

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
Appellate Side

Present:

The Hon'ble Justice Ajay Kumar Gupta

C.R.R. 1333 of 2001

With

CRAN 5/2025

Chittaranjan Banik & Ors.

Versus

The State of West Bengal & Anr.

For the Petitioners : Mr. Ujjal Ray, Adv.
Ms. Manishikha Mondal, Adv.

For the State : Mr. Debasish Roy, Ld. PP
Mr. Anand Keshari, Adv.
Ms. Chandreyi Dutta, adv

Heard on : 28-11-2025

Judgment on : 10-12-2025

Ajay Kumar Gupta, J:

1. This Criminal Revisional application has been filed by the four petitioners/convicts under Section 401 of the Code of Criminal Procedure, 1973 (in short 'Cr.P.C.'), challenging the correctness, legality and propriety of the judgment and order dated 24-04-2001 passed by the Learned Sessions Judge, Hooghly in Criminal Appeal No. 28 of 2000.
2. By the aforesaid judgment and order, the Learned Sessions Judge affirmed the judgment of conviction and sentence dated 21-11-2000 passed by the Learned Assistant Sessions Judge, Additional Court, Hooghly in Sessions Trial No. 34 of 1999. By the said judgment, the petitioners, namely, Chittaranjan Banik, Bimal Sen @ Mistry, Bhim Biswas and Bijan Biswas were convicted under Section 436 read with Section 34 of IPC and sentenced to suffer rigorous imprisonment for four years each and also to pay a fine of Rs. 4,000/- each, in default, to suffer Simple Imprisonment for further six months each.
3. The petitioners were further convicted under Section 143 of the IPC and sentenced to suffer rigorous imprisonment for two months each. They were also convicted and sentenced to suffer rigorous imprisonment for three months for the offence punishable under Section 447 of the IPC. They were, however, found not guilty under Sections 379/34 of the IPC.

4. During the pendency of this Criminal Revisional application, one of the petitioners, namely, Bhim Biswas, expired on 7th March, 2007, as such, his case got abated. The other petitioners contend that they are innocent and that they have been falsely implicated in this case, that the case is out and out false. The learned Trial Court, without applying a judicious mind, mechanically and whimsically convicted the present petitioners, which was further affirmed by the learned Sessions Judge without considering the case of the Petitioners.
5. Being aggrieved by the judgments passed by both the Courts below, the petitioners filed this Criminal Revisional application for setting aside both the judgments. Hence, this Criminal Revisional application.

FACTS OF THE CASE

6. The brief facts of the case, essential for the purpose of proper and effective disposal of this case, are as under: -
 - a. One Smt. Lakshmi Sarkar lodged a criminal complaint at Balagarh Police Station alleging, inter alia, that on 07.04.1993 at about 8 am, while one Lakshmi Sarkar and her two younger sisters were inside their room, about 7-8 persons forcibly entered the house and started damaging the structure. It was alleged that they broke the tiles of the roof and the walls and took all the garments and other articles of their house, poured kerosene, and set the house

on fire. They also allegedly took away money and gold ornaments before fleeing.

- b.** It is also alleged that the de facto complainant identified (1) Chittaranjan Banik, (2) Bimal Sen, (3) Bhim Biswas and (4) Bijan Biswas as the miscreants. It is also stated that on the day before the incident, there was a dispute between the father of the complainant and the accused persons.
- c.** On the basis of the said written complaint, Balagarh P.S. Case No. 52/93 dated 07.04.1993 under Sections 448/143/436/379/427 of I.P.C. was registered and initiated investigation. After the culmination of investigation, the investigating officer submitted charge sheet against the accused persons under Sections 143/447/436/427/379 of IPC. Charge was framed against the accused persons under Sections 143/447/436/34, 379/34 of the IPC to which the accused persons pleaded not guilty and claimed to be tried.
- d.** In order to prove the charge, prosecution has examined 11 witnesses. P.W. 1, Lakhi Sarkar is the de-facto complainant, P.W. 4 is the elder sister of the de-facto complainant, PW 5 is another sister of PW 1 and PW 4. PWs 2, 3, 6, 7 and 8 are co-villagers among them PW 2 have been declared hostile and P.W. 8 was tendered by prosecution, P.Ws. 9, 10 and 11 are police witnesses.

- e. After conclusion of trial, the Learned Assistant Sessions Judge convicted and sentenced the accused persons as aforesaid.

SUBMISSION ON BEHALF OF THE PETITIONERS:

7. Learned counsel appearing on behalf of the petitioners at very outset submitted that the case may be disposed of on the basis of compromise held between the parties during the pendency of the Revisional application. Both the petitioners and the complainant came forward owing to their present cordial relation between their family members and filed joint application praying for compromise vide CRAN No. 3 of 2025.
8. In view of such compromise petition, even though the sections are not compoundable, this Court can set aside the judgments of both the Courts below and quashed the proceeding in exercising of inherent power granted under Section 482 of the CrPC to prevent the abuse of process of Court and to secure the ends of justice.
9. Learned counsel further, in alternatively, argued and submitted that the minor witnesses have identified the accused persons without test identification parade in the court dock first time during trial. As per the version of the complainant, who was minor at the time alleged incident alleged that 7 to 8 persons entered the house and committed the offence as alleged. But, despite the fact, the prosecution failed to

place them for T.I. Parade for identification. Such lacuna would definitely be fatal to the entire case.

- 10.** As per P.W. 1's testimony, nearly 100 persons allegedly stormed into a small room. In such a situation, it would be humanly improbable to single out four accused persons with certainty. Further, no T.I. Parade was conducted. Identification was first made in open court, which is inherently unsafe as it leaves scope for tutoring or afterthought. Conviction based solely on such dock identification is unsustainable in law.
- 11.** It was further submitted that there are vital contradictions and inconsistencies in the prosecution witnesses particularly PWs. 1, 4 and 5 regarding the manner of entry, number of persons and sequence of events. All these discrepancies and inconsistencies go to the root of the prosecution case and render it unsafe to convict the petitioners. Apart from that, no independent public witnesses were examined by the prosecution. Non-examination of any natural witnesses available in the vicinity vitiates the credibility of the prosecution story.
- 12.** Learned counsel further submitted that the investigating officer who was the most crucial witness, who can prove the manner of investigation, seizure and verification of facts, has not been

examined. This omission violates the settled principle of fair trial which requires for cross-examination by the defence case.

13. The learned counsel further submitted that the allegation of setting ablaze the house of the complainant is concocted story because no seizure of utensils, garments, burnt household articles or any remnants were made from the place of occurrence. Instead, only one burnt bamboo was seized. Such burnt bamboo collected at any place. Therefore, the prosecution failed to prove the actual incident by producing corroborative evidence which creates another doubt of the alleged incident. Even, no expert evidence such as a fire brigade report, forensic examination of burnt materials or even medical report of burns/smoke injuries was produced. The absence of any scientific corroboration makes the allegation of “mischief by fire” under Section 436 of the IPC wholly unsubstantiated.

14. Learned counsel finally prays for setting aside the judgments of both the Courts below and submitted that if any doubt creates then criminal jurisprudence mandates that such benefits go in favour of the petitioners.

SUBMISSION ON BEHALF OF THE STATE:

15. Per contra, learned Public Prosecutor appearing on behalf of the State strongly opposed the prayer made by the learned counsel appearing on behalf of the petitioners and further submitted that the Learned

Appellate Court has rightly dismissed the appeal and affirmed the judgment of conviction and sentence. The whole case was based on eyewitnesses, particularly the minor girls. PWs. 1, 4 and 5. They have clearly stated the entire facts in toto. Learned PP prays for dismissal of this Revisional application.

FINDINGS AND ANALYSIS OF THIS COURT

- 16.** Having heard the arguments and submissions made by the learned counsel appearing for the respective parties, and upon carefully going through the record, this Court notes that although independent witnesses have been examined by the prosecution, the Trial Court principally placed reliance on P.W. nos. 1, 4, and 5, who were very much present at the place of occurrence.
- 17.** It is seen from the evidence of the P.Ws. 1, 4 and 5 that they have narrated the incident as they have seen the occurrence with their own eyes. Three eye witnesses, though they were minor, cannot be discarded on the contention that they have been tutored. Their evidence could not be rebutted or impeached or shaken by the defence.
- 18.** It is settled principle of law that even an ocular witness is sufficient for conviction if the evidence is reliable and trustworthy. During the incident, as per the evidence of P.Ws. 1, 4, and 5, when their house was damaged by the petitioners and others, they cried for help, but

none of the neighbours in the vicinity came forward to rescue them. Ultimately, the accused persons set fire to the house of the P.Ws. 1, 4 and 5. The witnesses firstly narrated the incident to P.W. 2, Nirmal Biswas. Just after the incident, under whose custody the said witnesses had to stay for a period of not less than 6 months because they had no roof over their heads for proper shelter.

19. As regards the status of minor witnesses, the Supreme Court in ***Dattu Ramrao Sakhare v. State of Maharashtra***¹ held that evidence of a child witness is acceptable if it is free from tutoring and inspires confidence. In the present case, the testimonies of P.W. nos. 1, 4, and 5, are natural, consistent, and unshaken in cross-examination.
20. This Court also does not find any vital contradictions or inconsistencies from the statements of P.W. nos. 1, 4 and 5. These three witnesses also identified the accused persons in the Court dock after questions were put before them by the Trial Court.
21. In this regard, reliance maybe placed in the case of ***Gurunath Donkappa Keri v. State of Karnataka***², particularly in paragraph 32, wherein the Supreme Court held as follows:-

“32. All the prosecution witnesses are natural witnesses. The essential ingredients to prove the crime against the accused have categorically been stated by them. Both the courts below have

¹ (1997) 5 SCC 341

² (2009) 13 SCC 34

placed implicit reliance on their testimonies. Our attention has not been drawn to any major contradiction in the deposition of the witnesses so as to disbelieve the entire prosecution case. The very fact that they had been taking the deceased who were grievously injured at that point of time from hospital to hospital is itself a pointer to show the state of mind they were having at the relevant time. It is, therefore, too much to expect that they would not only state the details of the manner in which the occurrence had taken place but also the names of all the persons who witnessed the same.”

- 22.** The defence had ample opportunity to cross-examine PW 1, PW 4 and PW 5 on identification but could not impeach their testimony. Moreover, the witnesses stated that they had known the accused previously, diluting the necessity of a T.I. Parade.
- 23.** Another witness i.e. P.W. 6, also supported that the house was burning, he saw the same. All the witnesses have successfully deposed evidence, efficiently and without any contradictions or inconsistencies.
- 24.** So far as the submissions made by the learned counsel for the petitioners on the issue of compromise between the parties during the pendency of this revisional application, this Court is unable to accept such submission when the offence is serious in nature. The petitioners were convicted under Sections 143/447/436/34 of the IPC. Offences under sections 436/34 are grave and heinous. Setting fire to the house in question, where only minors were present, is a

heinous crime. No parents were present at the time of occurrence. Therefore, by no stretch of imagination, can this type of case be quashed on the basis of compromise. Such offences are non-compoundable and quashing on the basis of compromise is impermissible.

25. Indeed, non-examination of the investigating officer, in the facts of the instant case, is an irregularity but it is not a fatal defect. This Court is of the opinion that non-examination of police witnesses or non-seizure of other materials from the spot will not affect the case, particularly in the case of defective investigation or lapses on the part of the investigating officer during the investigation.
26. In this regard, reliance may be placed in the case of **C. Muniappan v. State of Tamil Nadu**³, where the Supreme Court held that defective investigation does not vitiate the prosecution when there is credible ocular evidence. Similarly, in the case of **Shyamal Ghosh v. State of West Bengal**⁴, it was held that lapses on the part of the I.O. cannot be allowed to defeat the prosecution's case supported by trustworthy witnesses.
27. It will also not affect the result of the prosecution case when eye-witnesses, particularly minors, narrate the incident without any contradictions or inconsistencies.

³ (2010) 9 SCC 567

⁴ (2012) 7 SCC 646

- 28.** Therefore, this Court does not find any error, illegality or impropriety in the findings of the learned Trial Court as well as the Learned Appellate Court. The judgments of both the courts below call for no interference.
- 29.** Accordingly, **CRR 1333 of 2001** is, thus, **dismissed**. **CRAN 5 of 2025** and all pending connected applications, if any, are also, thus, disposed of.
- 30.** Judgements and orders dated 24.04.2001 and 21.11.2000 Passed by the both courts below are hereby affirmed. Petitioners are hereby directed to surrender themselves before the Trial Court at once to undergo incarceration of the remaining portion of sentences.
- 31.** Period of detention suffered by the Petitioners during investigation, enquiry and trial shall be set off from the substantive sentence imposed upon the Petitioners in terms of Section 428 of the Code of Criminal Procedure.
- 32.** Let a copy of this Judgment be sent to the Learned Courts below for information and necessary steps.
- 33.** Interim order, if any, stands vacated.
- 34.** Case Diary, if any, be returned to the learned counsel for the State.
- 35.** Parties shall act on the server copies of this Judgment uploaded on the website of this Court.

- 36.** Urgent photostat certified copy of this Judgment, if applied for, is to be given as expeditiously to the parties on compliance of all legal formalities.

(Ajay Kumar Gupta, J)

P. Adak (P.A.)