

**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.295 of 2021
IA NO. CRAN 1 of 2021**

**Nipu Sk. @ Taslim
VS.
The State of West Bengal
With
C.R.A.(DB) 60 of 2022
Azad Sk @ Abul Kalam Azad
Vs.
The State of West Bengal**

For the Appellants : Mr. Milon Mukherjee, Sr. Advocate
Mr. Ramdulal Manna,
Mr. Rana Mukherjee,
Mr. Sayan Mukherjee

For the State : Mr. Neguive Ahmed, Ld. A.P.P.
Mrs. Trina Mitra

Hearing concluded on : 22.03.2023

Judgement on : 22.03.2023

DEBANGSU BASAK, J.:-

1. Two appeals are taken up for analogous hearing as they emanate out of same police case resulting in the same impugned judgment of conviction and order of sentence.

2. The appeals are directed against the judgment of conviction dated September 9, 2021 and order of sentence dated September 10, 2021 passed by the learned Additional District and Sessions Judge, 5th Court, Malda, in Sessions Case No.303 of 2018.

3. By the impugned judgment of conviction both the appellants were found guilty under Section 302/34 of the Indian Penal Code 1860.

4. Both the appellants were sentenced by the impugned order of sentence to suffer rigorous imprisonment for life and to pay a fine of Rs.10,000/- each in default to suffer further rigorous imprisonment for six months each.

5. A written complaint was lodged by the P.W.2 on July 14, 2015 with respect to an incident of murder dated July 13, 2015 of her husband. In her written complaint, she stated that, on July 13, 2015, at about 10 a.m., one person called her husband near wooden furniture shop at Kaliachak of Rathmela. After receiving a phone call her husband went there at once, when the appellant of Criminal Appeal No.295 of 2021 (Nipu Sk. @ Taslim) shot her husband

on the upper side of the left eye causing serious bleeding injury. The local people took her husband to Sujapur Health Centre in serious condition. The doctor on duty examined her husband and declared him dead. P.W.7 witnessed the incident. She got information from P.W.1. P.W.2 stated that, due to she being busy in the burial ceremony of her late husband, she was late in lodging the written complaint.

6. On the basis of the written complaint, police registered First Information Report being Kaliachak Police Station F.I.R. No.373/2015 dated July 14, 2015, *inter alia*, under Section 302/34 of the Indian Penal Code, 1860 and under Section 25(1)(a)/27/35 of the Arms Act.

7. On conclusion of the investigation, police submitted charge-sheet. Court framed charges on January 3, 2019 against the appellants before us under Sections 302/34/120B of the Indian Penal Code, 1860 as also under Section 27 of the Arms Act. The appellants pleaded not guilty to the charges framed. They claimed to be tried.

8. At the trial, prosecution examined 14 witnesses. Prosecution relied upon various documentary and material

exhibits at the trial. On conclusion of the examination of the witnesses of the prosecution, the appellants were examined under Section 313 of the Criminal Procedure Code.

9. Learned Senior Advocate appearing for the appellants refers to the Post Mortem Report being Exhibit-7. He submits that, Post Mortem Report does not classify the death as homicidal. He refers to the deposition of the Post Mortem doctor being P.W.11. He submits that, P.W.11, in his deposition admits that, there is a possibility of death being suicidal in nature.

10. Learned Senior Advocate appearing for the appellants submits that, the appellants were exonerated of the charge framed under Section 27 of the Arms Act. He refers to the Post Mortem Report being Exhibit-7. He submits that, the Post Mortem doctor found a bullet injury on the deadbody of the victim. Therefore, the doctor opined that, the death was due to the bullet injury suffered by the victim. According to him, once, the appellants stood exonerated of the charge under Section 27 of the Arms Act, the question of the appellants

being found guilty of an offence under Section 302 of the Indian Penal Code, 1860 does not arise.

11. Learned Senior Advocate appearing for the appellants submits that the bullet was never recovered. Police did not seize the alleged spent cartridge. No fire arm was recovered from any of the appellants. Therefore, there was no case under the fire arms as against the appellants. In such circumstances, he contends that given the nature of evidence led by the prosecution as against the appellants at the trial, the question of finding the appellants guilty of murder of the victim, by using a firearm does not arise.

12. Learned Senior Advocate appearing for the appellants submits that, there are various lacuna in the investigations and that, such lacuna should enure to the benefit of the appellants. He submits that P.W.7, 8 and 10 claimed themselves to be eyewitnesses to the incident of murder. They claimed that there was a particular tea stall, although none of them, claimed that they saw each other at the time of the incident. However, the tea stall by itself was not found by the investigating agency. In support of such contention, he draws

the attention of the Court to the sketch map of the place of occurrence prepared by the police which was tendered in evidence and marked as Exhibit.10.

13. Learned Senior Advocate appearing for the both the appellants submits that two furniture shops were spoken of. However, the tea stall spoken of by the so-called eye witnesses is absent in Exhibit-10. Lack of such crucial piece of evidence, according to him, vitiates the claim of the prosecution.

14. Learned Senior Advocate appearing for the appellants submits that, the furniture shop owners were not examined. They were best witnesses to adduce evidence. According to him, non production of the best witnesses at the trial was fatal to the case of the prosecution.

15. Learned Senior Advocate appearing for the appellants submits that P.W.7 and 8, are full brothers. Apparently, they did not speak with each other at the time of the incident. It is unbelievable that two eyewitnesses, who are full brothers, did not speak to each other about the incident or did not speak about the presence of each other at the relevant point of time. P.W.8 recorded his statement under Section 164 of the

Criminal Procedure Code after three years. He submits that these facts taken together casts serious doubts on the case of the prosecution.

16. Learned Senior Advocate appearing for the appellants submits that, the Investigating Officer was the police personnel who conducted the inquest. He refers to the inquest report being Exhibit-6. He submits that P.W.10 was a witness to the inquest report. However, the inquest report does not identify Nipu Sk. @ Taslim as an assailant.

17. Learned Senior Advocate appearing for the appellants referred to the deposition of P.W.7 and 8 who claimed that, Nipu Sk. fired the firearms. He refers to the deposition of P.W.10 and submits that, in his deposition, P.W.10 claimed that Azad shot the victim. Therefore, he submits that there is inconclusive evidence as to the person who shot the victim.

18. Learned Senior Advocate appearing for the appellants submits that, the evidence of P.W.10, according to him, eliminates the presence of P.W.7 and 8 at the place of occurrence. He submits that, neither the place of occurrence nor the date and time of the occurrence was proved in

accordance with the law. Referring to the written complaint, he submits that, the left thumb impression of the P.W.1 on the written complaint was not proved in accordance with law.

19. Referring to the orders of the appropriate Court, learned Senior Advocate appearing for the appellants submits that, there was unexplained delay in forwarding the First Information Report as also the seizure list to the learned Magistrate.

20. In the conspectus of the facts and circumstances of the present case, according to the learned Senior Advocate appearing for the appellants, the impugned judgment of conviction and the order of sentence should be reversed. The appellants should be acquitted. He submits that, four persons were proceeded against, by the police in respect of the incident forming the subject-matter of the First Information Report. Out of such four persons, one died and one is still absconding. Other two were convicted.

21. Learned Additional Public Prosecutor appearing for the State submits that, there was no delay in the lodgement of the First Information Report. In any event, the written complaint

being Exhibit-6 explains the delay. According to him, the explanation offered in Exhibit-6 is sufficient.

22. Learned Additional Public Prosecutor appearing for the State submits that the incident occurred on July 13, 2015 when an unnatural death case was registered. Police on receipt of the written complaint, registered First Information Report and commenced conducting the investigation. He refers to the deposition of the Investigating Officer.

23. Learned Additional Public Prosecutor appearing for the State submits that, the Post Mortem doctor stated that, the death was homicidal in nature in his examination-in-chief at the trial. He refers to the nature of injury suffered by the victim. He submits that, three eyewitnesses saw the victim to be shot at. Therefore, according to him, the death was homicidal.

24. Learned Additional Public Prosecutor appearing for the State submits that, there are cogent and sufficient evidence on record to sustain the charge of murder as against both the appellants. Consequently, he submits that the impugned judgment of conviction and order of sentence be upheld.

25. P.W.1 is the scribe of the written complaint. He stated that on July 14, 2015, he wrote the complaint as per the statement of the wife of the victim, P.W.2. The written complaint was written in his own handwriting and as per the statement of P.W.2. After completion of the writing he read over and explained the same to P.W.2 who after going through its contents put her left thumb impression. He also signed the document. The written complaint was tendered in evidence and marked as Exhibit-1. His signature was marked as Exhibit-1/a.

26. P.W.2 is the wife of the victim. She stated that, her husband died due to gun shot injury. On the day, she and her husband was in the house. At that time, Azad Sk @ Abul Kalam Azad [the appellant in CRA (DB) 60 of 2022] called her husband at Jalalpur Stand. At about 10 a.m., her husband went to Subhash More near Jalalpur Stand. At that time, Azad fired at her husband with firearms. Nabi Sk also fired on her husband. She said that there were four persons in the team namely, Azad Sk. Nipu, Alam and Bablu. After receipt of the information, she went to the place of occurrence. She was

informed by P.W.8 over phone about the incident. She went to the Sujapur Hospital and saw the dead body of her husband. After completion of burial she lodged written complaint. She identified both the appellants in Court. She stated that one person wrote written complaint. She was not in a position to recollect his name.

27. P.W.3, is a police Constable. He stated that, on July 13, 2017, Sub Inspector, Rana Saha held inquest examination of the deadbody. Thereafter, such Inspector executed one document and he took away the dead body at Malda Medical College and Hospital. He identified his signature on the dead body challan which was marked as Exhibit 2/a. He identified the deadbody before the autopsy surgeon. The autopsy surgeon after completion of the Post Mortem examination handed over three articles namely, sample of nails, sample of blood and sample of hair. He brought such articles to the police station and handed over the same to Rana Saha. Sub Inspector Rana Saha seized the same under seizure list. He identified his signature in the seizure list which was marked as Exhibit-3/a.

28. P.W.4 is an acquaintance of the deceased. He was declared hostile by the prosecution. He denied suggestions put to him on cross-examination by the prosecution. He denied knowing any of the accused including the two appellants. He also denied making any statement to the police.

29. P.W.5 is a seizure list witness. He identified his signature on the seizure list dated July 14, 2015 which was marked as Exhibit-4/a. He was declared hostile by the prosecution. On cross-examination by the prosecution, P.W.5 denied making any statement at the time of the interrogation on July 13, 2015. He denied knowing any of the accused including the two appellants.

30. A co-villager of one of the appellants Azad Sk. deposed as P.W.6. He denied knowing the victim. He was declared hostile by the prosecution. On cross-examination by the prosecution, he denied making a statement to the police on July 13, 2015.

31. P.W.7 is an acquaintance of the victim. He stated that, the victim was murdered by gunshot injury. He stated that, on the date and time of the incident, he was in a tea stall at Jalalpur Subhasmore. While he was at the tea stall he saw the

victim come by a motorcycle. At that time, Azad Sk. asked him to stop and thereafter, four persons, namely, Azad Sk, Nipu Sk, Bablu and Alam started to push the victim. Thereafter Nipu Sk. fired from the firearms at the victim in the left side of his head. Thereafter, many persons shifted the victim to Sujapur Hospital and the doctor of such hospital declared him dead. He stated that he knew the four accused. He identified the two appellants in Court. He said that he made a statement before the police station and that he also made a statement before the learned Magistrate who recorded his statement.

32. In cross-examination, he stated that, he and P.W.8 used to reside at a separate mess. At the time of incident, he and P.W.8 were residing at separate mess. Profession of P.W.8 and him were separate and that he did not interfere with the business of P.W.8 as also P.W.8 does not interfere into his profession. He stated that, the tea stall was situated at Jalalpur, Subhaspur and one female was the owner of such tea stall. However, he did not know her name. He stated that, at the material point of time other 8/10 persons were also

taking tea in such tea stall. He could not say about their name and their place of residence. He described that, the tea stall would be located on the left side, if one went to Farakka from the Court by availing NH-34.

33. P.W.8 is another acquaintance of the victim. He stated that, the victim was murdered. He stated that, while he was going to Jalalpur Subhasmore to take tea. At that time, he saw the victim to be coming towards Subhasmore by a motorcycle. Thereafter, four persons gherowed the victim and started to manhandle him. He identified such persons to be the two appellants and Bablu and Alam. He said that, thereafter Azad brought out one firearms from his waist and handed over the same to Nipu Sk. Thereafter, Nipu Sk fired from such firearms towards Nabi and Nabi sustained bullet injury at the back side of his head. Thereafter, the victim fell down. Many persons assembled there. Thereafter, the four persons fled away from the place. Thereafter, he and others shifted the victim to at Sujapur Hospital by a vehicle. Thereafter, the doctor at the hospital declared the victim as dead. He said that, the incident took place at 10 am. He saw the said incident. He

stated such fact before the learned Magistrate and the learned Magistrate recorded the same. His statement recorded under Section 164 of the Code of Criminal Procedure was tendered in evidence and his signature thereon was marked as Exhibit-5/a and Exhibit-5/b. The statement itself was marked as Exhibit-5. He identified both the appellants in Court.

34. In cross-examination, he stated that, P.W.7 is his brother. He said that, both the brothers do not go to any specific place for taking tea in the early morning. He said that he made a statement before the police on the next date of occurrence. He denied the suggestions made to him in cross-examination.

35. The person who took the photographs of the victim at the Malda District Hospital Morgue was examined as P.W.9. He tendered the digital photographs which were marked as Exhibit-6 collectively.

36. P.W.10 is the brother of the victim. He stated that, the victim died 5/5 ½ years ago by gunshot injury. He was sitting at the tea stall at 9 am near Jalalnagar. Victim came to Subhashmore riding on a motorcycle. Victim stood his motorcycle near a factory. Three accused persons started to

push and pull the victim. During that time, Azad shot the victim by pistol at the back side of left side of his head and the victim fell down and started to struggle in pain in bleeding condition. Village people came there after knowing the facts. They took the victim to Sujapur Hospital. Doctor declared him brought dead. He is the witness to the seizure list dated July 14, 2015. He identified his signature thereon which was marked as Exhibit-4/b. He identified Azad Sk. in the court room. He was a witness to the inquest report. He identified his signature thereon which was marked as Exhibit-6.

37. In cross-examination, P.W.10 stated that, the victim was his brother. He was sitting at the tea stall at 9 pm(am) ? prior to that incident. No one of his locality was present at that time with him at the tea stall. He could not say the name of the persons who were in the tea stall. He did not get any time to save his brother as the incident happened within a second. He along with others took his brother to the hospital. He could not name the persons who accompanied him to the hospital as he did not know the names. He stated that, he did not tell the police that on that date he was sitting at the tea

stall and that during pushing and pulling Azad Sk fired at the victim.

38. P.W.11 is the autopsy surgeon who conducted the post-mortem on the dead body of the victim. He stated that, he conducted the post-mortem of the victim in connection with Kaliachak Police Station Unnatural Death Case No.391/15 dated July 13, 2015. The dead body was produced from Sujapur Primary Health Centre. The dead body was identified by a police constable. After conducting the post-mortem, he opined that the death was due to the effects of the bullet injury as described in the post-mortem report and ante-mortem in nature. He tendered the post-mortem which was marked as Exhibit-7. He stated that, probability of the death due to the homicidal manner cannot be ruled out.

39. In cross-examination, P.W.11 stated that, he did not mention regarding the distance from which the fire was done. He did not mention regarding the manner of death as homicidal in the post-mortem report. The investigating officer did not ask his opinion regarding such fact. He stated that,

although there was a least chance but the possibility of suicidal manner of death could not be ruled out.

40. P.W.12 is a Sub-Inspector of police who witnessed the seizure made on July 13, 2020. He identified his signature on such seizure list which was marked as Exhibit 3/b. He stated that, the seized articles were destroyed when fire broke out in the police station. He tendered the report with regard to such fire which was marked as Exhibit-8.

41. P.W.13 is the Investigating officer who conducted the investigations. He stated that, initially, Kaliachak Police Station Unnatural Death Case No.39/2015 dated July 13, 2015 was started on July 13, 2015. Thereafter, on receipt of the written complaint, on July 14, 2015 a formal First Information Report was drawn up. The formal First Information Report was tendered in evidence and marked as Exhibit-9. He narrated about the process of the investigations. He tendered various documents in evidence which was marked as Exhibits.

42. In cross-examination, P.W. 13 stated that Dr. Saiful Islam of Sujapur was the complainant of the unnatural death.

He stated that, the First Information Report in connection with the unnatural death case does not bear the name of any of accused persons. Neither in the First Information Report nor in the statement of the de facto complainant is it mentioned that Azad Sk. called the victim over the phone. He did not get any mobile at the pocket of the deceased at the time of doing the inquest report. He did not get empty cartridge from the place of occurrence. Initially, he stated that, he examined P.W.-8, on March 5, 2018 and then said that, he did not examine and proceeded to say that the second Investigating Officer examined P.W.-8. He said that, he could not recover any gun in connection with the case.

43. The Second Investigating Officer deposed as P.W.-14. He stated that, he was given the charge of investigations on August 22, 2016. He conducted raids on several dates. He arrested Azad Sk. on February 22, 2017. He examined P.W.-8 and Esraful under Section 161 of the Code of Criminal Procedure. After completion of the investigations, he submitted charge sheet against the accused persons. He identified the appellants in Court.

44. In cross-examination, he stated that he examined P.W.-8. P.W.-8 was placed before the learned Magistrate for recording a statement under Section 164 of the Criminal Procedure Code on March 5, 2018. He did not give any explanation regarding examination of P.W.-8 after 3 years of the incident happening. He stated that P.W.-7 and P.W.-8 are brothers of full blood.

45. On completion of the evidence of the prosecution, the appellants were examined under Section 313 of the Criminal Procedure Code where, they claimed to be falsely implicated and innocent. They declined to adduce any evidence in respect of their defence.

46. The victim died on July 13, 2015. A postmortem over the dead body of the victim was conducted by Autopsy surgeon, P.W.-11, on July 13, 2015.

47. The postmortem report of the victim, being Exhibit-7, noted one bullet injury on the body of the victim. The note of injury, in Exhibit-7 states that, ricocheting of bullet occurred and bullet came out from the wound of entry only.

48. Police did not find any cartridge. Police also did not find any bullet. The bullet entering into the body of the victim, was

explained in Exhibit-7 to entry and exit the victim from the same wound. Death of the victim was classified in Exhibit-7 as due to the effect of bullet injury, ante-mortem in nature.

49. P.W.-11, in his deposition, stated that the probability of death due to homicidal manner could not be ruled out. He admitted in his cross-examination that, he did not mention that the manner of death was homicidal in the postmortem report, being Exhibit-7. He also stated that, there was a least chance, but the possibility of suicidal manner could not be ruled out.

50. Prosecution produces three eye-witnesses at the trial to press the point that the death was homicidal in nature and, caused by the bullet injury inflicted on the victim. Such eye-witnesses are P.W.-7, P.W.-8 and P.W.-10. All the eye-witnesses, being P.W.-7, P.W.-8 and P.W.-10 stated in deposition that, the victim was fired upon. P.W.-7 and P.W.-8 stated that Nipu Sk. fired at the victim while, P.W.-10 stated that, Azad shot the victim. All the three witnesses spoke of four persons being present including two appellants before us

in the crowd of persons who accosted the victim on his motorcycle.

51. The narrative of the three eye-witnesses of the prosecution is that, the victim was on his motorcycle when he was accosted by four persons including the two appellants. A sort of scuffle took place whereupon, a firearm was taken out and the same was utilized to shoot at the victim.

52. The injury suffered by the victim corroborates this claim of the eye-witnesses, being P.W.-7, P.W.-8 and P.W.-10. The victim suffered a bullet injury. The victim died out of the bullet injury.

53. Death by a bullet injury, therefore, established that the victim died an unnatural death. The narrative of the three eye-witnesses states that a firearm was shot at the victim to inflict a bullet injury on the victim. Therefore, the nature of injury suffered by the victim together with the description of the incident by which, the victim suffered such bullet injury leads to the irresistible conclusion that, the victim was shot at in order to kill him. Therefore, the victim was murdered.

54. Both the appellants were involved in the incident of scuffle leading up to the murder of the victim. Both the appellants were charged, *inter-alia*, under Sections 302/34 of the Indian Penal Code, 1860. In the facts and circumstances of the present case, therefore, both the appellants are guilty of murdering the victim.

55. Place of occurrence of the incident is doubted on behalf of the appellants on the basis that tea stall which P.W.-7, P.W.-8 and P.W.-10 spoke of was not shown in the sketch map relating to place of occurrence. The incident of murder was seen by three eye-witnesses. The incident of murder did not take place inside any tea stall for the absence of the tea stall in the sketch map of the place of occurrence to assume any significance. All that the prosecution witnesses were saying were that they were in and around a tea stall. Significantly, elaborate cross-examinations were made with regard to the tea stall spoken of the prosecution eye-witnesses. One of them described the location of the tea stall in cross-examination. Existence of the tea stall, therefore, cannot be doubted.

56. Acquittal of the two appellants in respect of a charge under the Arms Act was canvassed as a ground to contend that, since the appellants stood acquitted of such charge, the appellants should not be found guilty of murder by inflicting an injury by a gunshot. We are, however, unable to accept such contention of the appellants. The victim suffered a bullet injury. The bullet injury was the cause of death. Eye-witnesses implicated both the appellants, in the incident of the victim ultimately suffering a gunshot injury and succumbing to such injury. Therefore, the acquittal of the appellants, from a charge under the Arms Act, in the facts of the present case, is not material.

57. The learned Trial Judge acquitted the appellants on the charge of the Arms Act on returning a finding that, no firearm was recovered. Therefore, according to the learned Trial Judge, the prosecution failed to prove the ingredients of the offence under Section 27 of the Arms Act. We are not in a position to agree with such conclusion of the learned Trial Judge with regard to acquittal of the appellants under the charge in respect of the Arms Act. However, the State did not

prefer any appeal against such finding returned by the learned Trial Judge. We, therefore, propose not to enter into such arena.

58. Delay in recording the statement of P.W.-6 under Section 164 of the Criminal Procedure Code was one of the grounds canvassed on behalf of the appellants. We are not shown that the P.W.-8 made any statement which was contrary to his claims made in his statement recorded under Section 164 of the Criminal Procedure Code.

59. The delay in lodging the written complaint was explained by P.W-2 on the ground that she was busy with the burial of her husband. An unnatural death case was commenced by the police immediately on receipt of the information and finding the dead body. The delay, according to us, between the incident of murder and the lodgment of the written complaint was not such so as to fatally affect the case of the prosecution. The written complaint was lodged at the behest of the wife of the victim. She was, busy with the burial ritual of her husband. Therefore, it cannot be said that, she delayed

the lodgment of the First Information Report with the police unreasonably or that the delay remained unexplained.

60. The seizure made by the police on July 13, 2015 was in respect of unnatural death case which the police registered. Therefore, we do not find any material incongruity in the police acting in the manner as done in the facts and circumstances of the present case.

61. P.W.7, in his deposition, used the words that “on the aforesaid date and time” to describe the date and time of the incident. The date and time of the incident, however, was not specifically mentioned before the user of such words. He was cross-examined with regard to the date and time of the incident. In his cross-examination, he said that, at the relevant date and time of the occurrence of the incident, he was engaged in his profession. Therefore, there was no ambiguity with regard to the date and time of the occurrence of the incident. The defence understood the date and time of the incident spoken of by P.W.-7 and cross-examined P.W.-7 at length thereon. Therefore, the contention that P.W.-7 did not

specify the date and time of the incident and consequently the same remained not proved is unacceptable.

62. The answer of P.W-8 to a question in cross-examination that, he made a statement before the police on the next day of occurrence is highlighted in contradiction of the statements of the two Investigating Officers. P.W-8 who recorded a statement under Section 164 of the Criminal Procedure Code but the same was on a later point of time than claimed in his cross-examination. The claim made by P.W.-8 in his cross-examination that he made a statement on the next day of occurrence is not borne out by the materials placed on record. It is also not borne out by the deposition of the two Investigating Officers.

63. However, such mis-statement in our view, does not fatally effect the case of the prosecution. As noted above, the defence did not bring to our attention anything in the statement which P.W.-8 recorded under Section 164 of the Criminal Procedure was contrary to or inconsistent with his deposition at the trial.

64. It is contended on behalf of the appellants that prosecution witnesses No.7 and 8 are chance witnesses and that prosecution witness no.10 eliminated the presence of prosecution witnesses no.7 and 8. Consequently, the entirety of the evidence of prosecution, through the so-called eye witnesses of the prosecution should be disbelieved.

65. With the deepest of respect, we are unable to subscribe to such view. P.W.7 and 10 stated that hey were at the tea stall while P.W.8 stated he was going to take tea from the tea stall when they witnessed the incident. All of the prosecution witness no.s.7, 8 and 10 stated that apart from them there were others in the tea stall at the relevant point of time. Therefore, in our view P.W.10 did not eliminate the presence of P.W.7 and 8 at the relevant point of time. Describing the witnesses as chance witnesses does not denude the evidences of such witnesses of creditability or rehability unless the creditability is otherwise suspect.

66. P.W.2 is the wife of the victim who lodged the written complaint. P.W.1 is the scribe of the written complaint.

Written complaint itself was tendered in evidence and marked as Exhibit-1.

67. P.W.1 proved his signature and he established that P.W.2 dictated the contents of the written complaint which he wrote down. P.W.2 corroborated P.W.1 and stated that she dictated the complaint which was written down by P.W.1 and was proved in accordance with Section 67 of the Indian Evidence Act. He stated that she got the information from P.W.7 over phone.

68. Therefore, we find no substance in the contention that the left thumb impression of the maker of the written complaint that is P.W.2 not being proved in accordance with the law at the trial, the written complaint stood vitiated.

69. In such circumstances, we find no merit in the present appeals. CRA 295 of 2021 and CRA (DB) 60 of 2022 are **dismissed**.

70. In view of the dismissal of the two appeals, nothing survives in the interim application filed in CRA 295 of 2021. IA No: CRAN 1 of 2021 is also **dismissed**.

71. The sentences awarded will run concurrently. Period of detention suffered by the appellants, pre and post trial would be set off against the sentences awarded.

72. A copy of this judgment and order along with the all trial Court's records be sent to the appropriate Court forthwith.

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

(Debangsu Basak, J.)

74. I agree.

(Md. Shabbar Rashidi, J.)