

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

Present:

**The Hon'ble Justice Debangsu Basak
&
The Hon'ble Justice Prasenjit Biswas**

**C.R.A. 133 of 2020
With
CRAN 2 of 2024**

Edel Khan @ Edel Sk. & Ors.

-Versus-

The State of West Bengal

For the Appellants : Mr. Kusal Kumar Mukherjee,

For the State : Mr. Debasish Roy, Ld. PP,
Mr. Bitasok Banerjee,
Mr. Ratul Ghosh.

Hearing concluded on : 04 July, 2025

Judgment On : 18 July, 2025

Prasenjit Biswas, J:-

1. This appeal is directed against the impugned judgment and order of conviction dated 14.02.2020 and 15.02.2020 passed by the learned Additional Sessions Judge, at Kandi, Murshidabad in connection with Sessions Trial No. 06(04)2918 corresponding to

Sessions Serial No. 82 of 2018 arising out of G.R. Case No. 1742/2017.

2. By passing the impugned judgment these appellants were found guilty for commission of offence punishable under Section 302/34 read with Section 149/34 of the Indian Penal Code and they were sentenced to suffer rigorous imprisonment for life along with fine of Rs. 10,000/- each. The appellant Edel Khan alias Edel Sk. was also further convicted under Section 323 of the Indian Penal Code and he was sentenced to suffer imprisonment for six months along with a fine of Rs. 1000/-.

3. Brief facts relevant and essential for the disposal of this appeal are as follows-

“One Khalil Sk., father of the victim had lodged a written complaint before the police station stating, interalia, that on 22.09.2017 at about 5.30 P.M. when his son Sujan Sk. was returning home from the school then all the accused persons armed with ‘jhaba’, ‘lathi’, ‘iron rod’ attacked the victim at the place of occurrence and assaulted him and as a result the victim sustained grievous injury on his head and body. The

de-facto complainant tried to rescue his son from the clutches of the accused persons but they also attacked him and caused injury over his body. This de-facto complainant and his son were brought to Khargram B.P.H.C. for treatment, the victim was not admitted in the hospital but was transferred to Murshidabad Medical College and Hospital and from there he was transferred to Nilratan Medical College, Kolkata but before moving from the Murshidabad Medical College and Hospital the victim died.”

4. Over the complaint a case being Khargram P.S. Case No. 348/2017 dated 22.09.2017 was started under Section 341/323/325/308/506/34 of IPC against the accused persons namely, Edel Khan, Horai Khan, Nurmahammad Khan, Ajai Khan and Jewel Sk. The case was handed over to S.I., Jayendu Debnath to investigate the case and during investigation he submitted a prayer for adding Section 302 of the Indian Penal Code before the learned S.D.J.M., Kandi and his prayer was allowed. After completion of investigation charge-sheet was submitted by the prosecuting agency against the accused persons namely, Edel

Khan @ Edel Sk., Samirul Sk. @ Nurfaj Sk., Alai Khan, Horai Khan and Jewel Sk. under Sections 341/323/325/308/506/34 of IPC showing the accused persons namely, Alai Khan, Horai Khan and Jewel Sk. as absconders.

5. Charge was framed against Edel Khan @ Edel Sk., Samirul Sk. @ Nurfaj Sk. Nur Mahammad Khan and Horai Khan under Sections 302/34 and 308/34 of the Indian Penal Code.

6. In this case, 12 (twelve) persons were cited as witnesses to the prosecution. Documentary as well as seized articles were marked as exhibits in this case. Neither any oral nor any documentary evidences were adduced on behalf of the appellants.

7. Mr. Kusal Kumar Mukherjee, learned Advocate for the appellants said that there are lots of discrepancies between the statements of the witnesses. It is said that most of the witnesses are close relatives of the victim and they are highly interested persons in this case and as such, their testimonies cannot be relied upon. Moreover, the de-facto complainant has not been examined by the Investigating Officers. It is said by the learned Advocate that although several independent persons were present

at the place of occurrence but none of them was cited as a witness to the prosecution.

8. Mr. Mukherjee further said that the impugned judgment is solely based on conjectures and surmises and not warranted by the evidence on record and there are no eye witnesses to the incident at all. It is further said by the learned Advocate that the depositions of the prosecution witnesses do not establish the essential ingredients of the offence punishable herein and in no manner substantiates the allegation sought to have been made against these appellants. The learned Advocate for the appellant contended that the conviction and sentence passed against these accused appellants for the offence under Section 302 of the Indian Penal Code simplicitor is not legally sustainable in the absence of any specific overt acts attributed to each of the accused. It is contended by the learned counsel that as there is no charge framed for the offence under Section 302 read with Section 149 of the Indian Penal Code; the impugned judgment and order of conviction is not sustainable under the law. He placed reliance upon a decision rendered by the Hon'ble Apex Court in the case of

Uday Singh-vs- State of Madhya Pradesh reported in **(2022) 1 SCC (Cri) 481**. It is said by the learned counsel that in absence of specific charge under Section 302 read with Section 149 is not sustainable as section 149 of the Indian Penal Code creates a distinct and separate offence. It is further assailed by the learned Advocate that in the instant case admittedly there is no charge under Section 149 of the Indian Penal Code at all nor any findings of the learned Trial Court that the accused had the common object to commit the offence under Section 302 of the Indian Penal Code. So, it is said by the learned Advocate that there was sufficient scope for the learned Trial Court to extend the benefit of doubt in favour of the appellants and to acquit them from the charge of murder of the son of the de-facto complainant. So, it is said that the impugned judgment and order of conviction passed by the learned Trial Court may be set aside.

9. Mr. Debasish Roy, learned Public Prosecutor appearing for the State respondent has supported both the order of conviction and sentence contending interalia that in view of the overwhelming evidence against the present appellants, there

appears no scope for the appellants to avoid the order of conviction and sentence.

10. Mr. Roy said that from inquest report, post-mortem report and also from the deposition of the doctor there was no scope to deny that Sujan Sk. was murdered by these appellants. It is said by the learned Advocate that from the post-mortem report as well as the statement of the doctor it was also proved beyond reasonable doubt that these appellants were involved behind homicidal death of Sujan Sk. It is said that PW2, PW3, PW4, PW5, PW6 and PW7 corroborated the statements made by the de-facto complainant (PW1). Mr. Roy, therefore, concludes that there is practically no merit in the present appeal and the same must be dismissed.

11. We have given our thoughtful consideration to the submissions advanced by both the parties and have gone through the judgments of the trial court as well as the evidence available on record.

12. From the FIR as well as from the statement of PW1, Khalil Sk. we find that the incident of this case occurred on 5th Aswin at

around 5.30 P.M. near the house of Bidhan. It is said by this witness that as there was previous grudge between the accused namely, Edel Khan, Harai Khan, Samirul Sk, Nur Mahammad, Alai Khan, Juwel Sk, Fateja Bibi and Gulti Bibi in one side and his son in another side relating to eating 'Kalai' from the field and as such, on the date of incident when the victim was returning from school, all the accused persons armed with 'jhapa', 'iron rod', 'lathi', assaulted his son and in the result the victim sustained grievous injuries on his head and body. Due to such assault the skull of the victim was broken and the brain matter came out. It is said by this witness that when he rushed to save the victim from the clutches of the accused persons, the accused Edel Sk assaulted him with 'jhapa' on his left leg and as a result he sustained cut injury. It is said by PW1 that he and the victim were brought to Khargram B.P.H.C. for treatment. His son was not admitted in the hospital but was transferred to Murshidabad Medical College and Hospital. It is said by this witness that he was admitted in Khargram B.P.H.C. and was given 14 stitches for repairing the injuries. It is further said by this witness that the

victim was transferred to Nilratan Medical College and Hospital from Murshidabad Medical College and Hospital but before moving from the Mushidabad Medical College and Hospital, his son died. This PW1 categorically stated that accused Harai Sk assaulted his son with an iron rod on his head and thereby his son's head was fractured and as a resultant effect the victim fell down on the ground and at that stage, the accused Edel Sk assaulted his son with 'lathi'.

13. PW2, Firoz Sk is the eye witness to the incident and said that hearing hue and cry, he rushed from his home and went to the place of occurrence and noticed all the accused persons were armed with iron rod and 'jhapa' and he further noticed that his brother's back side skull was broken and the brain matter came out. In cross-examination, this witness stated that when the incident occurred, he was in home. It is further said by this witness that on the way of returning home from school, his brother sustained injury on his head as he was assaulted and fell down on the ground. It is further said by this witness that hearing shouting he and other 'para' persons rushed to the place. It is

further said by this PW2 that the victim was taken to Khargram B.P.H.C. and he along with his father and 'boudi' accompanied the victim.

14. PW3, Nurasmin Bibi, neighbour of the victim has stated in her evidence that hearing hue and cry, she rushed to the place of occurrence and noticed assaulting was going on. The accused persons namely, Edel Sk @ Khan, Harai Sk, Samirul Sk, Nur Mahammad Sk, Alai Sk, Juwel Sk, and Khateja Bibi and Bulti Khatoon armed with iron rod, jhapa and lathi assaulted the victim Sujan Sk. and as a result he sustained fracture injury on the back side of his head and his brain matter came out. It is further said that the victim was taken to Khargram BPHC and she accompanied the victim to the said hospital and thereafter, he was taken to Murshidabad Medical College and Hospital, where he died. On cross-examination, this witness stated that at the time of incident she was in her house and hearing shouting, she rushed to the place of occurrence.

15. PW4, Gajol Sk, the brother of the victim has stated in his evidence that he saw the incident personally that Harai and Indel

assaulted his brother on his head with iron rod and thereby his brother sustained grievous hurt on his head. This witness further said that the other accused persons namely, Nur Mohammad, Alai and Samirul assaulted his brother with bamboo and Juel assaulted his brother with 'jhaba'. This witness identified the accused persons on dock.

16. PW5, Jantab Sk stated in his evidence that he saw the incident and the accused Indel accompanied with 8/10 other miscreants, namely, Harai, Nur Mohammad, Samirul, Alai and Juel, Bulti and Khateja came near the dealer shop of Bidhan with rod and lathi and they assaulted Sujan Sk on his head and thereby he sustained grievous injury. So, this witness and PW3 stated in the same voice that the accused persons were involved in murdering the victim and their testimonies also supported the statements made by PW(s) 1, 2 and 4.

17. PW6, Samiruddin Sk is another eye-witness to the incident who stated that he saw the incident and on the relevant date when he was returning home from field and as soon as he reached near the dealer shop of Bidhan, he saw that the accused Indel was

assaulting Sujan Sk with bamboo and iron rod accompanied with Nur Mohammad, Harai, Alai, Samirul and Juel and as a result the victim Sujan Sk sustained fracture injury on his skull. It is said by this witness that the victim was taken to Khargram B.P.H.C and he accompanied the victim to the hospital. It is further said by this witness that when the victim was transferred to Berhampore Hospital and at that time he also accompanied him and the victim died therein. There is no evidence on record to show that there was enmity between the accused and this witness which prompted him to give false evidence in this case.

18. PW7, Sumerun Bibi is another witness to the incident who has said in his evidence that when the victim Sujan Sk was returning home from school and when he came near the dealer shop of Bidhan, Indel Sk assaulted the victim with iron rod and other accused persons namely, Harai, Samirul, Nur Mohammad, Alai and Juel caught hold 'bamboo lathies' in their hands. It is said by this witness that in the said incident the de-facto complainant also sustained injury on his leg and he saw Indel Sk to assault Sujan Sk by iron rod and as a result the victim

sustained fracture injury on his head. From the post-mortem report and also from the statement of the doctor (PW8) we get that the death of the victim was due to the effect of the injuries which is ante mortem in nature. It appears from the deposition of PW8 wherein he stated that the injuries were caused by application of some external force which was ante mortem and homicidal in nature. This post-mortem report was marked as exhibit 8 in this case.

19. On careful perusal of the entire evidences as stated above, it appears that PW2 (brother of the victim), PW4 (brother of the victim), PW6 (victim was his cousin) and PW7 (victim was his cousin), although they are relations of the de-facto complainant and the victim but their presence at the place of occurrence at the time of incident cannot be denied and their testimonies get corroboration from the evidence of PW3 and PW5 who are the neighbours of the deceased. The law nowhere states that the evidence of the interested witness should be discarded altogether. The law only warrants that their evidence should be scrutinized with care and caution. Merely if witnesses are relative, their

testimonies cannot be discarded on that ground alone. In criminal cases, the credibility of witnesses, particularly those who are close relatives of the victim, is often scrutinized. However, being a relative does not automatically render a witness "interested" or biased. Though the eyewitnesses who have been examined in the present case were relations of the deceased and the defacto complainant but their testimonies are consistent with respect to the accused persons being the assailants who assaulted the deceased. As is revealed from the sequence of events that transpired, one of the relations was subjected to an assault. It was thus quite natural for the other relations to rush on the spot to intervene. Their presence on the spot and thus being eyewitness has been well established. In such circumstances, merely because the eyewitnesses are relations of the deceased and the defacto complainant, their testimonies cannot be discarded solely on that ground. There is nothing in the evidences on record or in cross-examination for which their statements can be disbelieved. The de-facto complainant and father of the victim (PW1) has stated in his examination-in-chief that all the accused persons assaulted

Sujan Sk on the way of his returning home from the school. Those witnesses as referred above also stated the same fact that the accused persons assaulted the victim on his way of his returning home from the school. There is nothing in the record in which the defence gave any suggestion to any of the witnesses that the incident did not occur when the victim was returning from the school. As soon as the victim reached near to the dealer shop of Bidhan, the accused persons assaulted the victim. It appears from the evidence on record that immediately after the incident both the de-facto complainant and the victim were taken to Khargram BPHC wherein the de-facto complainant was treated but the victim was referred to Murshidabad Medical College and Hospital. The de-facto complainant Khalil Sk was not admitted in the hospital and it is said by this witness (PW1) that he did not go with his son to Berhampore Hospital. It appears from the medical document in respect of the treatment of the de-facto complainant that he sustained cut injury on his left leg. So, it appears that the de-facto complainant Khalil Sk was present at the place of occurrence and he sustained injury on his person. So, the

evidence of PW1, PW2, PW3, PW4, PW5, PW6 and PW7 in their evidences in a clear language stated that these accused persons were involved in murdering the victim. Ocular evidence of the eye witnesses is corroborated by the post-mortem doctor (P.W8). P.W8, Autopsy Surgeon stated in his evidence that in his opinion, the death of the victim was due to the effect of the injuries as noted in the Post Mortem Report (Exhibit-8) are ante mortem and homicidal in nature. It is said by this witness that the injuries were caused by application of some external force which were ante mortem and homicidal in nature. In the present case the eyewitness testimonies were consistent with regard to the victim being attacked by the accused persons. Further, their presence on the spot was also well-established. It is trite law that once there is a version of eyewitness and the same inspires confidence of the court, it will be sufficient to prove the guilt of the accused. Hence, a conviction can be based upon the version put forth by the eyewitness and the medical evidence must be considered only for the purpose of corroboration of the ocular evidence.

20. It is a well-established principle of law that minor contradictions or inconsistencies in testimony do not necessarily render it unreliable, as long as the core facts remain intact. The role of the court is to discern the truth by considering the evidence in its totality and not by isolating individual inconsistencies to discredit an entire narrative. As per the medical evidence, there was a fatal injury to the head of the victim. The same was also sufficient to cause death. The brutal nature of the attack and the coordinated actions of the accused persons demonstrated clear intent to cause grievous hurt, leading to the victim's death. The benefit of doubt must be on cogent grounds. Mere conjectures or hypothetical inconsistencies cannot form the basis for acquittal when the evidence, viewed as a whole, points to the guilt of the accused persons.

21. Learned Advocate for the appellants vehemently argued on the point that no charge for the offence under Section 302 read with Section 149 of the Indian Penal Code was framed by the learned Trial Court and as such the impugned judgment and order of conviction is not sustainable under the provision of law.

22. In unmistakable terms Section 464 of the Code of Criminal Procedure specifies that a finding and sentence of a Court shall not be set aside merely on the ground that a charge was not framed or that charge was defective unless it has occasioned in prejudice. Because of non-framing of charge under Section 149 of the Indian Penal Code, the conviction would not be rendered bad, if accused has not been adversely affected thereby. If the ingredients of section are obvious or implicit, conviction in regard thereto can be sustained irrespective of the fact that the said section has not been mentioned. A fair trial to the accused is a *sine qua non* in our criminal justice system but at the same time procedural law contained in the Code of Criminal Procedure is designed to further the ends of justice and not to frustrate it by invocation of hyper technicalities. The essential and important aspect to be kept in mind is as to whether the omission to frame a specific charge resulted in prejudice to the accused. We did not think so. In non framing of a charge under section 149 of the Indian Penal Code on the face of the charges framed against the appellants would not vitiate the conclusion made by the trial

court, more so when the accused persons have failed to show any prejudice in this regard. The entire argument of the appellant is that the impugned judgment and order of conviction is not sustainable under the provision of law as there is no charge under section 149 of the Indian Penal Code framed by the Trial Court but the conviction was made under section 302 read with section 149 of the Indian Penal Code. We find that the present case is a case where there is mere omission to frame charge under section 149 of the Indian Penal Code and at the highest, it may be considered as an irregularity since the appellants have failed to show any prejudice to their conviction and sentence is at all effected. The offence in the established facts and circumstances of the case, under section 302 read with section 149 of the Indian Penal Code is implicit and omission to frame charge under section 149 of the Indian Penal Code cannot effect their conviction. In no way their conviction is rendered bad as the accused persons had assembled armed with 'jhaba', iron rod, 'lathi' and assaulted the victim. In a situation such as this, it was not obligatory upon the

prosecution to prove which specific overt act was done by which of the accused person.

23. It is not the case of the appellants that they are not able to establish their case due to defect in framing the charge and it has caused real prejudice to them. They were informed as to what real case against them or that they could defend themselves properly and in such situation no interference is required on mere technicalities. If the instant case is examined in the light of the aforesaid settled legal propositions, we do not find any force in the submissions made on behalf of the appellants.

24. It is trite law that sections 34, 114 and 149 of the Indian Penal Code provide for criminal liability viewed from different angles as regards actual participants, accessories and men actuated by a common object or a common intention; and the charge is rolled up one involving the direct liability and the constructive liability without specifying who are directly liable and who are sought to be made constructible liable. In such situation, the absence of a charge under one or other of the various heads of criminal liability for the offence cannot be said to be fatal by itself

and before a conviction for the substantive offence, without a charge can be set aside, prejudice will have to be made out.

25. Mere non-framing of a charge under section 149 on face of charges framed against appellants would not vitiate the conviction in the absence of any prejudice caused to them. Considering section 464 Cr.P.C. we are of the opinion that mere defect in language, or in narration or in the form of charge would not render conviction unsustainable, provided the accused is not prejudiced thereby. We further hold that if ingredients of the section are obvious or implicit in the charge framed then conviction in regard thereto can be sustained, irrespective of the fact that said section has not been mentioned.

26. So, if the charges not framed under a specific section shall not be the ground to vitiate the conviction, if the ingredients of that section match with the offence mentioned in the charge. Considering section 464 Cr.P.C. we are of the opinion that mere defect in language, or in narration or in the form of charge would not render conviction unsustainable, provided the accused is not prejudiced thereby. In this case charges were framed under

section 302 but not under section 149 IPC. The accused were convicted under section 302 read with section 34/149 of IPC. The Court may convict under a section not explicitly mentioned in the charge if all ingredients of the offence are made out and the accused had adequate opportunity to defend. In this case the accused were fully aware of the allegations, and there was no surprise or prejudice, the conviction under section 149 could be sustained.

27. We have already held that in case of omission or error in framing a charge, the accused has to show failure of justice/prejudice caused thereby. The technical defects in framing charges should not defeat substantive justice when the evidence shows that the accused acted in furtherance of a common object. The accused persons assaulted the victim brutally in open day light. It appears from the evidences brought on record by the prosecution that the object and intention of the accused persons were to murder the victim who was at that time without any arms. The manner by which the offence was committed would convince the court that they had common intention and object to assault

the victim. We have already said that it is evident from the evidences on record that there was dispute regarding reaping of 'kalai' in the field of Khalil Sk between the victim and the accused Edel Sk. So, there was mensrea or motive of the accused persons to assault the victim out of their previous grudge. All the accused persons with common object and intention attacked the victim without any provocation from the end of Sujana Sk and they committed the offence in pre planned manner.

28. Section 34 of the Indian Penal Code carves out an exception from general rule that a person is responsible for his own act as it provides that a person can also be held vicariously responsible for the act of others if he has the common intention to commit the offence. The common intention to bring about a particular result may also well develop on the spot between a number of persons with reference to the facts of the case and circumstances existence thereto. Section 34 operates inasmuch as this section gets attracted when a criminal act is done by several persons in furtherance of a common intention of all. In respect of common intention or the intention of individual concerned inference can be

drawn from the acts or attending circumstances of the case and conduct of the parties. It appears from the evidences on record that the accused persons formed unlawful assembly with common object and intention and assaulted the victim with 'jhapa', 'iron rod' and 'lathi' on his vital parts of the body. It is evident that all the accused persons joined hands in forming an illegal assembly in committing the offence upon the victim.

29. In the instant case, it is evident that an FIR was lodged by PW1 promptly within few hours from the time of commission of offence and all the appellants along with other co-accused had been named therein. PW1 has stated in his evidence as well as in the written complaint that there was previous grudge between the accused and the victim relating to eating of 'kalai' from the field. The prosecution has explained the motive in which the appellants attacked the victim in a pre-planned manner armed with deadly weapons and as a result the victim sustained several injuries on his person and ultimately succumbed to injuries. The father of the victim (PW1) when came to rescue his son (victim) was also assaulted and as a result he also sustained injuries on his person.

The accused person did not take any defence at the time of their examination under section 313 Cr.P.C. except the fact that they have been falsely implicated in the case. The accused persons could not explain why they came on the spot on the relevant time and date.

30. The courts below after appreciating the evidence on record rightly came to the conclusion that the appellants had been responsible for the said offence. The testimony of these witnesses had been subjected to stretching cross-examination, but nothing has been brought on record to discredit the statement of either of the eye-witnesses. The decision referred by the learned Advocate for the appellant does not lend much assistance to support the contentions made by him. The fact as narrated in the decision cited on behalf of the appellants is quite different from the facts involved in this case.

31. In view of the above, we are of the view that the instant appeal does not present special features warranting inference in the impugned judgment and order of conviction passed by the learned Trial Court. There is no cogent reason to interfere with the

impugned judgment and order dated 14.02.2020 and 15.02.2020 passed by the learned Additional Sessions Judge, at Kandi, Murshidabad in connection with Sessions Trial No. 06(04)2018 corresponding to Sessions Serial No. 82 of 2018 arising out of G.R. Case No. 1742/2017.

32. Thus, the appeal lacks merit and is accordingly **dismissed**.

33. Let a copy of this judgement along with the Trial Court Record be sent down to the Trial Court immediately for taking necessary steps in this regard.

34. Urgent Photostat certified copy of this order, if applied for, be given to the parties on payment of requisite fees.

(Prasenjit Biswas, J.)

35. I Agree

(Debangsu Basak, J.)