

IN THE HIGH COURT AT CALCUTTA
Criminal Miscellaneous Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

CRA 9 of 2020

(IA No. CRAN 2 of 2020 (Old No. CRAN 3107 of 2020))

Minati Halder & Ors.

Vs.

The State of West Bengal

With

CRA 102 of 2020

Pritam Karmakar @ Donka

Vs.

The State of West Bengal

With

CRA 232 of 2020

Suman Mondal @ Kanu Mondal

Vs.

The State of West Bengal

With

CRA 242 of 2020

Tanmoy Banerjee

Vs.

The State of West Bengal

With

CRA 246 of 2020

Babu Sarkar & Anr.

Vs.

The State of West Bengal

With

CRA 285 of 2020

Sagar Bachar

Vs.

The State of West Bengal

With

CRA 373 of 2021

Ganesh Das

Vs.

The State of West Bengal

For the Appellants in CRA 9 of 2020 & CRA 285 of 2020	: Mr. Souvik Mitter, Adv. Ms. Amrita Maji, Adv. Ms. Rajnandini Das, Adv.
For the Appellant in CRA 242 of 2020	: Mr. Milon Mukherjee, Ld. Sr. Adv. Mr. Biswajit Manna, Adv.
For the Appellant in CRA 232 of 2020	: Mr. Somnath Ghoshal, Adv. Ms. Anupama Chakraborty, Adv. Mr. Sahid Uddin, Adv.
For the Appellants in CRA 102 of 2020, CRA 246 of 2020, CRA 373 of 2021	: Ms. Anasuya Sinha, Adv. Mr. Avishek Sinha, Adv. Ms. Jonaki Saha, Adv.
Hearing Concluded on	: January 16, 2023
Judgement on	: February 1, 2023

DEBANGSU BASAK, J.:-

1. Seven appeals have been heard analogously as they emanated out of the same police case.
2. Police had registered a First Information Report on January 20, 2019 on the basis of a written complaint of PW 1 of the same date. In his written complaint, PW 1 had alleged that on January 20, 2019 at around 7 AM his father and four other villagers had gone to Kalna to spray insecticide. At around 9 AM when such persons were returning home, at Baruipara, a few persons had detained them out of suspicion. Those persons had requested many others of the locality to come armed with sharp weapons, Iron rod and chopper. On being instigated, they had assaulted his father and the co-villagers. On being assaulted, his father had sustained severe injuries. Thinking that his father had succumbed, the miscreants had left the place of occurrence. When PW 1 had learnt about the assault, he took his father to the Kalna Hospital where he received preliminary treatment. Thereafter, his father was referred to the Burdwan Hospital where he had succumbed to his injuries. PW 1 had come to learn from the local people that his father had been murdered by a sharp weapon and that the companions of his father were injured by

iron rod. PW 1 had named 8 persons along with other unnamed persons as the assailants.

3. On completion of the investigation, police had submitted a charge sheet. The Court had framed charges against 19 persons under Sections 341/326/307/302/149 of the Indian Penal Code, 1860 on August 22, 2017.

4. On the accused persons pleading not guilty, they had been tried. At the trial, the prosecution had relied upon 57 witnesses, documentary and material evidences to bring home the charges as against the accused persons.

5. By the impugned judgement of conviction dated October 2019, the learned trial judge had found 7 of the 19 accused persons as not guilty 12 of the accused persons had been found as guilty under Sections 341/326/307/302/149 of the Indian Penal Code, 1860. The learned trial judge had by the impugned order of sentence dated November 11, 2019 sentenced 12 of the accused persons. They had been sentenced to suffer simple imprisonment for one month each and to pay a fine of Rs. 500 each in default to suffer simple imprisonment for another 15 days each for commission of offence punishable under Section 341/149 of the Indian Penal Code 1860; to suffer rigorous imprisonment for 10 years each

and to pay a fine of Rs. 5000 each in default to suffer simple imprisonment for another 6 months each for commission of offence punishable under Section 326/149 of the Indian penal code, 1860; to suffer rigorous imprisonment for 10 years each and to pay a fine of Rs. 5000 each in default to suffer simple imprisonment for another 6 months each for commission of offence punishable under Section 307/149 of the Indian Penal Code 1860; to suffer rigorous imprisonment each for life and to pay a fine of Rs. 10,000 each in default to suffer simple imprisonment for another one year each for commission of offence punishable under Section 302/149 of the Indian Penal Code, 1860 with the direction that all the sentences would run concurrently in the period of conviction already undergone to be set off under Section 428 of the Criminal Procedure Code.

6. The 12 convicted persons have preferred 7 appeals which have been heard analogously as noted above. 4 sets of advocates have appeared for the 12 convicted persons in the 7 appeals. We have heard all the appellants through their learned advocates. It would be convenient to deal with the 7 appeals in 4 sets as the 4 sets of learned advocates have assisted the Court on the 7 appeals.

7. Mr. Souvik Mitter, the learned advocate appearing for the appellants in CRA No. 9 of 2020 and CRA No. 285 of 2020 has submitted that, although the de facto complainant had stated in the written complaint that the accused had been involved in the incident, the prosecution did not produce any evidence to corroborate the oral testimony of the de facto complainant PW 1 in this regard.

8. Mr. Souvik Mitter has contended that, the de facto complainant did not lodge the police complaint immediately upon coming to learn of the incident. He has referred to the formal First Information Report and submitted that, the written complaint was received by the police at 3:45 PM on January 20, 2017 and that the incident was claimed to have occurred at 9:30 AM on January 20, 2017. The de facto complainant had claimed that, he came to learn of the incident of assault on his father at about 10:30 AM over the mobile phone. According to him, the prosecution has created ambiguity as to whether the complaint was lodged at the first instance or after a substantial period of time having elapsed between the first encounter with the police and the actual lodging of the complaint.

9. Mr. Souvik Mitter has contended that, only PW Nos. 52 and 53 can be said to be independent eyewitnesses. They did not name any of the appellants as the assailants or had participated in the Test Identification Parade. Therefore, the complicity of the appellants has remained ambiguous.

10. Mr. Souvik Mitter has referred to the deposition of the various prosecution witnesses and contended that, there was a failure on the part of the prosecution to identify the accused persons. He has doubted the presence of the prosecution witnesses at the place of occurrence and at the time of occurrence.

11. Mr. Souvik Mitter has highlighted several aspects, which according to him, were loopholes in the manner in which the investigation was conducted. He has also referred to the deposition of various prosecution witnesses and contended that, none of the prosecution witnesses had identified any of his clients as the assailant. Therefore, he has contended that, the learned trial judge was incorrect in holding any of his clients guilty.

12. Mr. Souvik Mitter has contended that, requisite certificate under Section 65B (4) of the Indian Evidence Act, 1872 was not obtained or at least had not been produced

before the trial Court. The so-called video recording therefore could not have been relied upon by the learned trial judge to convict any of his clients.

13. Mr. Souvik Mitter has contended that, the manner in which, the incident unfolded, suggested that, the same was on the spur of the moment. The prosecution had failed to establish any prior enmity between the assailants and the injured persons and certainly not between the injured persons and his clients. No deadly weapon had been recovered from the possession of any of his clients. Therefore, the conviction as against his clients should be set aside.

14. Ms. Anasuya Sinha the learned advocate appearing for the appellants in CRA No. 102 of 2020, CRA No. 246 of 2020 and CRA No. 373 of 2021 has submitted that, the source information of the de facto complainant has not been proved by the prosecution. She has highlighted the fact that in the written complaint, the de facto complainant claimed that he came to know about the incident from some local people whereas in his oral testimony stated that he went to the place of occurrence along with his cousin and heard from PW Nos. 30 and 31 about the assailants. However, PW Nos. 30 and 31 did not support the prosecution and had been declared

hostile. Moreover, they did not speak anything about the de facto complainant.

15. Ms. Anasuya Sinha has contended that, there was inordinate delay in examining the injured eyewitnesses. The injured eyewitnesses being PW Nos. 3, 4 and 2 had been discharged on January 27, 2017, January 24, 2017 and January 28, 2017 respectively. However, their statements had been recorded on March 14, 2017 after a lapse of about 2 months. Their statements under Section 164 of the Criminal Procedure Code had been recorded on March 30, 2017 that is after a delay of about two months. She has drawn the attention of the Court to the deposition of the judicial officer recording the statement under Section 164 of the Criminal Procedure Code, in cross-examination who stated that, at the time of recording of the statements of a particular witness, remaining witnesses were waiting in the Courtroom with a constable. According to her therefore, tutoring by the police cannot be ruled out.

16. Ms. Anasuya Sinha has contended that, there was delay in holding the Test Identification Parade of her clients. She has referred to the individual dates of arrest and the surrender made by her clients and the date of the holding of

the Test Identification Parade. She has drawn the attention of the Court to the fact that one of her clients was never placed in the Test Identification Parade. The other clients although had been placed in the Test Identification Parade were not identified by the injured eyewitnesses. None of her clients had been identified in Court. Therefore, according to her, there was failure on the part of the prosecution in identifying any of her clients as assailants either during the investigation or at the trial.

17. Ms. Anasuya Sinha has contended that, the close circuit television footage and the photographs were not admissible in evidence. The source of collection had not been identified. Prosecution has failed to provide any certification of authenticity with regard to the videos or photos.

18. According to Ms. Anasuya Sinha the recovery claimed to have been made at the instance of her clients were doubtful. In this regard, she has drawn the attention of the Court to the testimonies of the several prosecution witnesses.

19. Mr. Somnath Ghoshal, the learned Advocate appearing for the appellants in CRA No. 232 of 2020 has contended that, the investigation of the case was defective. The Investigating Officer did not take any measure for matching the blood group

of the bloodstained earth with the bloodstained wearing apparel of the deceased and other victims.

20. Mr. Somnath Ghoshal has contended that, his client was not named in the First Information Report. The de facto complainant did not see his client at the place of occurrence. None of the eyewitnesses produced by the prosecution had placed his client at the place of occurrence. No incriminating material had been recovered from his client before or during the investigations. His client was produced in the Test Identification Parade held on March 24, 2017 where his client had not been identified. His client has not been identified in Court by any of the 3 eyewitnesses.

21. Mr. Somnath Ghoshal has contended that, reliance on the video footage of the incident was misplaced. In support of his contentions, he has relied upon ***All India Reporter 1960 Supreme Court 490 (State of Delhi Versus Shri Ram Lohia), All India Reporter 1990 Supreme Court 2140 (Kishore Chand Versus State of Himachal Pradesh), and 2014 Volume 10 Supreme Court Cases 473 (Anvar P.V. Vs. P. K. Basheer and Others).***

22. Mr. Milon Mukherjee, the learned senior advocate appearing for the appellants in CRA No. 242 of 2020 has

submitted that his client surrendered before the Court. He has drawn the attention of the Court to the various loopholes in the conduct of the investigation. He has contended that, his client was not identified as one of the assailants. He has referred to the evidence of the prosecution witnesses in particular to the 3 injured prosecution witnesses namely PWs 2, 3 and 4. He has contended that, his client was not identified by any of such injured eyewitnesses either in the Test Identification Parade or in Court. They had claimed that they heard the assailants taking the name of his client. He has submitted that, in absence of his client being identified as one of the assailants by the injured eyewitnesses, the conviction as against his client cannot be upheld.

23. Mr. Madhusudhan Sur, the learned additional public prosecutor appearing for the State has submitted that, the prosecution was able to prove the charges against the appellants beyond reasonable doubt. He has submitted that, 5 persons had been assaulted out of which, 2 had succumbed to the injuries. The police complaint had been lodged by the son of one of the deceased. He has contended that, the impugned judgement of conviction and the order of sentence should be upheld.

24. As noted above, prosecution had relied upon 57 witnesses at the trial. The son of one of the deceased had deposed as PW 1. He had lodged the written complaint on the basis of which the subject First Information Report was registered resulting in the chargesheet and ultimately the trial in which the appellants had been convicted. He did not witness the incident. He had gathered the information as to the involvement of the accused from the locality.

25. PW Nos. 2, 3 and 4 had claimed them to be assaulted in the incident and can be said to be injured eyewitnesses. They had stated that, the incident had taken place in front of cloth shop namely Subhas Enterprise. PW Nos. 2, 3 and 4 along with the two deceased were going to Baruipara, Kalna for applying medicine on mango trees. They had been accosted at about 8 AM when they replied that they were going to apply medicine on mango trees. The crowd did not believe them. They had shown their respective voter identity card, ration card, panchayat certificate with a view to prove their identity but the crowd did not accept them. They had claimed that the assailant had called out certain names which they heard. PW 2 had stated that, Nasir had come in a Toto and inflicted a blow on the nose of Samir Das. Others had started assaulting

them by lathi, iron rod, and plastic pipe. PW 2 had stated that, while the crowd was assaulting them, they called themselves between each other by saying Minati Halder, Raju, Pakhi, Ganesh, Dalim etc. He had identified Minati Halder in Court and failed to identify any of the others.

26. PW 3 had stated that, while the crowd was assaulting them, such crowd were calling each other by saying Minati Halder, Kanu, Dalim, Pakhi, Kartik, Ganesh, Tanmoy etc. He had also been able to identify Minati Halder in Court and failed to identify the others.

27. PW 4 had also stated that while the crowd were assaulting them, they were calling each other Kartik, Ganesh, Samir, Najir, Pakhi, Samaresh, Tanmoy, Raju and Minati Halder. He had been able to identify Minati Halder in Court. He had identified Samaresh, Tapas Roy @ Pakhi, Najir Sk, Raju Patra by touching them and claiming that such persons had assaulted them.

28. PW 5 had claimed that he was not present at the place of occurrence and heard about the incident. PW 6 had stated that, on the date at about 9:30-10 AM he was returning from the market and found some persons assembled in front of the local club. He had been declared hostile by the prosecution.

Similarly, PW 7 had stated that, he was a hawker by occupation and a labourer. On the relevant date at about 10 AM he was returning to his house where he had found a gathering of people. He had recorded a statement which he tendered in evidence.

29. A civic volunteer had deposed as PW 8. He did not witness the incident. A seizure list witness had deposed as PW 9. PW 10 had claimed that he heard about the incident. He had been declared hostile by the prosecution. Similarly, on the claims of PW Nos. 11, 12, 13, 14 that they had heard about the incident, they were declared hostile by the prosecution.

30. PW 15 had recorded a statement under Section 164 of the Criminal Procedure Code with regard to the incident. In cross examination, he had stated that he did not have any personal knowledge about the facts of the case.

31. PW 16 had recorded a statement under Section 164 of the Criminal Procedure Code with regard to the incident. He had stated that he could not identify any of the accused persons in Court. In cross-examination he had stated that he did not have any direct knowledge about the facts of the case. PW 17 had also recorded a statement before the learned

Magistrate and in cross-examination stated that he did not have personal knowledge about the facts of the case.

32. PW 18 had stated that, he heard about the incident. He had recorded a statement before the learned Magistrate. In cross-examination, he had claimed that police tuned him forcibly to record the statement before the learned Magistrate.

33. The lady constable who arrested Minati Halder had deposed as PW 19. She had claimed that, Minati Halder had confessed to assaulting the 5 persons with a branch of a tree at the place of occurrence.

34. A police personnel who had made seizure and assisted in the investigation had deposed as PW 20. PW Nos. 21, 22, 23, and 24 had been declared hostile by the prosecution.

35. PW 25 is a police personnel who had made seizure of a belt allegedly used in the assault on February 11, 2017. PW 26 is another police personnel who had made a seizure of an iron rod on February 10, 2017. PW 27 is a police constable who had witnessed some of the seizures.

36. A police constable who had collected the post-mortem report and also the injury report in respect of the injured and handed over the same to the Investigating Officer who seized the same in his presence deposed as PW 28. A police

constable who had participated in the seizure on February 15, 2017 and March 22, 2017 had deposed as PW 29.

37. A worker of a shop at the place of occurrence had deposed as PW 30. He had been declared hostile by the prosecution. The owner of the shop had deposed as PW 31. He had also been declared hostile by the prosecution. A seizure list witness had deposed as PW 32. He had been declared hostile by the prosecution.

38. The doctor who had treated one of the injured on January 20, 2017 deposed as PW 33. He had tendered the treatment sheets which were marked as Exhibit 45 series. Another doctor who had treated another injured had deposed as PW 34. He had stated that, such patient was admitted on January 20, 2017 and discharged on January 24, 2017. He had tendered the injury report in respect of the treatment of such patient which was marked as Exhibit 46.

39. A third doctor who treated another injured on January 20, 2017 had deposed as PW 35. He had stated that, such injured suffered cut injury over the head and the left ear, fracture of the left fibula, and other injuries over neck and all over body. He had stated that, as per the statement of the patient party, such patient was assaulted by a mob and that

he had been rescued later by the local police and taken to local hospital. He had tendered the prescription in respect of the treatment of such patient which was marked as Exhibit 47 and the treatment sheet which was marked as Exhibit 48 series. The medicolegal information had been tendered in evidence and marked as Exhibit 49. He has stated that, such patient was discharged from the hospital on January 28, 2017. He had tendered the discharge certificate which was marked as Exhibit 50.

40. The Judicial Magistrate before whom the persons had recorded statements under Section 164 of the Criminal Procedure Code on January 24, 2017 had deposed as PW 36. She had stated that, on January 31, 2017, another person had recorded a statement under Section 164 of the Criminal Procedure Code. On February 20, 2017, 4 more persons had recorded statement under Section 164 of the Criminal Procedure Code.

41. The doctor who had performed the post-mortem on the dead body of Anil Biswas deposed as PW 37. He had described the injuries that he found on such dead body. He had tendered the post-mortem report which was marked as Exhibit 52. He had stated that, in his opinion, the cause of

death was due to effects of injuries ante-mortem and homicidal in nature. According to him, such type of injuries may be caused out of the use of lathi, iron rod, iron made pipe, plastic pipe, branch of trees etc. In reply to a query of the Court, he has stated that, the injuries were sufficient to cause death of the deceased. In cross-examination he had stated that the death of such deceased was done anytime between 12 to 24 hours prior to the post-mortem examination. He had started performing the post-mortem examination on January 21, 2017 at 14:05 hours and completed such examination at 14:55 hours.

42. The doctor who was on duty as emergency medical officer at Kalna S.D Hospital had deposed as PW 38. He had stated that, he examined and treated 5 injured persons on January 20, 2017. He had tendered the emergency tickets in evidence which were marked as Exhibit 53, 54, 55, 56 and 57.

43. The surgeon of the same hospital had deposed as PW 39. He has stated that on January 20, 2017 he was on duty as emergency medical officer. He had examined the 5 injured persons at around 10:30 AM. He had described the treatment he prescribed for each of the individual injured.

44. Professor and Head Forensic Department of SSKM Hospital who had performed the post-mortem examination on the dead body of Narayan Das deposed as PW 40. He had described the injuries found over the dead body. The post-mortem report had been tendered in evidence and marked as Exhibit 63. He had opined that, the injuries noted might have been caused due to impact of hard blunt weapon or object like iron made pipe, iron made rod, lathi etc. or weapon of similar nature. According to him, injuries numbers 1 to 5 noted in the post-mortem report were sufficient to cause death singularly or collectively in ordinary course of nature whereas injuries numbers 6 to 8 were not sufficient to cause death singularly or collectively in ordinary course of nature.

45. A doctor working at Good Samaritan Hospital had deposed as PW 41. He had stated that, one of the injured had been admitted in such hospital where he was treated. He had tendered the treatment report of such injured patient in evidence.

46. The scribe of the written complaint had deposed as PW 42. He had stated that, he had written such complaint on the instructions of the de facto complainant and that he read over and explained the contents of the written complaint to the de

facto complainant. Thereafter, the de facto complainant had signed the same. He had identified his signature on the written complaint.

47. One of the witnesses to the inquest of the dead body of Anil Biswas had deposed as PW 43. Another witness of the same inquest had deposed as PW 44. PW 45 had witnessed the inquest of the dead body of Samir @ Narayan Das. The police personnel who had made the inquest over the dead body of Anil Biswas deposed as PW 46. PW 47 had witnessed the inquest of the dead body of Samir @ Narayan Das.

48. The Judicial Magistrate before whom, Test Identification Parade was held on March 24, 2017 had deposed as PW 48. Three witnesses had recorded statements under Section 164 of the Criminal Procedure Code before him.

49. The officer in charge who had received the written complaint from the de facto complainant and treated the same as First Information Report and filled up the formal FIR had deposed as PW 49.

50. The person who collected some video footage of the incident of assault and uploaded the same in his mobile had deposed as PW 50. He had stated that, the police seized his mobile. He had identified his signature on the seizure list

which was marked as Exhibit 69. He had stated that, he could identify the mobile set if the same was made available before him.

51. Another person who had collected some video footage of the same incident of assault had deposed as PW 51. He had claimed that, he uploaded such video footage and prepared a compact disc. He had identified his signature on the seizure list. He had stated that if such compact disc was made available he could identify the same. In cross- examination, he had stated that, he was a civic volunteer and was appointed on October 29, 2013. He had collected the video from WhatsApp. He could not identify the person from whom he had collected the video footage.

52. An eyewitness to the incident had deposed as PW 52. He did not identify any of the appellants in Court. He did not ascribe any role to any of the accused apart from saying that there was an assault. Another eyewitness to the incident had deposed as PW 53. He had also spoken of an assault without identifying the person assaulting.

53. The father of one of the deceased had deposed as PW 54. He had identified his signature on the seizure list.

54. The Investigating Officer had deposed as PW 55. He had described the manner in which he conducted the investigations including making seizures, recording statements under Section 161 of the Criminal Procedure Code and facilitating recording of statements under Section 164 thereof. He had been cross-examined at great length on behalf of the accused persons without the defence being able to elicit anything favourable to them.

55. The forensic examiner of the mobile phone and the compact disc had deposed as PW 56. He had tendered the report which was marked as Exhibit 112 in evidence. The forensic examiner who had compared the photograph with the video footage had deposed as PW 57. He had tendered his report in evidence which was marked as Exhibit 113 collectively.

56. On conclusion of the evidence of the prosecution, the accused persons had been examined individually under Section 313 of the Criminal Procedure Code where they had claimed innocence and to be falsely implicated. They had declined to adduce any defence witness.

57. 2 persons had died in the assault namely, Anil Biswas and Narayan Das. PW 37 had performed the post-mortem on

the dead body of Anil Biswas. He had described 9 wounds that he found on such dead body. His post-mortem report being Exhibit 52 and his deposition in court had established that, the death was due to effects of injuries noted in the post-mortem report, ante mortem and homicidal in nature. Such type of injuries may be caused out of the use of lathi, iron rod, iron made pipe, plastic pipe, branch of trees etc. He had stated in response to a query of the Court that, the injuries were sufficient to cause death of the deceased.

58. PW 40 had conducted the post-mortem on the dead body of Narayan Das. In his testimony he had described the wounds that he found on the dead body. He had stated that, the death was due to the effects of injuries noted in the post-mortem report, ante mortem and homicidal in nature. Therefore, reading his post-mortem report being Exhibit 63 along with his deposition, it can be said that, Narayan Das was murdered. Similarly, reading the deposition of PW 37 and Exhibit 52 together, it can be said that, Anil Biswas was murdered.

59. Prosecution had examined 57 witnesses at the trial. Out of the 57 witnesses, 3 had suffered injuries and therefore can be considered as injured eyewitnesses. Two witnesses had

claimed that they witnessed the incident. Prosecution had also relied upon photographs and video recordings of the incident to bring home the charges.

60. In ***Shri Ram Lohia (supra)*** the Supreme Court has held that, statements recorded under Section 164 of the Criminal Procedure Code were not substantive evidence and could not be made use of except to corroborate or contradict the witness.

61. In ***Kishore Chand (supra)*** the Supreme Court has held that in a case of circumstantial evidence, all the circumstances from which the conclusion of the guilt is to be drawn should be fully and cogently established. All the facts established should be consistent only with the hypothesis of the guilt of the accused. In the facts of the present case, the prosecution had relied upon eyewitnesses and injured eyewitnesses to bring home the charges.

62. On the admissibility of secondary evidence of electronic recording, the Supreme Court in ***Anvar P.V (supra)*** has held as follows: –

“14. Any documentary evidence by way of an electronic record under the Evidence Act, in view of Sections 59 and 65-A, can be proved only in accordance with the procedure prescribed under Section 65-B. Section 65-B deals with the admissibility of the electronic record. The purpose of these

provisions is to sanctify secondary evidence in electronic form, generated by a computer. It may be noted that the section starts with a non obstante clause. Thus, notwithstanding anything contained in the Evidence Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer shall be deemed to be a document only if the conditions mentioned under sub-section (2) are satisfied, without further proof or production of the original. The very admissibility of such a document i.e. electronic record which is called as computer output, depends on the satisfaction of the four conditions under Section 65-B(2). Following are the specified conditions under Section 65-B(2) of the Evidence Act:

(i) The electronic record containing the information should have been produced by the computer during the period over which the same was regularly used to store or process information for the purpose of any activity regularly carried on over that period by the person having lawful control over the use of that computer;

(ii) The information of the kind contained in electronic record or of the kind from which the information is derived was regularly fed into the computer in the ordinary course of the said activity;

(iii) During the material part of the said period, the computer was operating properly and that even if it was not operating properly for some time, the break or breaks had not affected either the record or the accuracy of its contents; and

(iv) The information contained in the record should be a reproduction or derivation from the information fed into the computer in the ordinary course of the said activity.

15. Under Section 65-B(4) of the Evidence Act, if it is desired to give a statement in any proceedings pertaining

to an electronic record, it is permissible provided the following conditions are satisfied:

- (a) There must be a certificate which identifies the electronic record containing the statement;
- (b) The certificate must describe the manner in which the electronic record was produced;
- (c) The certificate must furnish the particulars of the device involved in the production of that record;
- (d) The certificate must deal with the applicable conditions mentioned under Section 65-B(2) of the Evidence Act; and
- (e) The certificate must be signed by a person occupying a responsible official position in relation to the operation of the relevant device.

16. It is further clarified that the person need only to state in the certificate that the same is to the best of his knowledge and belief. Most importantly, such a certificate must accompany the electronic record like computer printout, compact disc (CD), video compact disc (VCD), pen drive, etc., pertaining to which a statement is sought to be given in evidence, when the same is produced in evidence. All these safeguards are taken to ensure the source and authenticity, which are the two hallmarks pertaining to electronic record sought to be used as evidence. Electronic records being more susceptible to tampering, alteration, transposition, excision, etc. without such safeguards, the whole trial based on proof of electronic records can lead to travesty of justice.”

63. In the facts of the present case, the prosecution had introduced the secondary evidence of electronic recording of the incident through PW 50 and 51. The prosecution had however failed to comply with the provisions of Section 65B of

the Evidence Act while introducing such evidence. The prosecution had failed to produce any certificate, identify the source of the video recording or produce the source which recorded the video recording or the photographs. Therefore, a court would commit an error of law in relying upon the electronic evidence that the prosecution had sought to introduce in the trial of the present case.

64. In the facts and circumstances of the present case therefore, one needs to keep aside the electronic evidence and assess the rest of the evidence to arrive at the finding as to whether the appellants were guilty of the charges that they had been charged with or not.

65. Prosecution witnesses who had recorded statements under Section 164 of the Criminal Procedure Code had either turned hostile or did not add any substance to the case of the prosecution at the trial. 3 injured eyewitnesses had deposed at the trial being PW 2, 3 and 4. They had uniformly identified Minati Halder as one of the assailants. A role had been ascribed to her in the assault claiming that she had kicked the victims by saying “bring kerosene oil, I want to burn them”.

66. PW 4 is the only person who had identified four other assailants apart from Minati Halder. He had identified Samaresh Halder and Tapas Roy alias Pakhi and claimed that such accused were assaulting them. He had identified Najir Sk as the person who assaulted them with a lathi. He had identified Raju Patra as the person who had assaulted him with blows. All the 3 injured eyewitnesses had stated that, while they were being assaulted, the assailants had disclosed an intention to kill them by their words and deeds.

67. Two persons had died. They had been murdered. The 3 injured eyewitnesses had also received injuries of various degrees. All of that had happened in one incident of assault. Presence of Minati Halder and her participation in the assault had been established by all the 3 injured eyewitnesses. The presence of 4 other persons who are the appellants in CRA No. 9 of 2020 had been established by PW 4. All the appellants in all the appeals had been charged under Sections 341/326/307/302/149 and under Section 109/34 of the Indian Penal Code, 1860. They had been convicted under Sections 341/326/307/302/149 of the Indian Penal Code, 1860.

68. So far as the appellants in the 6 other appeals are concerned, none of the injured eyewitnesses or the 2 eyewitnesses to the incident had identified any of such appellants in court or had ascribed any role to any of them. None of the injured eyewitnesses were from the locality where the incident had happened. It was not expected of them to know the names of the individuals who had assaulted them. However, it was expected of them to identify the assailants when such assailants were produced in person before them. They had identified only 5 persons out of the body of assailants produced in court. Therefore, the appellants in the other appeals should be given the benefit of the doubt and acquitted.

69. Consequent to the discussions above, we uphold the impugned judgement of conviction and the order of sentence in respect of the appellants comprised in CRA No. 9 of 2020.

70. However, we set aside the impugned judgement of conviction and the order of sentence in respect of the appellants comprised in CRA No. 102 of 2020, CRA No. 232 of 2020, CRA No. 242 of 2020, CRA No. 246 of 2020, CRA No. 285 of 2020 and CRA No. 373 of 2021.

71. CRA No. 9 of 2020 is dismissed. The appellants will serve the remainder of their sentences as imposed by the learned Trial Judge. The sentences awarded shall run concurrently. Period of detention undergone shall be set of.

72. In view of dismissal of CRA 9 of 2020, IA No. CRAN 2 of 2020 (Old No. CRAN 3107 of 2020) filed therein is also dismissed.

73. CRA No. 102 of 2020, CRA No. 232 of 2020, CRA No. 242 of 2020, CRA No. 246 of 2020, CRA No. 285 of 2020 and CRA No. 373 of 2021 are allowed. The appellants are acquitted of the charges they were charged with. They are directed to be set at liberty forthwith, if not required in any other case. They shall, however, furnish a bail bond to the satisfaction of the trial Court which shall continue for six months from date in terms of Section 437A of the Criminal Procedure Code.

74. All pending applications in all the appeals stand disposed of.

75. Trial Court records along with a copy of this judgement and order be sent down at once to the appropriate Court for necessary action.

76. 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.]

77. I agree.

[MD. SHABBAR RASHIDI, J]