

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

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

CRA (DB) 25 of 2022

Dhanu Ghosh And Others

Vs.

The State Of West Bengal

For the Appellants : Mr. Sekhar Kr. Basu, Ld. Sr. Adv.
Mr. Saryati Datta, Adv.

For the State : Mr. Debasish Roy, Ld. PP
Ms. Subhasree Patel, Adv.
Ms. Rajashree Tah, Adv.

Hearing concluded on : 27.10.2025

Judgment on : 06.11.2025

MD. SHABBAR RASHIDI, J.:-

1. The appeal is in assailment of impugned judgment of conviction dated February 1, 2022 and order of sentence dated February 2, 2022 passed by learned 1st Additional Sessions Judge, Katwa in Sessions Trial No. 30 of 2012 arising out of Sessions Case No. 18 of 2010.

2. By the impugned judgment, the appellants were convicted for the offence punishable under Section 302/34 of the Indian Penal Code, 1860. Consequently, by the impugned order of sentence, the appellants were sentenced to imprisonment for life with fine of ₹5,000/- each and in default of payment of fine, the appellants were directed to undergo simple imprisonment for a further period of 6 months each.

3. It was submitted by learned advocate for the appellants that the prosecution was not able to bring home the charges levelled against the appellants; nevertheless, the learned Trial Court convicted the appellants on mere conjectures. It was also submitted that the learned Trial Court did not consider the fact that the scribe of the written complaint was not examined by the prosecution, although, it was claimed that the written complaint was scribed at the place of occurrence itself and was handed over to the police.

4. Learned advocate for the appellants also submitted that there are material contradictions in the testimony of the prosecution witnesses, especially PW1 made contradictory statements with regard to presence of witnesses at the place of occurrence. PW2 also was not able to establish the presence of appellant at the place of occurrence.

5. Learned advocate for the appellants further contended that the learned trial Court failed to appreciate that the alleged crime was

committed by a pipe gun. Firearms were also used to threaten the witnesses at the time of occurrence. However, no such offending weapon was ever recovered. There was actually no endeavour on the part of the investigating officer to recover the offending weapon. At the same time, the fired bullet was also not recovered.

6. It was further submitted by learned advocate for the appellants that although, the investigating officer stated to have found blood stains in the boat but nothing was sent for forensic examination by the investigating agency. The learned trial Court also did not appreciate that no one from the locality where the incident took place was examined during the investigation or trial. Learned advocate for the appellant also submitted that opinion of the medical officer regarding the cause of death was inconclusive and doubtful.

7. It was also contended that the questions put to the appellants in their examination under Section 313 of the Code of Criminal Procedure were complex and beyond the understanding of the appellants. The appellants were not able to understand the purport of such questions which consequently, denuded them from explaining the circumstances appearing against them in the evidence led by the prosecution. For such reason, the appellants were wrongly convicted.

8. On the other hand, learned advocate for the State submitted that there are overwhelming evidences on record as against the guilt of

the appellants. According to learned advocate for the State, the evidence led at the trial convincingly establishes the charges levelled against the appellants.

9. Learned advocate for the State submitted that eyewitnesses have established the appellants alone were the persons who perpetrated the crime. The defence has not been able to imprint any dent on the trustworthiness of the prosecution witnesses. The prosecution has convincingly proved the charge beyond all reasonable doubts and as such, the conviction and sentence imposed upon the appellants are justified and liable to be affirmed.

10. On June 19, 1999 one Gopinath Ghosh lodged a written complaint with the officer-in-charge, Ketugram Police Station. It was stated that on June 19, 1999 at about 7.45 in the morning, he along with his second brother Sridam Ghosh boarded a motorized boat from Raghupur Ghat. They were destined to Silurichar. On the way, when they reached Juranpur Ghat, his third brother Dilip Ghosh also boarded the same boat. Some more passengers including the appellants, namely Dhanu Ghosh, Fakir Ghosh, Boga Ghosh and Bangshi Ghosh also boarded the said boat there. Suddenly, Dhanu Ghosh went near the second brother of the de-facto complainant, took out a pipe gun and fired at his throat from a close distance. The other miscreants remained standing beside Dhanu Ghosh and gave out to

kill him, then only revenge would be taken. The victim, being shot fell on the floor of the boat and instantly died. The written complaint also disclosed that the de-facto complainant and others present in the boat could not object out of fear. The appellants and other miscreants, after committing the crime, got off the boat and proceeded towards Juranpur at Nadia.

11. On the basis of such written complaint, Ketugram PS Case No. 45 of 1999 dated June 19, 1999 under Section 302/34 of the Indian Penal Code and Section 25/27 of Arms Act was started against four named accused persons including the appellants. The police, upon completion of investigation, submitted charge-sheet against three accused persons. Accordingly, on the basis of materials in the case diary, charges under Sections 302/34 of the Indian Penal Code were framed against the appellants. The appellants claimed not guilty to the charges and claimed to be tried.

12. In order to substantiate the charges, prosecution examined 7 witnesses in all. In addition to ocular evidence, the prosecution also relied upon certain documentary as well as material evidences which were admitted in evidence at the trial.

13. The de-facto complainant and one of the brothers of the victim deposed as PW1. In his deposition, PW1 stated that on June 19, 1999 corresponding to 4th of Asarh, 15 years ago at about 7.45 a.m.

he along with his brother Sridam Ghosh (victim) boarded a motor boat named as 'Debdyut' from Raghupur ghat under Ketugram PS. The boat reached Juranpur ghat, where four persons, namely, Dhanu Ghosh, Fakir Ghosh, Bangshi Ghosh and Boka Ghosh boarded the said boat and surrounded PW1 and his brother. Then, Dhanu Ghosh brought out a pipe gun from under his shirt and shot at Sridam, holding it on the left side of his neck. Sridam fell down and died there. Other three accused persons were going out to kill the victim to take revenge. PW1 further stated that after such incident, the appellants got off the boat at Juranpur ghat itself and went away towards Juranpur.

14. PW1 stayed with the dead body and was crying. Local people including Dulal Ghosh assembled. At the request of PW1, Dulal Ghosh scribed the written complaint which was handed over to the police on its arrival. PW1 proved his signature on the written complaint. He also signed on the document prepared by police on its arrival. He further stated that his brother Dilip Ghosh had also boarded the boat when the appellants boarded it. PW1 identified the appellants in Court. He was cross examined at length by the defence but nothing favourable could be elicited in such cross examination.

15. The boatman of the boat named 'Debdyut' was examined as PW2. He stated that about 16/17 years ago (from March 18, 2015); he

set off by his motor operated boat from Kalyanpur ghat on river Ganges for Katwa at 7.30 in the morning. It first stopped at Rahgupur ghat where some passengers boarded and some got off the boat. The next stop was at Juranpur, where also some passengers boarded and some got off the boat. Suddenly, he heard the sound of bursting of a cycle tyre. He also heard some people crying and on enquiry, he came to know that one person was lying dead in his boat. Four persons fled from the boat after killing the said passenger, towards Juranpur. He came to know that the dead person was Sridam Ghosh of Raghupur.

16. PW2 further stated that police arrived at the spot after 1 ½ hours and seized the boat. After about 1 ½ years, he was taken to Court and recorded his statement at Katwa Court. The statement so recorded was read over and explained to him and put his left thumb impression thereon after being satisfied that it was correctly recorded. He however, did not know the appellants. He was cross examined by the defence.

17. The brother of the victim and de-facto complainant deposed as PW3. He identified the appellants in Court. He stated that about 16 years ago at about 8.00 a.m. he was cutting grass in a field at Juranpur near the ferry ghat. At that time, he heard hue and cry and rushed to the spot. He found his brother lying dead in the motor driven boat and the appellants were leaving the place of occurrence

after committing the crime. He further stated that on reaching the spot, PW3 was informed about the incident by his brother Gopinath Ghosh. The appellant Dhanu Ghosh pulled the trigger of a pipe gun in course of committing the crime. Police arrived at the spot and conducted inquest over the dead body. The boat as well as the milk container was seized by the police under a seizure list. PW3 signed both, the seizure list as well as the inquest report, which he proved at the trial. He was cross examined by the defence.

18. Another brother of the victim and de-facto complainant was examined as PW4. He collected milk from Gobra village and boarded the boat named 'Debdyut' at Juranpur ghat for his journey to Katwa. His brothers, Gopinath Ghosh and Sridam Ghosh were already in the boat which had started from Kalyanpur ghat and reached Juranpur ghat via Raghupur ghat. He further stated that the appellants boarded the boat at Juranpur ghat with him and went towards his brother Sridam Ghosh. The appellant Dhanu Ghosh brought out a pipe gun from under his shirt and pointed at Sridam. The other appellants asked him to finish Sridam Ghosh to get the revenge. Dhanu Ghosh fired at Sridam Ghosh on the left side of his throat whereupon; he fell down and died on the boat itself. Thereafter, the four accused persons left the boat and went towards Juranpur village. When PW4 and others raised hue and cry, the appellants threatened them with the

firearms. Police arrived there at about 12.30/1.00 p.m. and conducted inquest over the dead body. PW4 put his left thumb impression over such report.

19. The recording officer was examined as PW 5. He stated that on June 19, 1999 at about 12. 30 hours, he received a complaint carried by one Constable/2997 Dinesh Ghosh lodged by one Gopinath Ghosh. PW 5 endorsed the receipt of the written complaint on the complaint itself and thereafter proceeded to fill up the formal First Information Report. He proved the formal FIR and his endorsement of receipt on the complaint (Exhibit 1/2 and 4). He also proved the endorsement of the officer in charge on the formal FIR (Exhibit 1/3). PW 5 also stated that on June 20, 1999 Constable 1740 Yaquub Hossain brought the wearing apparels of the deceased from Katwa S. D. Hospital and handed over the same to the investigating officer SI Balaram Ghosh who seized the same under a seizure list in presence of PW 5. He proved his signature on such seizure list (Exhibit 5/1).

20. The investigating officer of the case was examined as PW 6. He stated that on June 19, 1999 one SI Ashes Kamar Jha was the officer in charge of Ketugram Police Station. He further stated that upon information of a murder, he accompanied the officer in charge to Juranpur ferry ghat. Reaching there, they found one dead body was lying on a boat namely Debdyut at about 10.45 AM on June 1999. A

complaint was received on the spot from one Gopinath Ghosh of Raghunathpur village and upon receipt of such written complaint, the officer-in-charge sent the complaint to the PS through Constable Dinesh Ghosh. The officer-in-charge endorsed the case to PW6 for investigation.

21. On receipt of the written complaint, the duty officer, PW5 started Ketugram PS Case No. 45 of 1999 dated June 19, 1999 under Section 302/34 of the Indian Penal Code as well as under Section 25/27 of the Arms Act. Upon telephonic information of the registration of specific case, PW6 started investigation. In his deposition, PW6 described the various steps taken by him in the investigation. He visited the place of occurrence, prepared rough sketch map with index thereof, conducted inquest over the dead body and arranged for sending the same to Katwa S.D. Hospital for post mortem examination. He proved the rough sketch map with index, inquest report and dead body challan (exhibits 6, 2 and 7) respectively. He also seized the boat, milk container and the wearing apparels of the victim under two several seizure lists which he proved (exhibits 3 and 5). In course of investigation, PW6 examined the available witnesses and recorded their statements under Section 161 of the Code of Criminal Procedure and also collected the post mortem report of the victim. However, owing to his transfer, he handed over the

investigation to the officer-in-charge. PW6 further stated that SI Tarak Nath Pal conducted the subsequent investigation and submitted charge-sheet in the case.

22. The autopsy surgeon deposed as PW7. He stated that he conducted autopsy on the dead body of one Sridam Ghosh on June 20, 1999 at about 2.15 p.m at Katwa S.D. Hospital in connection with Ketugram PS Case No. 45 of 1999 dated June 19, 1999. On examination, he detected following injuries on the dead body namely:-

- I. *“One semi lunar lacerated wound present at the left side of the neck below the angle of mandible,*
 - a) *Penetrating injury 1 ½” x 1” was the size of injury No.1.*
 - b) *Blackening and tauting of the surrounding area of the wound.*
- II. *One circular shaped wound ½” x ½” over left scapula.*
- III. *One lacerated injury present over the mandible near chin of the subject with exposure of the bone, size 1” x ¾”.*
- IV. *Four to sixth ribs fracture on the back of the subject.*
- V. *Left lung was hemothorax with lacerated injury of lungs.”*

23. On the basis of injuries found, PW7 opined that all the injuries were 24 hours old and the cause of death were the injuries noted by him which were ante mortem and homicidal in nature. According to PW7, the injuries were caused by gun shots from very close range; however, no bullet could be detected on the person of the subject. PW7 proved the post mortem report prepared in his pen and signature (exhibit 6).

24. Upon conclusion of the evidence of prosecution, the appellants were examined under Section 313 of the Code of Criminal Procedure. The appellant pleaded innocence in such examination. No defence witness was adduced on behalf of the appellants.

25. According to the case set out by the prosecution, the victim was shot dead by the appellants with the help of a pipe gun while he was travelling in a boat. One of the appellant shot at the victim whereas the other appellants were present and instigating the appellant Dhanu Ghosh to kill the victim. There appears evidence led at the trial that all the appellants were acting in furtherance of common intention to kill the victim.

26. Evidence on record goes to show that the appellants boarded the boat the victim was travelling in, shot him dead and fled away. The victim, being shot, fell down inside the boat and died at the spot. Inquest over the dead body of the victim was conducted at the place of occurrence itself. Later the dead body was sent for post mortem examination. PW7 is the autopsy surgeon who conducted the post mortem examination. He has described the injuries found on the person of the victim in his post mortem examination report which was admitted in evidence as exhibit 6. He has confirmed that the injuries found on the dead body were caused by gunshots from a close range, which were ante mortem and homicidal in nature. PW7, on the basis

of the nature of injuries detected by him during post mortem examination has also opined that the victim died due to effect of gunshot injuries. Therefore, the testimony of PW7 coupled with that of exhibit 6 leaves no doubt that the victim Sridam Ghosh was murdered.

27. The de-facto complainant, PW1 happens to be an eyewitness to the incident and brother of the victim. He has deposed that he was accompanying the victim in a boat and both of them started their journey in the boat named 'Debdyut' from Kalyanpur ghat destined to Katwa at 7.30 in the morning. It first stopped at Rahgupur ghat where some passengers exchanged. The next stop was at Juranpur, where also some passengers boarded and some got off the boat. PW1 also stated that it is at Juranpur ghat, the appellants boarded the boat, surrounded the victim and fired at him from a close range with a pipe gun. The gunshot was fired on the left side of his throat. As a result, the victim fell down in the boat and instantly died. The appellants, after committing the crime left the boat at Juranpur itself and went away towards Juranpur village. According to the case of the prosecution, nobody could do anything as the appellants were armed with firearms.

28. Another brother of the victim, PW4 had boarded the same boat at Juranpur ghat with the appellants. He is an eyewitness to the

occurrence and has corroborated the case of the prosecution as made out in the written complaint and as narrated by PW1. In his deposition, PW4 stated that he collected milk from Gobra village and boarded the boat named 'Debdyut' at Juranpur ghat for his journey to Katwa. His brothers, Gopinath Ghosh and Sridam Ghosh were already in the boat which had started from Kalyanpur ghat and reached Juranpur ghat via Raghupur ghat. He further stated that the appellants also boarded the boat at Juranpur ghat with him and went towards his brother Sridam Ghosh. The appellant Dhanu Ghosh brought out a pipe gun from under his shirt and pointed at Sridam. The other appellants asked him to finish Sridam Ghosh to get the revenge. Dhanu Ghosh fired at Sridam Ghosh on the left side of his throat. Sridam fell down and died on the boat itself. Thereafter, the appellants got off the boat and went away towards Juranpur village.

29. PW2, the boatman, although, did not claim to be an eyewitness, nevertheless, he has corroborated the time, date and manner, the occurrence was perpetrated. He did not identify the appellants as the assailants but he testified that the incident took place at Juranpur ghat. While the passengers were exchange at Juranpur ghat, he heard the sound of bursting of cycle tyre. He was reported that one person was lying dead in the boat and some persons were crying. PW1 had stated that he was crying after the incident.

PW2 also stated that his boat was seized by police and later he recorded his statement in Katwa Court.

30. Another brother of the victim, PW3 was cutting grass in the field at Juranpur at the relevant time. He arrived at the spot upon hearing hue and cry. Though, he did not see the occurrence and was reported about the incident by his brother PW1 but saw the four appellants leaving the boat and going towards Juranpur. He was a witness to the inquest conducted on the dead body of his brother as well as the seizure list through which boat and the milk container were seized.

31. The evidence of the aforesaid witnesses i.e. PW1, PW2, PW3 and PW4 are consistent in so far as it describes that the victim was travelling in a boat in the morning hours of June 19, 1999. There appears no contradiction that the incident occurred at Juranpur ghat. All the aforesaid witnesses have consistently testified that at Juranpur ghat, the appellants boarded the boat named as 'Debdyut' and shortly after boarding surrounded the victim. There is consistent evidence that the appellant brought out a pipe gun from inside his wearing apparel and shot at the victim from a close range resulting in the fatal injury. There are consistent statements of such witnesses that the appellants, after committing the crime, got off the boat where they had boarded and set off towards Juranpur. The defence has not been able

to dislodge the testimony of such witnesses as is evident from their cross examination. We are of the view that the statements of such witnesses corroborate each other and also the case of the prosecution.

32. Furthermore, there are unswerving testimony of PW1 and PW4 that the appellants, after boarding the boat, surrounded the victim and appellant Dhanu Ghosh brought out a pipe gun from inside his shirt and shot at the left side of the throat of the victim from a close range. The injuries noted by PW7 in his post mortem examination report, exhibit 6 are quite consistent to the description and manner of incident described by such witnesses. PW7 found the injuries namely,

- I. *“One semi lunar lacerated wound present at the left side of the neck below the angle of mandible,*
 - a) *Penetrating injury 1 ½” x 1” was the size of injury No.1.*
 - b) *Blackening and tauting of the surrounding area of the wound.”*

33. The penetrating injury was on the left side of the neck which according to the testimony of PW1 and PW4 was on the left side of the throat. The blackening and tauting of the surrounding area clearly suggests a gunshot from a close range. We find no force in the submissions of learned advocate for the appellant that since the bullet was not found in the body of the victim, the appellants cannot be held liable for the fatal gunshot injury.

34. From the trend of cross examination of the prosecution witnesses, it appears that the defence has sought to put up a plea that since there were several cases pending between the two sides, the complainant party and the prosecution witnesses were involved in criminal cases started at the behest of the appellant party, the appellants have been falsely implicated in this incident out of previous enmity. We are afraid, such a case made out on the part of the appellants may act like a two edged sword. Such case may also result in providing a motive behind the incident of murder of the victim. The victim might be murdered for the previous enmity between the two sides to settle the scores. We are not at all convinced with such defence put up by the appellants.

35. It is trite law that in presence of eyewitnesses, motive for committing a crime becomes redundant. In the case at hand, there are at least three eyewitnesses to the incident. PW1 and PW4 were travelling in the same boat with the victim at the relevant point of time and they have described the entire crime in detail. The aforesaid witnesses have successfully withstood their cross examination without any doubt with regard to their presence at the scene of occurrence. The descriptions of the occurrence given by such witnesses are consistent and duly corroborated by medical evidence. Moreover, PW2 has also corroborated the narration of incident given by PW1 and

PW4. Apart from that, after examination of at least two witnesses to the inquest and seizure made at the place of occurrence, non-examination of the scribe of the written complaint cannot be termed as fatal for the case of the prosecution. Although, PW3 came to the place of occurrence after the incident had happened, nevertheless, his presence at the scene of occurrence just after the incident cannot be ruled out.

36. Since it is established from the evidence led at the trial that the victim was murdered, non-recovery of the offending weapon and absence of charge under the relevant Sections of Arms Act cannot render the case of the prosecution unreliable or false.

37. Therefore, in consideration of the materials on record and in the light of discussions made hereinabove, we are of the view that the prosecution was sufficiently able to prove the charges levelled against the appellants with the help of convincing evidence. As such, we find no justification in interfering with the impugned judgment of conviction and order of sentence. We affirm the same.

38. Consequently, the instant appeal being CRA (DB) 25 of 2022 is disposed of accordingly.

39. A copy of this judgment along with the Trial Court records be remitted to the appropriate Trial Court forthwith.

40. Period of detention already undergone by the appellant shall be set off against the substantive punishments in terms of the provisions contained in Section 428 of the Code of Criminal Procedure.

41. Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties on priority basis upon compliance of all formalities.

[MD. SHABBAR RASHIDI, J.]

42. I agree.

[DEBANGSU BASAK, J.]