw his mother from the balcony. PW5 was cross-examined in extenso on behalf of the accused persons.

- 18.** PW6 is a local witness. He has stated that on 20.02.2008, he along with his friend Nandadulal Yadav went to Naihati Cinema Hall to watch a movie in the Night Show. After purchasing tickets, when they were standing for the show, some eight-ten persons in a group standing there. The aforesaid persons were wearing Bermuda, Ganji, shirt and pant and were talking in Hindi and Bengali. On the following day PW6 came to know about the incident of dacoity and murder in Kanchrapara. He was interrogated by police. He identified the appellant Ganpatram and six other accused persons present in the Court as the persons whom he identified at the Test Identification Parade and also claimed to have seen them outside Naihati Cinema

Hall in the evening of 20.02.2008. This witness was cross-examined by the defence but nothing favourable could be elicited.

19. PW7 stated that the mother used to run a mobile phone shop. He identified the receipt issued from the shop of his mother written by her staff Gobindo Biswas in respect of the Samsung Mobile Phone. Mobile in the name of Bimal Das on 14.02.2007(Exbt. 3). PW7 also identified the mobile handset in the Court. PW7 also stated that the mobile phone had a system of tracking through mobile on PW7 and his father. He also stated that on 04.04.2008 at 08.04 hrs. he received an emergency message on his phone from a mobile number of Badayun. He informed the matter to the police.

20. The land lord at whose house the appellant and the other accused persons took shelter was examined as PW8. He stated that he had two houses in the same premises at Dasghara Purbapara. In the front house, PW8 resided with his family. The other house was let out

on 19.02.2008 to the appellant and seeks others at a rent of Rs. 1,800/- per month. He took Rs. 5,000/- as advance and Rs. 1,800/- as advance rent. On 19.02.2008 by issuing a receipt of Rs. 6,800/- , PW8 identified the some of the aforesaid persons in the Court to whom he let out his premises. He further stated that being inducted, the aforesaid persons were still residing in the house from 19.02.2008 but they returned to the said house on 21.02.2008 at about 9.00/10.00 hrs. PW8 also stated that on 21.04.2008, while the aforesaid seven persons were still residing in his house appellants came to his house and took him to the tenanted house. The tenants were present there. The police seized bags and gold ornaments from the aforesaid persons. Police also recovered pipe guns, life cartridges, two mobile phones and iron cutting blades from the said bags. The aforesaid articles were seized in presence of PW8 and his son-in-law, PW8 proved his signature on the two seizure lists dated 21.04.08 (Exbt. 4 and Exbt. 4/1). He also

claimed to identify the seized articles. PW8 and his son-in-law also signed on the labels pasted on the attaché (Exbt 4/2) which was seized by police from the house under the occupation of his tenants. The attaché was also identified (MAT Exbt. V). PW8 also proved his signature on the label attached on the three torches (Exbt. 4/3) and the torches (MAT Exbt. VI). He also proved his signature on the labels of the two mobile phones (Exbt. 4/4 and 4/5) and that of iron cutting blades (Exbt. 4/6), the iron cutting blades were identified by PW8 (MAT Exbt. VII). Mobile Phones were identified as MAT Exbt. 8 collectively and the plastic bags seized from the possession of the accused persons were identified by PW8 (Exbt. IX). He also proved his signature on the label attached to the plastic bags (Exbt. 4/7, 4/8, 4/10, 4/11,4/12) and the plastic bags (MAT Exbt. X collectively). The witness also identified ten gold-like Balas (MAT Exbt. XI collectively) and his signature on the label attached to such balas (Exbt. 4/13). PW8

also proved his signature on the label attached to the seized articles and gold and silver ornaments (Exbt. 4/14 to 4/44). He also identified the seized materials which were seized by police from his house tenanted to the appellant and the other accused persons (MAT Exbt. XII to MAT Exbt. XXXI), the police visited the tenanted house of PW8 on a subsequent date i.e. 01.05.2008 along with the present appellant Ganpat Ram and accused Babulal Singh and recovered several articles. PW8 also proved the rent receipt issued in favour of the appellant and the accused persons and the receipt booked (Exbt. 5/1 and 5 respectively). The witness was extensively cross-examined on behalf of the appellant and other accused persons but nothing could be elicited favourable to the appellant or the other accused persons. PW10 is the son-in-law of PW8 and the other witness to the seizure of recovered articles. He has proved his signature on the labels attached to the seized articles (Exbt. 4/45 to 4/87). He also identified the

seized articles i.e. attaché, bags, gold and silver ornaments, torches and the house breaking tools, already admitted in evidence at the behest of PW8.

21. PW10 also proved his signature on the bag of the rent receipt book (Exbt. 4/88 and his signatures on the seizure lists dated 01.05.2008 (Exbt. 4/87, 4/89 respectively).

22. PW11 is a drafts man, he prepared sketch map as per the index prepared by the appellant. He proved the sketch map prepared in his pen and signature (Exbt. 7).

23. The autopsy surgeon had conducted post-mortem on the dead body of the victim Chandana Das on 21.02.2008 deposed as PW12. He has stated that he conducted post mortem on the dead body of Chandana Das in connection with Bijpur P.S. U.D. Case No. 7 dated 21.02.2008 corresponding to Bijpur P.S. Case No. 32 dated 21.02.2008. On examination, he found the following injuries on her person:

- 1. A lacerated wound measuring 4 ½" X 3" bone, ¼" above the right eyebrow, 1" to the right of the middle.**
- 2. A lacerated wound measuring about 1"X1/2" X bone, 1" above the left eyebrow.**
- 3. bruise on the right eyebrow measuring about 1 ¼" X 1".**
- 4. abrasion measuring 1" X ½" on the chin in the mid line .**
- 5. a diffused boggy swelling measuring about 5" X 4" on the back of the scalp.**
- 6. an abrasion measuring 8" X 5" on the right memory region measuring 2" to the right of the midline.**
- 7. abrasion measuring 7" X 4" on the left memory region measuring 2" to the left of the midline.**
- 8. abrasion measuring 6"4" on the right side of the abdominal wall touching the midline measuring 10 ½" about the right iliac (sic) crest.**
- 9. an old scar measuring about 7"x2" longitudinally disposed in the midline measuring 1" below the umbilicus.**
- 10. an old scar transversely disposed measuring 6" extending 3" to the right and**

left of the midline 1" above the symphysis pubis (sic).

11. a bruise measuring 6 1/2"x 2 1/2"x 2" above the left elbow joint on the lateral aspect of the left arm.

12. abrasion measuring 7" x 3 1/2" on the lateral aspect on the right arm with a lacerated wound measuring 1"x 1" bone measuring 2 1/2" below the shoulder joint with a fracture of the shaft of the humerus on the right side.

13. abrasion measuring 1"x 1/2" on the basis of the right great toe with multiple abrasions measuring 1/4" x 1/4" on the bases of other toes.

14. abrasion measuring 1/2"x 1/2" on the left dorsum of the foot with a bruise measuring 2" x 2".

15. a bruise measuring 2" x 1" on the dorsum of the left hand with fracture of lower ends of both radius and ulna.

16. a bruise measuring 4" x 3" on the right flank touching the right iliac (torn) measuring 7" to the right of the midline.

17. abrasions measuring 2 2/1" x 1"x 1/2" lateral to the previous injury.

On dissection, he found the following injuries:

- 1. Fracture of the right clavicle with fracture of all the ribs on the right side.**
- 2. Fracture of both pelvic bones.**
- 3. A lacerated wound measuring 2" x 1" on the posterior lobe of the liver.**
- 4. A bruise measuring 2 ½" x ½" present in the anterior aspect of the intestine involving jejunum.**
- 5. Fracture of the 6th and 7th cervical vertebra.**
- 6. A bruise measuring 2" x 1" present on the posterior surface of the right kidney.**
- 7. Presence of about 1 to 1.5 litres of blood in the peritoneum cavity.**
- 8. Extra extravasation of blood in the layers of the scalp measuring 4" x 2" on the left frontal and parietal regions measuring 3" x 4" x 2" on the right frontal and parietal areas.**
- 9. Depressed comminuted fracture measuring 2"x2" involving the frontal bone.**
- 10. Diffused extra extravasations of blood in the subdural space involving all the lobes of the brain.**

11. Longitudinal fractures involving the anterior and middle cranial fossa including fracture of the nasal bones.

24. He further stated that as per his opinion, it was due to the effect of injuries as noted in the post-mortem report which were ante-mortem in nature. He tendered the post mortem report prepared in his pen (Exbt. 8). He further opined that the injuries noted in the post-mortem could have been informed if the deceased was thrown from the top of the information building force and it was unlikely that such injuries will be received if the victim fell accidentally from the top. PW12 categorically stating that the injuries noted in the post-mortem were homicidal in nature.

25. PW13 was an employee of the SDO office, Barrackpore. He has proved the sanction order issued by the then District Magistrate, Binod Kumar (Exbt. 9).

26. The scribe of the written complaint deposed as PW14. He has stated that he wrote the written complaint as per the instruction of Bimal Das when he visited his

house hearing the news of a dacoity at his house. The written complaint was read over and explained to the de facto complainant whereupon he signed on it. PW14 proved the written complaint (Exbt 1/1).

27. PW15 is a neighbour of the de facto complainant. He has stated on 21.02.2008, there was an incident of dacoity at the house of Bimal Das and his wife was thrown down by the miscreants. Ornaments were stolen away in the incident. Police visited the place of occurrence and seized certain articles under seizure lists. PW15 proved his signatures on the five seizure lists prepared on 21.02.2008 (Exbt. 2/5, 2/6, 2/7, 2/8, and 2/9). PW15 also stated that Bimal Das purchased a mobile phone from the shop of his wife and the said mobile phone was equipped with a tracker system. In the month of April 2008, one message was received by PW15 and his son.

28. PW16 is a co-villager of accused Srikanta Dey. He stated that after arrest when accused Srikanta Dey was

taken to the shop of Shankha Jewellers, PW 16 was called upon by the police. He proved his signature on the seizure lists dated 27.04.2008 (Exbt. 10). This witness was declared as hostile by the prosecution. He denied having made any comment regarding the recovery and seizure of bag with gold ornaments from the possession of the said accused before the Police.

29. The brother of accused Srikanta Dey deposed as PW17. He stated that his brother Srikanta Dey used to run a jewellery shop under the name and style 'Shankha Jewellers' at his village Pacha. His brother was arrested by the police. PW17 proved his signature on the seizure list dated 27.04.2008 (Exbt. 10/3) and that of his brother Srikanta Dey thereon (Exbt. 10/4). PW 17 was also declared hostile by the prosecution. In his cross-examination on behalf of the prosecution, PW17 admitted the signature of his brother Srikanta Dey on his memo of arrest dated 23.04.2008 (Exbt. 10/5 and 10/6). He further admitted that he along with the

witness Tarun Paul, Saktinath Das and his brother Srikanta Dey signed on the seizure list. PW17 denied having made any statement before the police. PW17 further proved his signatures on the labels attached to the recovered articles (Exbt. 10/7 and 10/8) and the signatures of the accused Srikanta Dey (Exbt. 10/9 AND 10/10).

30. PW 18 was a vegetable seller. He proved his signature on the seizure list dated 25.02.2008 (Exbt. 11). PW18 further stated that on one Surya was apprehended by police near Khalpara. The said Surya brought out one rifle, mobile: Nokia Phone, cartridge, Sabol, rod from inside the Khal kept in a black plastic and handed over to the police. Police seized the same and he along with others signed in seizure list. PW18 also proved the aforesaid belt(MAT Exbt. XXXII), sabol, wrench and iron rods (MAT Exbt. XXXIII collectively).

31. PW19 also proved his signature on the seizure list dated 25.02.2008(Exbt. 12) whereby iron rods, one arms

were recovered from the possession of accused Babar Ali.

32. The arms expert was examined as PW20. He stated that sixteen sealed packets of arms and ammunition seized in connection with Bijpur P.S. Case No. 32 dated 21.02.2008 was received by his office for examination. He assigned markings on the said packets. He examined the said fire arms and identified the same in Court and found the same to be in working condition. He has tendered his reports (Exbt. 13,13/1) and identified the fire arms and ammunition (MAT Exbt. Xxxiv to MAT Exbt. LIV). He also proved his signatures on the labels attached to such articles (Exbt. 14 to 14/20).

33. PW21 is another person who was going to watch a movie in the Naihati Cinema Hall on 20.02.2008 in the night. He has stated that he saw eight/ten persons standing there and were talking in Hindi and Bengali. They were wearing bermuda Pant and ganji and some of them wearing pant and shirt. They were talking in a

suspicious way. On the next day, he heard about the dacoity in jewellery shop at Kanchrapara. He further stated that on 30.04.2008 and 02.05.2008 he went to Barrackpur Jail for T.I. Parade. On 30.04.2008, he identified the three accused persons as the persons standing near the cinema hall and on 02.05.2008, he identified one suspect.

34. PW22 proved his signature on the seizure list dated 02.05.2008 (Exbt. 15).

35. One local person was examined as PW23. He stated that in the night of 21.02.2008, there was a dacoity in the house of Bimal Das. On the following morning, at about 6.00 hrs. on 21.02.2008, he went there and saw the dead body of the wife of Bimal Das lying on the road. He was reported by Bimal Das that his wife was thrown away by the dacoits from the third floor of his house.

36. PW24 is the bench clerk of Judicial Magistrate, 3rd Court, Barrackpore. She has proved the T.I. Parade

sheets dated 30.07.2008 and 02.05.2008 and 05.05.2008 prepared in the pen and signature of Judicial Magistrate Nachiketa Bera (Exbts. 16, 16/1& 16/2 respectively) and his signature thereon.

37. The Inspector in-charge of Bijpur P.S. deposed as PW25. He stated that on 21.02.2008, at about 6.30/7.00 hrs. he was informed by one person at his quarter that there was a dacoity in the house of Bimal Das at Lenin Sarani. He came back to his wife, collected the force and after lodging G.D.E. No. 1221 dated 21.02.2008. He proceeded to the place of occurrence. The matter was also informed to R.T. Officer S.I. Mankik Chakraborty who also went to the place of occurrence. PW25 received written complaint from Bimal Das upon endorsement of receipt thereon (Exbt.1/2). He then sent the written complaint for lodging an FIR and endorsing the investigation to one S.I. Manirul Islam. PW25 proved his signature on the formal FIR (Exbt. 17).

38. PW26 received the written complaint sent by the Inspector-in-charge for endorsing his receipt thereon (Exbt. 1/3). PW26 started the case by filing a formal FIR being Bijpur P.S. Case No. 32 dated 21.02.2008. He proved the formal FIR (Exbt. 17/1). PW26 also stated that he accompanied the investigating Officer in the case to Lucknow, Uttar Pradesh and accompanied by Special Task Force, Lucknow, to District Badayun and arrested one accused. He also proved his signature on the seizure list dated 21.04.2008 (Exbt. 18/3).

39. PW28 carried the dead body to the police morgue under dead body challan bearing his signature (Exbt. 20). PW28 also proved his signature on the seizure list through which wearing apparels of the deceased were seized (Exbt. 21).

40. PW29 proved his signature on the seizure list dated 21.02.2008 (Exbt. 21/1).

41. PW30 proved his signature on the seizure list dated 21.02.2008 through which the wearing apparels and viscera of the deceased were seized (Ext. 21/2).

42. Another police personnel has deposed as PW31. He stated that on 21.02.2008, at about 6.00 hrs. as per the direction of the inspector-in-charge, he went to the house of the deceased Chandana Das lying ten/12 feet from the back side of the house. PW31 conducted inquest on the dead body. He proved the inquest report prepared in his pen and signature (Exbt. 22). Thereafter, he sent the dead body under the challan through constable Rajan Shaw for post mortem examination. He proved the dead body challan (Exbt. 20/1). PW 31 has also stated that as per the leading statement of one of the accused persons, he accompanied the investigating officer to a rented house and recovered gold ornaments which were seized by the investigating officer. PW31 proved his signature on the seizure list dated 01.05.2008 (Exbt.4/90) and the labels attached to the

recovered articles (Exbt. 4/91 to 4/98). PW31 also identified the recovered articles already admitted in his evidence as MAT Exbt. II collectively and Exbt. 28). He proved his signature on the label attached to the plastic packets (Exbt. 4/99), that attached to the seized wearing apparels of the accused persons (Exbt. 4/100).

43. First investigating officer deposed as PW32. He stated that he accompanied the inspector-in-charge Sibkumar Banerjee to the house of Bimal Das at Lenin Sarani, Kachrapara. He was endorsed with the investigation of the case. In the course of investigation, he examined the available witnesses including further statement of the de facto complainant. The sniffer dogs, finger print experts also collected evidence. He also prepared sketch map of the place of occurrence (Exbt. 7/1) with indices (Exbt. 23, 23/1). The investigating officer also seized certain articles like three padlocks, moneybag etc. from the place of occurrence under a seizure list (Exbt. 55) and packets of Biri (Exbt. 57). He

also proved the map found from inside the money bag indicating the place of occurrence (Exbt. 56), a paper containing some mobile numbers as well as a photo of Ma Kali found from inside the money bag (Exbt. 58). PW32 also seized certain other articles like currency note, paper cutting etc. (Exbt. 59 to 64). He also proved seizure list dated 21.02.2008(Exbt. 2/10). Thereafter, the investigating officer proceeded to the jewellery shop and workshop of the de facto complainant situated on the ground floor and seized certain articles under four separate seizure lists prepared on 21.02.2008 (exbt. 2/11,2/12,2/13 and 2/14). He further proved the Zimmanama through which the seized ornaments were handed over to the de facto complainant (Exbt. 24). He further examined the seizure list witnesses and recorded their statement. The seized articles were handed over to th Malkhana officer. PW32 also proved the seizure list dated 21.02.2008 through which the wearing apparels and viscera of the deceased were seized (Exbt. 21/3). On

25.02.2008, PW32 recovered fire arms and ammunition from some of the accused persons which were seized. He also proved the relevant portion of the statement of the accused recorded by him leading to recover of the fire arms (Exbt. 25 and 25/1, and 25/4). PW32 also recovered the alleged stolen particulars as per the statement leading to recovery made by the accused persons. He proved the seizure list dated 23.02.2008(Exbt. 11/1).

- 44.** Inspector-in-charge deposed as PW33. In course of his part of investigation, he arrested accused Shisu Pal for whose statement he came to know the name of the present appellant and others involved in the incident of the dacoity. He also proved the G.D.E., seizure list and relevant portion of the statement of the accused persons leading to recovery of stolen articles, mobile phone and fire arms.

- 45.** On completion of investigation, PW33 submitted charge sheet against the fifteen accused persons under Sections 395/397/396/412 of the Indian Penal Code.
- 46.** The judicial magistrate was examined as PW34. He conducted the T.I. Parade and proved his reports (Exbt. 16/3 and 16/4). By his report dated 05.05.2008 (Exbt. 16/5) present appellant Ganpatram was identified by the witnesses.
- 47.** On the termination of the evidence on behalf of the prosecution, the appellant and the other accused persons were examined under section 313 of the Code of Criminal Procedure. The appellant did not make out a positive case of defence on his behalf, in such examination, rather, pleaded his innocence.
- 48.** At the conclusion of the trial, the appellant along with 14 other accused persons were found guilty by the learned trial court and were convicted of the offence punishable under Section 395/396/412 of the Indian Penal Code.

49. However, after his conviction and hearing, on the point of sentence, on 22.12.2012, the appellant fled away from the custody, with another accused, on his way to Dumdum Central Correctional Home, from the court. For which, no order of sentence could be passed against the appellant. He was later on produced before the learned Sessions Court convicting him, on 16.4.2015. Accordingly, the order of sentence as against the present appellant was passed 19.6.2015.

50. By the impugned order of sentence, the appellant was sentenced to suffer rigorous imprisonment for life and to pay a fine of Rs. 5,000/- and in default of payment of fine to suffer further rigorous imprisonment for one year for the offence punishable under Section 396 of the Indian Penal Code.

51. He was also sentenced to suffer rigorous imprisonment for life and to pay a fine of Rs. 5,000/- and in default of payment of fine to suffer further

rigorous imprisonment for one year for the offence punishable under Section 395 of the Indian Penal Code.

52. The appellant was also sentenced to suffer Rigorous Imprisonment for 7 (seven) years for the offences punishable under section 395/397 of the Indian Penal Code.

53. The appellant was also sentenced to suffer rigorous imprisonment for life and to pay a fine of Rs. 5000/- and in default of payment of fine to undergo rigorous imprisonment for a further period of 1 (one) year for the offence punishable under section 412 of the said Code.

54. All the sentences were directed to run concurrently.

55. In course of investigation on the basis of source information, police arrested some of the miscreants on February 25, 2008 and on the basis of the statement made by them some arms and ammunition were recovered. On April 21, 2008 the appellant Ganptram along with other accused persons was arrested by the police and stolen properties and house-breaking

instruments were recovered from their possessions. During their custody the accused persons were interrogated and pursuant to their statements, the police further recovered other stolen properties, and house-breaking instruments. Appellant Shisu Pal was arrested on April 21, 2008 from Badaun, U.P. and the stolen Samsung Mobile Phone belonging to the de-facto complainant was recovered from his possession. The accused persons were put on T.I. Parade and they were identified by the witnesses.

- 56.** At the time of advancing arguments, it was contended by learned advocate for the appellant that the written complaint of Bimal Das ought not to have been treated as the First Information Report in the case and admitted in evidence (**Exhibit – 1**). It is submitted that such complaint was made after the investigation had already commenced with the conduct of inquest over the dead body of the victim. Such investigation had started on the basis of a telephonic message received by PW 25.

57. It is also submitted that the G.D.E disclosed that a lady had died falling from the verandah, the prosecution case that she was killed by the miscreants by throwing her down, is a clear embellishment. Moreover, according to the de-facto complainant, soon after the incident of dacoity, his neighbors had informed the police over phone, but, the police witnesses have not testified receipt of any such information. For the aforesaid reasons, the case of the prosecution cannot be relied upon.

58. Besides, it has been contended that the testimony of the de-facto complainant (PW1) contains material contradictions in so far as he first stated that he woke up due to noise made by the miscreants while they were in the process of breaking open the collapsible gate but later he stated that he woke up hearing barking dogs. Apart from that, it has been submitted, that the neither the stock register maintained by the de-facto complainant was checked and verified in reference to the

available stock of gold bars and ornaments nor the alleged articles claimed to be looted away were not sealed or bore proper genuine markings. Such facts render his deposition highly unreliable in reference to the quantity of stolen articles. Moreover, the recovered articles were claimed by PW1 to bear the embossed mark of his company however, no stamp etc. was seized by the investigating officer, which, according to learned advocate for the appellant, raises doubts. It was also pointed out that according to the PW1 the dacoits entered in his flat by breaking open a collapsible gate situated at the entrance of their flat but no part of broken collapsible gate was either seized by police nor any photographs showing broken gate was brought on record during the trial, in support of his claim. On the other hand, P.W. 3 Niranjan Paul, an employee of the said PW1 has altogether denied the very existence of any such collapsible gate. PW1 also did not arrange for medical treatment of his wife. When his wife was

removed by the locals, the de-facto complainant did not accompany her rather he remained at his house. Such conduct on the part of the de-facto complainant is quite unnatural raising genuine doubts regarding the veracity of his testimony. It has also been argued that the de-facto complainant is an illegal migrant from East Pakistan and has been able to set up a business of considerable size. This shows that he has some roots in the local authorities. The instant case was initiated with the connivance of said authorities in order to shield mysterious death of his wife under the garb of dacoity.

- 59.** Besides that the appellant seeks to assail the impugned judgment and order on the grounds that the place of occurrence ought to have sealed but the same was not done leaving the possibility of any third party intervention. The stock register, stamp, molds or imprints were also not seized by the investigating officer. The investigation was done in a shoddy manner. Accused persons were telecasted over media leading to a

possibility that they were identified by the witnesses prior to them being place on Test Identification Parade.

60. On the other hand, the learned advocate for the State submitted that the case against the appellant has been proved beyond any iota of doubt. It is further submitted the prosecution, on the basis of convincing evidence has been able to prove that a dacoity was committed at the residence of P.W. 1 Bimal Das and in course of such dacoity the wife of the de-facto complainant was killed and the ornaments were looted away from the shop as well as the workshop of the de-facto complainant. There are no material contradictions in the evidence of witnesses.

61. It is further submitted that the appellant was identified in the T.I. Parade held before the Judicial Magistrate. He was also sufficiently identified in Court, therefore the participation of the appellant in the commission of the dacoity has been amply proved beyond any shadow of doubt.

62. It was further contended that in addition to his identification as the perpetrator in the commission of dacoity, the stolen properties were also recovered from the custody of the accused persons, which clearly points to his involvement. As such according to the learned advocate for the State, the judgment of conviction and order of sentence passed by the learned trial court is well founded based on the basis of cogent and convincing evidence and deserves to be affirmed.

63. So far as the contention of the appellant regarding inadmissibility of the First Information Report, the same being hit by the provisions of section 162 of the Code of Criminal Procedure is concerned, it has come out from the evidence on record that in the present case the First Information Report, was lodged after holding of inquest over the dead body of the deceased.

64. The evidence on record goes to show that P.W. 31 was informed by the I.C. Bijpur police station regarding a dacoity and murder in the house of P.W. 1 Bimal Das.

He was asked to move to the place of occurrence, he rushed there and upon finding the dead body, he held inquest. However, before proceeding to the spot no such information was reduced into writing. It also transpires that P.W. 25 I.C. Bijpur received information from an unknown person at his quarter about the incident. Receiving such information, he went to the police station, recorded a G.D.E in this regard and then he proceeded to the spot.

65. The contents of the said G.D.E, shows a short message about an alleged incident. It could be treated as an official entry justifying the presence of PW31 at the place of occurrence. A First Information Report is required contain facts which discloses commission of a cognizable offence.

66. The acts on the part of PW31 in arriving at the place of occurrence upon receipt of an information of the commission of a cognizable offence, without any First Information Report formally registered and even without

being entrusted with the investigation by the superior officer, can at best, be construed as an irregularity which does not render the First Information Report lodged subsequently, inadmissible in evidence. In any case, the First Information Report lodged by PW1 does not come within the purview of section 161 of the Criminal Procedure Code to render it inadmissible in terms of the provisions of section 162 of the said Code. Moreover, the statements of PW1, PW25 and PW31 recorded at the trial, sufficiently discloses the commission of a cognizable offence. Accordingly, we do not find much force in the argument on behalf of the appellant that the First Information Report lodged in the case has no probative value.

67. The contention on the part of appellant that no broken part of collapsible gate etc., were seized by the police or any photograph of the broken gates were brought on record tells upon the credibility of the prosecution case. Three broken padlocks with the loop

cut and other articles from the place of occurrence were seized and produced at the trial. The front portions of those padlocks were found to be cut instruments. House-breaking instruments, like hacksaw blades, metal cutting instruments, iron rods, sabls, wrench, sindkathi, etc. were seized in course of investigation. Such an omission or non production of broken collapsible gate etc. is not sufficient to destroy the prosecution case. On the contrary, the evidence of PW1, PW2, PW3 and other witnesses is quite explicit regarding the commission of offence. They all have identified the appellant and other accused persons in the TI Parade as well as at the trial as the perpetrators with sufficient clarity.

- 68.** The question of PW1 being a foreigner and having illegal residence in India is of no consequence in the facts and circumstances of the case. No positive evidence is forthcoming to establish that the de-facto complainant, taking advantage of his connections with the authorities, has shielded the unnatural death of his

wife in the garb of dacoity. On the other hand, the prosecution, with the help of convincing evidence has been able to prove that there was an incident of dacoity at the house of de-facto complainant. The miscreants came to his house, threw down his wife, caught the de-facto complainant and his employees at ransom and looted away valuable articles from his shop-room and workshop. The miscreants along with the present appellant were identified at the Test Identification Parade conducted in course of investigation and also at the trial as the member of the gang of dacoits. The stolen articles were recovered and identified as such, at the trial. Such identification, either of the miscreants including the appellant or of the stolen articles could not be shaken during the trial.

69. P.W. 1 Bimal Das, P.W. 2 Abhijit Paul, P.W. 3 Niranjan Paul and P.W. 5 Bidyut Das, who were extensively cross-examined by the defence. The evidence of aforesaid witnesses, leaves no doubt that the

prosecution has been able to establish at the trial that there was an incident of dacoity on February 21, 2008 at the residence of P.W.1 Bimal Das. The dacoits at the point of firearms looted away various valuable articles, viz., gold and silver ornaments from the shop and workshop of the de-facto complainant. The wife of the de-facto complainant was killed. The evidence on record points to the only proposition of guilt of miscreants including the appellant. On the other hand, the defence in spite of cross-examined the witnesses at length has miserably failed to create any doubt regarding involvement of the appellant and other accused persons in the incident. We have also no doubt that at the time of the commission of the dacoity, the P.W. 1 Bimal Das, P.W. 2 Abhijit Paul, P.W. 3 Niranjan Paul and P.W. 5 Bidyut Das were very much present at the place of occurrence and they are the eyewitnesses of the said incident.

70. The testimony of the postmortem doctor (PW12), discloses that if the deceased was thrown away from the top of the building or thrown away by applying force from the top of the building she might received the injuries as mentioned in the Postmortem Report and it was unlikely that the deceased would receive such injuries if she fell accidentally from the top. In his extensive cross- examination by the defence, nothing could be elicited rendering his evidence untrustworthy. Thus medical evidence do establishes that deceased suffered a homicidal death which was caused in course of and in order to facilitate the commission of a dacoity.

71. So far as the involvement of the appellant in the incident is concerned, it is the case of the prosecution that the miscreants who committed dacoity at the residence of the P.W. 1 Bimal Das were not known to the witnesses from before and its case entirely rests on the evidence of P.W. 1 Bimal Das, P.W. 2 Abhijit Paul, P.W. 3 Niranjana Paul and P.W. 5

Bidyut Das who were present at the place of occurrence during the incident and identified them during investigation, in the T.I. Parade and in the Court, during trial and the stolen articles were recovered from their possession. It was also urged that the T.I. Parade was held long after the arrest of the appellant and before T.I. Parade he was shown to the witnesses.

72. From the evidence of P.W. 1 Bimal Das, it transpires that on the fateful night while he along with his son P.W. 5 Bidyut Das and his wife Chandana Das, who was killed in the incident by the dacoits, were sleeping in one room, their daughter P.W. 4 Barsha Das was sleeping in the next room. According to the P.W. 1 Bimal Das, as soon as they found that the dacoits entering into their flat, they closed the door of their bedrooms and he asked his wife to seek help of the neighbours by raising alarm from the balcony. It was his further evidence as soon as his wife opened the door of the balcony, she found some of the miscreants were

hiding there and seeing the miscreants as his wife shouted by uttering “Surjo Tui Eki Korchis”, the miscreants immediately pushed her from the balcony.

73. Evidence goes to show that P.W. 1 Bimal Das in the T.I. Parade identified the appellant along with other accused persons namely Surjya Golder, Babar Ali Mondal, Ratan Tarai, Satish Gautam, Bhagwan Singh, Srikanta Dey, Shisu Pal, Babulal Singh and in Court the said witness identified all of them including the appellant. Similarly, P.W. 2 Abhijit Paul in T.I. Parade identified Satish Gautam, Bhagwan Singh, Srikanta Dey, Shisu Pal, Babulal Singh and the appellant and in court he identified all the aforesaid miscreants. The witness, Niranjana Paul (P.W. 3), in T.I. Parade identified Babar Ali Mondal, Ratan Tarai, Satish Gautam, Prem Pal, Bhagwan Singh, Srikanta Dey Babulal Singh and the appellant. In Court the witness identified all the said miscreants including appellant. The witness P.W. 5 Bidyut Das in the T.I. Parade

identified the accused Babulal Singh and the appellant Ganpatram and at the trial in dock the witness also identified the appellant. The witnesses were kept hostage on gun point and were made to carry out the orders of the miscreants and as such the witnesses were at close quarters with the miscreants which occasioned their identification without any iota of doubts. Besides making out an evasive defence challenging the identification of the appellant and the other miscreants, no definite and positive case has been made out to render such identification suspected and untrustworthy.

74. Therefore, we are quite convinced that the appellant Ganpatram and other miscreants were sufficiently and credibly identified by the witnesses in the Test Identification Parade as well as at the trial as the persons involved in the commission of dacoity with murder which was committed at the house of the de-facto complainant. The present appellant was also identified as one of two persons who threw the wife of

the de-facto complainant from the balcony when she was trying to get help from the neighbors.

75. The evidence of the Judicial Magistrates who conducted the T.I. Parade, i.e. P.W. 9 Sandip Chakraborti and P.W. 34 Nachiketa Bera together with the T.I. Parade Sheets, goes to establish that all legal formalities were observed and necessary precautions were taken during the T.I. Parade. During their cross-examination nothing favourable could be elicited by the defence which could create any doubt over the TI Parade.

76. It is well settled proposition that minor contradictions and/or exaggerations may occur owing to normal error of observation and the mental disposition varying from person to person and depending upon the facts and circumstances of particular case. Such contradictions cannot vitiate the prosecution case or make any dent in its veracity.

77. Evidence on record also reveals that in course of investigation, the appellant along with Babulal Singh,

Prem Pal, Bhagwan Singh, Banwari Singh, Satish Gautam and Balbir Singh were apprehended from the residence of P.W. 8 Haraprasad Karmakar situated at Purbapara, Dashghara within the jurisdiction of Dhaniakhali Police Station. They were residing as tenants of PW8, occupying four rooms on the ground floor. During such raid, various stolen properties, viz. Gold and Silver ornaments in a rexine bag and house-breaking instruments were also recovered. The stolen articles and the housebreaking tools were produced before the police by the said apprehended accused persons including the appellant and were seized in presence of the witnesses P.W. 8 Haraprasad Karmakar and P.W. 10 Rakesh Majhi under a proper seizure list. The witnesses and the accused persons including the appellant from whose possession the same were seized signed on the seizure list. P.W. 8 and P.W. 10 have corroborated the factum of such seizure. A few days later on the basis of the interrogation of some of the accused

persons, the police further recovered certain stolen gold and silver jewelries and the wearing apparels of the appellants, viz. barmuda pants, which the accused persons were wearing at the time of incident of dacoity, which were seized in presence of P.W. 8 and P.W. 10 under proper seizure list duly signed by the said seizure witnesses and signed by the accused persons at whose instance the same were recovered.

78. The rent receipts in support of the fact that at that relevant time the aforesaid accused persons were residing at the house of P.W. 8 Haraprasad Karmakar as his tenants were also seized. At the trial P.W. 8 Haraprasad Karmakar identified appellants Babulal Singh, Bhagwan Singh, Satish Gautam while P.W. 10 Rakesh Majhi identified appellants Babulal Singh, Prem Pal, Bhagwan Singh, Banwari Singh, Satish Gautam as the persons who were residing at their house as tenants occupying four rooms in the ground floor. Therefore it seems to be sufficiently proved at the trial

that the appellant and other accused persons after committing dacoity, took shelter at the house of P.W. 8 Haraprasad Karmakar in the guise of tenants and from their possession stolen properties, house-breaking instruments and their wearing apparels used at the time of the dacoity were recovered by the police.

79. In the light of evidence on behalf of the prosecution, led at the trial there appears no iota doubt that the appellant was very much involved in the commission of the dacoity at the residence, shoproom and workshop of the de-facto complainant on the fateful night. The evidence also conclusively establishes that during such dacoity, wife of de-facto complainant was thrown down from the balcony and was killed by the members of the miscreant gang. Huge amount of gold and silver ornaments were looted away from the workshop situated at the ground floor of the said premises. The guilt of the appellant is also established beyond doubts by his identification by the witnesses

present at the place of occurrence at the relevant time and also by recovery of the stolen properties and house-breaking instruments from the possessions of the accused persons including the appellant.

- 80.** The offence of dacoity has been defined under section 391 of the Indian Penal Code in the following terms, that's to say:-

391. Dacoity.—When five or more persons conjointly commit or attempt to commit a robbery, or where the whole number of persons conjointly committing or attempting to commit a robbery, and persons present and aiding such commission or attempt, amount to five or more, every person so committing, attempting or aiding, is said to commit “dacoity”.

- 81.** In the instant case the number of the miscreants was 15, much more than the statutory minimum of 5 persons required to constitute an offence of dacoity. This

leaves no doubt that an offence of dacoity was committed by the appellant with the other miscreants at the house of the de-facto complainant.

82. Section 396 of the Indian Penal Code, 1860, provides that

396. Dacoity with murder.—If any one of five or more persons, who are conjointly committing dacoity, commits murder in so committing dacoity, every one of those persons shall be punished with death, or 1[imprisonment for life], or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

83. The appellant was identified as one of the person who threw the wife of the de-facto complainant from the balcony resulting in her death. There are overwhelming evidence that such act was committed when the wife of the de-facto complainant tried to thwart the commission of such offence by seeking help from the neighbors

which indicates that the murder was committed in furtherance of the commission of the offence of dacoity. As such, there appears no doubt that the appellant is liable for the punishment prescribed under Sections 395/396 of the Indian Penal Code and was justifiably, convicted for such offence.

84. So far as punishment under Section 397 of the Penal Code, 1860, is concerned, the evidence on record exhibits that the miscreants while committing the dacoity were carrying firearms. They forced the de-facto complainant and his associates to act at their tunes on the point of firearms. They acted so desperate that they did not hesitate in committing murder of the wife of de-facto complainant when she tried to seek help from the neighbors. These facts by itself, show that deadly weapon was used in the commission of the offence of dacoity and the miscreants including the appellant had every intention to cause death or grievous hurt in furtherance of the offence. Therefore, we do not find any

illegality with the conviction and sentence awarded for the offence punishable under Section 397 of the Indian Penal Code and the same deserves to be upheld.

85. Evidence on record also reveals that several stolen articles procured in the commission of dacoity were recovered at the instance of the appellant from his possession. The aforesaid articles were duly recovered and identified by the witnesses including the owner of such articles, as the property with which he was deprived of, in the incident of dacoity. The appellant was found in possession of such stolen articles knowing the same to have been procured by way of dacoity with which he himself was involved as defined under Section 410 of the Indian Penal Code. Section 412 of the said Code provides for the punishment for receiving as well as retention of such property. Therefore, the appellant Ganpat Ram appears to be rightly convicted and sentenced for the offence punishable under Section 412

of the Indian Penal Code, 1860, and the same is liable to be affirmed.

86. However, since the sentence under Section 412 of the Indian Penal Code of the other accused persons in other appeals being CRA No. 69 of 2010, CRA No. 130 of 2010, CRA No. 162 of 2010 and CRA No. 269 of 2010 were reduced by a coordinate bench, to rigorous imprisonment for 10 years with a fine of Rs. 10,000/- each, and in default to suffer rigorous imprisonment for one year each, it seems desirable that the sentence of this appellant be also reduced to rigorous imprisonment for 10 years with a fine of Rs. 10,000/- and in default to suffer rigorous imprisonment for one year.

87. On the realization of fine amount, the entire amount shall be paid to the legal heirs of the deceased Chandana Das by way of compensation.

88. Accordingly, the judgment of conviction dated 21.12.2009 and order of sentence dated 19.06.2015 passed by learned 2nd Additional Sessions Judge, Fast

Track Court, Barrarckpore, North 24 Parganas, Sessions Trial No. 101(12) of 2008 corresponding to Sessions Case No. 11(07) of 2008 are affirmed.

- 89.** 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.
- 90.** 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.
- 91.** 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.

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

93. Consequently, the instant appeal being **CRA 154 of 2018** is dismissed.

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

[MD. SHABBAR RASHIDI, J]

95. I agree.

[DEBANGSU BASAK, J.]