

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 685 of 2007

Shatrughna Atta & Anr.

-Vs-

The State of West Bengal

For the Appellants : Mr. S. Imam
Mr. Sk. Siddique Rahaman
Md. Khairul

For the State : Mr. Avishek Sinha

Heard on : 28.11.2023, 29.02.2024, 06.05.2024

Judgment on : 05.08.2024

Ananya Bandyopadhyay, J.:-

1. This appeal is preferred against the judgment and order dated 29.11.2007 passed by the Learned Additional Sessions Judge, Second Court, Paschim Midnapore in Sessions Trial Case No. 35 of December, 2002 which arose out of G.R. Case No. 1385/98, convicting thereby the appellants for commission of offences punishable under 304 Part-II of the Indian Penal Code and sentencing them to suffer rigorous imprisonment for two years and to pay a fine of Rs.1,000/- (one thousand) each, in default, to suffer simple imprisonment for a further period of two months each.

2. The prosecution case precisely stated on 06.07.1998 at around 20:05, one Sandhya Singh, widow of late Krishna Singh, lodged a written complaint at Kharagpur Local Police Station inter alia stating on the same day, i.e. on 06.07.1998, in the morning the appellants along with other persons led by one Sambhu Dey assaulted Krishna Singh and as such he sustained grievous injury on his leg at the playground of Madpur market. Thereafter the said Krishna Singh was transmitted to Kharagpur Hospital for treatment where he subsequently died.
3. On the basis of the aforesaid complaint lodged by the de facto complainant Kharagpur (Local) Police Station Case No. 131/98 dated 06.07.1998 under Sections 147/148/149 and Section 325 of the Indian Penal Code was initiated.
4. After completion of investigation, the Investigating Officer submitted charge sheet on 28.03.1999 bearing No. 48/99 dated 28.03.1999 under Sections 147/148/325 adding Section 304 of the Indian Penal Code against Raju Guchhait, Shatrughna Atta, Kista Aigon, Bharat Atta, Ramu Atta, Lachman Atta, Shiba Prasad Dey, Nidha Atta and Ganesh Dey and discharged the name of Sambhu Dey under whose leadership the incident took place, from the instant case.
5. Charges under Section 147/148/149/325 adding Section 304 of the Indian Penal Code were framed against the accused persons to which they pleaded not guilty and claimed to be tried.
6. Prosecution examined as many as 11 witnesses and exhibited certain documents.

7. Considered the submissions of the Learned Advocate for the appellant as stated in the written notes of argument explicitly stating the inconsistencies in the evidence of the prosecution witnesses.
8. The Learned Advocate for the State submitted charges to have been framed against 9 accused persons. The evidence was recorded after 8 years of the occurrence of the incident resulting in the death of the victim which led to minor discrepancies in the evidence of prosecution witnesses owing to considerable gap between the date of the incident and the date of recording of evidence as human memory is susceptible to falter with lapse of time.
9. It was further contented that the entire incident of assault on the victim was premeditated and not instantaneous on spur of moment. It was not necessary for the inquest report to reveal the name of the assailants which, however, depicted the nature of injuries which corroborated with the evidence of the doctor, i.e. PW-8. The evidence of PW-1, PW-2 and PW-3 was corroborative in nature, conforming the fact of the victim being taken to a different place from his residence where he was assaulted severely establishing the fact of "last seen together".
10. The witnesses who turned hostile had initially supported the prosecution case. Evidently, the victim suffered injuries and the cause of the same was unexplained by the defence. The prosecution was able to prove its case and, therefore, the appeal shall be dismissed.
11. The impugned judgment dated 29.11.2007 passed by the Learned Additional Sessions Judge, Second Court, Paschim Midnapore in Sessions Trial No. 35, inter alia, stated that:

“In this case I find that charge u/S. 304 Part-I, I.P.C. was framed against these accused persons but the two accused persons have been convicted u/S. 304 Part-II I.P.C. which is minor to offence u/S. 304 Part-I I.P.C. So, in view of Sec. 222(1) Cr.P.C. that there is no bar to convict these accd pesons u/S. 304 Part-II I.P.C. as offence u/S. 304 Part-II I.P.C. is minor to offence u/S. 304 Part-I I.P.C. Hence, it is,

Ordered

that accd. Shatrughna Atta and Krista Aygon are held guilty of committing offence u/S. 304 Part-II I.P.C. Accordingly, they are convicted. After considering that the accused persons have been convicted u/S. 304 Part-II I.P.C. which is serious in nature and after considering the other facts and circumstances I do not like to proceed to give benefit to these convicts either u/S. 360 Cr.P.C. or under the provisions u/S. 4(1) of Probation of Offenders Act.

Other accd. persons viz. Lakshman Atta, Shibaprasad Roy Ganesh Dey, Raju Guchhait, Bharat Atta, Nidhu Atta, Ramu Atta are held not guilty of committing offence u/S. 148/149/304 Part-II I.P.C. Accordingly, they are acquitted and be released from bail bond and be set at liberty.”

12. In the case of **Basdev v. State of Pepsu**¹, the Hon’ble Supreme Court inter alia observed as follows:

“Of course, we have to distinguish between motive, intention and knowledge. Motive is something which prompts a man to form an intention and knowledge is an awareness of the consequences of the

¹ AIR 1956 SC 488

act. In many cases intention and knowledge merge into each other and mean the same thing more or less and intention can be presumed from knowledge. The demarcating line between knowledge and intention is no doubt thin but it is not difficult to perceive that they connote different things. Even in some English decisions, the three ideas are used interchangeably and this has led to a certain amount of confusion.”

16. *It requires to be borne in mind that the test suggested in the aforesaid decision and the fact that the legislature has used two different terminologies, ‘intent’ and ‘knowledge’ and separate punishments are provided for an act committed with an intent to cause bodily injury which is likely to cause death and for an act committed with a knowledge that his act is likely to cause death without intent to cause such bodily injury as is likely to cause death, it would be unsafe to treat ‘intent’ and ‘knowledge’ in equal terms. They are not different things. Knowledge would be one of the circumstances to be taken into consideration while determining or inferring the requisite intent. Where the evidence would not disclose that there was any intention to cause death of the deceased but it was clear that the accused had knowledge that his acts were likely to cause death, the accused can be held guilty under second part of Section 304 IPC. It is in this background that the expression used in Penal Code, 1860 namely “intention” and “knowledge” has to be seen as there being a thin line of distinction between these two expressions.”*

...

13. In the case of **Pulicherla Nagaraju @ Nagaraja Reddy v. State of Andhra Pradesh**², the Hon’ble Supreme Court observed as follows:

² (2006) 11 SCC 444

“Therefore, the court should proceed to decide the pivotal question of intention, with care and caution, as that will decide whether the case falls under Section 302 or 304 Part I or 304 Part II. Many petty or insignificant matters — plucking of a fruit, straying of cattle, quarrel of children, utterance of a rude word or even an objectionable glance, may lead to altercations and group clashes culminating in deaths. Usual motives like revenge, greed, jealousy or suspicion may be totally absent in such cases. There may be no intention. There may be no premeditation. In fact, there may not even be criminality. At the other end of the spectrum, there may be cases of murder where the accused attempts to avoid the penalty for murder by attempting to put forth a case that there was no intention to cause death. It is for the courts to ensure that the cases of murder punishable under Section 302, are not converted into offences punishable under Section 304 Part I/II, or cases of culpable homicide not amounting to murder, are treated as murder punishable under Section 302. The intention to cause death can be gathered generally from a combination of a few or several of the following, among other, circumstances : (i) nature of the weapon used; (ii) whether the weapon was carried by the accused or was picked up from the spot; (iii) whether the blow is aimed at a vital part of the body; (iv) the amount of force employed in causing injury; (v) whether the act was in the course of sudden quarrel or sudden fight or free for all fight; (vi) whether the incident occurs by chance or whether there was any premeditation; (vii) whether there was any prior enmity or whether the deceased was a stranger; (viii) whether there was any grave and sudden provocation, and if so, the cause for such provocation; (ix) whether it was in the heat of passion; (x) whether the person inflicting the injury has taken undue advantage or has acted in a cruel and unusual manner; (xi) whether the accused dealt a single blow or several blows. The above list of circumstances is, of course, not exhaustive and there may be several

other special circumstances with reference to individual cases which may throw light on the question of intention.”

...

14. The Hon’ble Supreme Court in the case of **Anbazhagan v. The State represented by the Inspector of Police**³ provided certain principles to test the intention or knowledge of an accused committing an offence as follows:

“60. Few important principles of law discernible from the aforesaid discussion may be summed up thus:

(1) When the court is confronted with the question, what offence the accused could be said to have committed, the true test is to find out the intention or knowledge of the accused in doing the act. If the intention or knowledge was such as is described in Clauses (1) to (4) of Section 300 of the IPC, the act will be murder even though only a single injury was caused. To illustrate: ‘A’ is bound hand and foot. ‘B’ comes and placing his revolver against the head of ‘A’, shoots ‘A’ in his head killing him instantaneously. Here, there will be no difficulty in holding that the intention of ‘B’ in shooting ‘A’ was to kill him, though only single injury was caused. The case would, therefore, be of murder falling within Clause (1) of Section 300 of the IPC. Taking another instance, ‘B’ sneaks into the bed room of his enemy ‘A’ while the latter is asleep on his bed. Taking aim at the left chest of ‘A’, ‘B’ forcibly plunges a sword in the left chest of ‘A’ and runs away. ‘A’ dies shortly thereafter. The injury to ‘A’ was found to be sufficient in ordinary course of nature to cause death. There may be no difficulty in holding that ‘B’ intentionally inflicted the particular injury found to be caused and that the said injury was objectively sufficient in the ordinary course of nature to cause death. This would bring the act of ‘B’ within Clause (3) of Section 300 of

³ Criminal Appeal No. 2043 of 2023

the IPC and render him guilty of the offence of murder although only single injury was caused.

(2) Even when the intention or knowledge of the accused may fall within Clauses (1) to (4) of Section 300 of the IPC, the act of the accused which would otherwise be murder, will be taken out of the purview of murder, if the accused's case attracts any one of the five exceptions enumerated in that section. In the event of the case falling within any of those exceptions, the offence would be culpable homicide not amounting to murder, falling within Part 1 of Section 304 of the IPC, if the case of the accused is such as to fall within Clauses (1) to (3) of Section 300 of the IPC. It would be offence under Part II of Section 304 if the case is such as to fall within Clause (4) of Section 300 of the IPC. Again, the intention or knowledge of the accused may be such that only 2nd or 3rd part of Section 299 of the IPC, may be attracted but not any of the clauses of Section 300 of the IPC. In that situation also, the offence would be culpable homicide not amounting to murder under Section 304 of the IPC. It would be an offence under Part I of that section, if the case fall within 2nd part of Section 299, while it would be an offence under Part II of Section 304 if the case fall within 3rd part of Section 299 of the IPC.

(3) To put it in other words, if the act of an accused person falls within the first two clauses of cases of culpable homicide as described in Section 299 of the IPC it is punishable under the first part of Section 304. If, however, it falls within the third clause, it is punishable under the second part of Section 304. In effect, therefore, the first part of this section would apply when there is 'guilty intention,' whereas the second part would apply when there is no such intention, but there is 'guilty knowledge'.

(4) Even if single injury is inflicted, if that particular injury was intended, and objectively that injury was sufficient in the ordinary

course of nature to cause death, the requirements of Clause 3rdly to Section 300 of the IPC, are fulfilled and the offence would be murder.

(5) Section 304 of the IPC will apply to the following classes of cases : (i) when the case falls under one or the other of the clauses of Section 300, but it is covered by one of the exceptions to that Section, (ii) when the injury caused is not of the higher degree of likelihood which is covered by the expression 'sufficient in the ordinary course of nature to cause death' but is of a lower degree of likelihood which is generally spoken of as an injury 'likely to cause death' and the case does not fall under Clause (2) of Section 300 of the IPC, (iii) when the act is done with the knowledge that death is likely to ensue but without intention to cause death or an injury likely to cause death.

To put it more succinctly, the difference between the two parts of Section 304 of the IPC is that under the first part, the crime of murder is first established and the accused is then given the benefit of one of the exceptions to Section 300 of the IPC, while under the second part, the crime of murder is never established at all. Therefore, for the purpose of holding an accused guilty of the offence punishable under the second part of Section 304 of the IPC, the accused need not bring his case within one of the exceptions to Section 300 of the IPC.

(6) The word 'likely' means probably and it is distinguished from more 'possibly'. When chances of happening are even or greater than its not happening, we may say that the thing will 'probably happen'. In reaching the conclusion, the court has to place itself in the situation of the accused and then judge whether the accused had the knowledge that by the act he was likely to cause death.

(7) The distinction between culpable homicide (Section 299 of the IPC) and murder (Section 300 of the IPC) has always to be

carefully borne in mind while dealing with a charge under Section 302 of the IPC. Under the category of unlawful homicides, both, the cases of culpable homicide amounting to murder and those not amounting to murder would fall. Culpable homicide is not murder when the case is brought within the five exceptions to Section 300 of the IPC. But, even though none of the said five exceptions are pleaded or prima facie established on the evidence on record, the prosecution must still be required under the law to bring the case under any of the four clauses of Section 300 of the IPC to sustain the charge of murder. If the prosecution fails to discharge this onus in establishing any one of the four clauses of Section 300 of the IPC, namely, 1stly to 4thly, the charge of murder would not be made out and the case may be one of culpable homicide not amounting to murder as described under Section 299 of the IPC.

(8) The court must address itself to the question of mens rea. If Clause thirdly of Section 300 is to be applied, the assailant must intend the particular injury inflicted on the deceased. This ingredient could rarely be proved by direct evidence. Inevitably, it is a matter of inference to be drawn from the proved circumstances of the case. The court must necessarily have regard to the nature of the weapon used, part of the body injured, extent of the injury, degree of force used in causing the injury, the manner of attack, the circumstances preceding and attendant on the attack.

(9) Intention to kill is not the only intention that makes a culpable homicide a murder. The intention to cause injury or injuries sufficient in the ordinary course of nature to cause death also makes a culpable homicide a murder if death has actually been caused and intention to cause such injury or injuries is to be inferred from the act or acts resulting in the injury or injuries.

(10) When single injury inflicted by the accused results in the death of the victim, no inference, as a general principle, can be drawn that the accused did not have the intention to cause the death or that particular injury which resulted in the death of the victim. Whether an accused had the required guilty intention or not, is a question of fact which has to be determined on the facts of each case.

(11) Where the prosecution proves that the accused had the intention to cause death of any person or to cause bodily injury to him and the intended injury is sufficient in the ordinary course of nature to cause death, then, even if he inflicts a single injury which results in the death of the victim, the offence squarely falls under Clause thirdly of Section 300 of the IPC unless one of the exceptions applies.

(12) In determining the question, whether an accused had guilty intention or guilty knowledge in a case where only a single injury is inflicted by him and that injury is sufficient in the ordinary course of nature to cause death, the fact that the act is done without premeditation in a sudden fight or quarrel, or that the circumstances justify that the injury was accidental or unintentional, or that he only intended a simple injury, would lead to the inference of guilty knowledge, and the offence would be one under Section 304 Part II of the IPC.”

15. In **Abdul Hamid and Ors. Vs. State of U.P.**⁴, the Hon’ble Supreme Court held as follows:

“7. ... A person would not be guilty of a crime merely because he was present unless his complicity in the crime can be inferred by some act or the other or by way of constructive liability. If it was a case of free fight then different considerations would arise. In Gajanand v. State 1954 CR. LJ. 1746 it is observed "A free fight is one where both sides mean to fight from the start, go out to

⁴(1991) 1 SCC 339

fight and there is a pitched battle. The question of who attacks and who defends in such event is wholly immaterial and depends upon the tactics adopted by the rival commandos." If that is the nature of the fight, in the instant case, then the witnesses have completely given a different and distorted version. At any rate there is absolutely no scope to convict any of the appellants under Section 304 Part II simpliciter as there is absolutely no material as to which one of them caused the single injury on the head of the deceased. Nor can they be convicted under Section 304 Part II read with Section 149 as it is not possible to hold that they were members of an unlawful assembly. Further the number is less than five. In any event the High Court has doubted the prosecution version as a whole. Thus there are any number of infirmities in the prosecution case. For all these reasons, the convictions and sentences passed against the appellants are set aside. The appeal is therefore allowed."

16. A conjoint reading of the aforesaid decisions of the Hon'ble Supreme Court indicated that an act that results in death, or acts that are intended to cause death or physical injury i.e. likely to result in death pertaining to offence under Section 304 Part-II of the Indian Penal Code can be inculpatory in absence of premeditation to cause death or an action which can be accidental or unintentional or only intended to a simple injury if it can be inferred that the accused possessed guilty knowledge of his act.
17. In the instant case out of 9 accused persons charged under Section 148/149/325 read with Section 304 of the Indian Penal Code, 7 accused persons were acquitted and the present appellants had been convicted.
18. The course of prosecution evidence denoted PW-1 the de facto complainant to have deposed the present appellants to have lifted the victim and exited

from his house in the morning. It was queer that PW-1 witnessed her husband to have been forcefully displaced and did not protest to the same. It was testified that a brawl occurred near a betel leaf shop of the appellant no. 1 at Madpur at 9 P.M. the night before concerning an issue of consuming betel leaf. PW-1 further stated that the accused persons assaulted the victim husband with iron rod, wooden log etc. after tying him to an electric post at Madpur with a rope. Her brother-in-law and sister-in-law were present at the place of occurrence and witnessed the incident. The accused persons fled at the sight of the police. It was further stated that *"accused Shatru and Krista lifted my husband on the police van then my husband was brought to P.S. and from there to Chandmari Hospital."* It was absurd that the present appellants did not flee from the place of occurrence and lifted the victim to the police van in contradiction to her earlier statement that the accuseds escaped from the place of occurrence at the arrival of the police. Moreover PW-2 and PW-3 present at the spot of assault did not resist the occurrence or raised an alarm against the same. During her cross-examination, PW-1 stated *"I did not make any complaint to police against Shatru and Krista while my husband was lifted on police car by them, voluntarily says- I had no time to make such complaint against them. I also went to P.S. in the same vehicle along with my injured husband. I made complaint against Shatru and Krista at the P.S."* The written complaint lodged by the de facto complainant did not prescribe the names of the present appellants however specifically mentioned that the victim had been assaulted under the leadership of Sambhu at Madpur. Ironically the said

Sambhu was not charge-sheeted. The written complaint as aforesaid apart from the name Sambhu did not mention the name of any other accused persons. PW-1 further stated of her absence at the relevant time of dispute at the betel leaf shop. She further denied to have stated to police that at the time of incident she was present at the betel shop along with her brother-in-law and sister-in-law. Evidently the deposition of PW-1 the de facto complainant is indented with inconsistencies and contradictions.

19. PW-2 the brother of the deceased victim reiterated the evidence of PW-1 further describing that the appellants Shatru and Krista came to their house and lifted the victim on a bicycle to the village Madpur and tied him with a rope onto an electric post and assaulted him with an iron rod and wooden log. At the sight of police, the accused persons fled. His injured brother was recovered by the police to Chandmari Hospital, in contradiction to the deposition of PW-1 who stated that PW-1 along with the present appellants accompanied the victim to the hospital by a police van. PW-2 thereafter stated to have reached the police station by train along with Sandhya, wife of Krishna and his wife narrated the incident at the police station contrary to the statement of PW-1 who deposed to have stated the incident to the police. During his cross-examination, PW-2 stated *“On the same night I along with Sandhya, brother’s wife again went to P.S. and then Sandhya stated about the names of assailants to P.S. I stated to police that I saw the incident of assault on the deceased. I am not able to say the names of the weapons carried by each of the accd at the relevant time. 20/25 people assembled at the P.O. at that time. I am not able to say the names of each*

accused persons present today.” The defence story of retaliation through filing of the instant criminal case related to the denial of an incident whereby the deceased victim had earlier injured one Bankim Atta with a knife and a criminal case was filed against him. PW-2 denied the suggestion to have filed the instant criminal case to save the deceased from the criminal case filed for injuring Bankim Atta brother of certain accused persons.

20. PW-3 the sister-in-law of PW-1 inter alia deposed *“Before 8 years at about 9 p.m. night near Madpur rly station there was a dispute over the issue of eating of betel leaf near the betel leaf shop of accd. Satru. Then accd Satru, Ramu, Lakshman, Ganesh Atta beat my dewar and they hit deceased Krishna with a kniefe. Then Krishna came to our house in that night. On the next morning accd. Krista and Satru came to our house and caught Krishna and took him on a cycle to the field near Madpur rly station. Then I, myself, my mother-in-law and Sandhya wife of Krishna followed them and came to the p.o. and saw that they tied Krishna with a rope in an electric post and accd Satru assaulted him with iron rod, Krista with a wooden log and Raju with a stick. Ramu and Lakshman caught hold the wife of Krishna. They also assaulted my mother-in-law. 7 accd persons namely Krista, Satru, Ramu, Raju, Lakshman, Bharat and Nidha assaulted the deceased. As a result deceased sustained bleeding injury. Thereafter my husband Dhiren Singh came. Subsequently police came and recovered Krishna and took him to P.S. by police van and from there to Chandmari S. D. hospital. Deceased died at the hospital on the same day. Local people saw the whole incident.”*

21. The evidence of PW-1, PW-2 and PW-3 cited three different episodes of the victim's displacement from the place of occurrence and transmission to the hospital either via the police station or directly to the police station. PW-2 in his deposition did not testify to have been assaulted by the accused persons to have sustained bleeding injury as stated by his wife PW-3.
22. The evidence of PW-4 was based on hearsay. PW-5, PW-6, PW-7 were declared hostile by the prosecution.
23. PW-8 the doctor who conducted the post mortem examination detected the following injuries and opined the injuries to have been due to shock and haemorrhage:

*"1. Multiple abrasions all over the body, right fore-arm,
2. Presence of clotted blood on dissection.
3. Spleen ruptured,
4. Left lung lacerated and presence of clotted blood in the left side of chest, all ribs fractured, left pleura lacerated covering on the lungs, peritoneal cavity clotted blood about 1 lit. present, intestinal wall pale."*

It was further opined that there was possibility of the above injuries to have been caused through an assault with an iron rod, wooden log or lathi.

24. PW-9 the Investigating Officer who had filed the charge-sheet during his cross-examination, inter alia, stated that *"Sandhya Singh, wife of deceased identified the P.O. to me. No electric post was found by me adjacent to the P.O. during my visit at the P.O. No rope was produced before me at that time."*

I was present while deceased was admitted in hospital. I examined the de facto complainant, wife of deceased and the relatives of deceased at the hospital about cause of injury. I did not collect admission ticket and 'bed head ticket' of the deceased from the hospital. F.I.R was lodged on the night by the wife of the deceased on the date of examination of D.C. at morning. I did not examine the persons living adjacent to the P.O. D.C. did not supply any name of the accd in writing to me during investigation." The offending weapon was not recovered by PW-9 the Investigating Officer.

25. PW-10 prepared the inquest report. In his cross-examination PW-10 stated that witness including the wife of the deceased did not disclose the name of persons/assailants involved in causing death of the deceased. Witness present at the time did not make any allegation against any person or did not disclose about the P.O.
26. The post mortem report indubitably disclosed the victim to have suffered injuries through an assault and succumbed to the same. The Investigating Officer failed to identify the place of occurrence, recover the offending weapon, seize the wearing apparel of the victim for FSL examination. None of the local people or neighbourers were examined. The victim to have been lifted from his house by the present appellants on a bicycle in a broad day light was unbelievable to the exclusion of any independent witness including PW-1 to have seen such a forcible act. There was considerable distance between the residence of the victim to the alleged place of occurrence which had to be commuted by means of a local train as per the version of PW-2. There was ample scope for the victim to raise alarm to

rescue himself from the clutches of the present appellants on his way to the place of occurrence. The Investigating Officer did not find any electric post to which the victim was tied with a rope. The rope was also not found at the place of occurrence as claimed by the Investigating Officer. The inconsistencies and exaggerations in the depositions of PW-1, PW-2 and PW-3 attribute their evidence to be untrustworthy and devoid of credibility.

27. The prosecution failed to prove that the intention or the knowledge on the part of the appellants to have committed such an act. The commission of the act of assault on the victim could not be proved through any specific overt act by the appellants except the evidence of PW-3 which was uncorroborated and apparently concocted. PW-9 the Investigating Officer did not mention the present appellants to have lifted the victim into the police van and escorted him to the police station. The time to lodge the complaint at the police station is also ambiguous.
28. The prosecution further could not prove any kind of premeditation or an action on the spur of the moment to have incited the appellants to cause the injury to the victim. If the evidence of PW-3 was to be believed then the present appellants should have been similarly circumstanced with the other co-accused persons in terms of the descriptions of overt acts.
29. It is bizarre and figmentary that the appellants traversed with the victim hale and hearty on a bicycle through a distance from the house to the place of occurrence barring the visibility of a single person.

30. The prosecution has failed to prove the involvement, intention, knowledge and guilty motive of the present appellants in committing the aforesaid offence.
31. Under the facts and circumstances, the prosecution has failed to establish its case beyond reasonable doubt and as such the criminal appeal is allowed.
32. Accordingly, the instant criminal appeal being CRA 685 of 2007 stands disposed of.
33. There is no order as to costs.
34. Lower court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.
35. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)