

**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.(DB) 94 of 2022
IA No. CRAN 1 of 2022
CRAN 2 of 2025**

Rejuan @ Sk. Rejuan & Anr.

-Versus-

The State of West Bengal

With

**C.R.A. (DB) 95 of 2023
IA NO: CRAN 2 of 2014**

Mustafa @ Golam Mustafa

-Versus-

The State of West Bengal

For the Appellants : Mrs. Nayaab Mulla, Adv.
[CRA (DB) 94 of 2022] Mr. Sourat Nandy, Adv.

For the Appellants : Mr. Anand Keshari, Adv.
[CRA (DB) 95 of 2023] Ms. Soumili Choudhury, Adv.
Ms. Pubali Debnath, Adv.

For the State : Mrs. Anasuya Sinha, Ld. A.P.P.
Ms. Rajnandini Das, Adv.

Hearing concluded on : 11th July, 2025

Judgment On : 21st August, 2025

Prasenjit Biswas, J:-

1. Both the appeals are directed against the impugned judgment and order dated 27.04.2022 and 28.04.2022 passed by the learned Additional Sessions Judge, Haldia, Purba Medinipur in connection with Sessions Trial No. 05(03) of 2017.

2. By passing the impugned judgment and order, the appellant Mustafa @ Sk. Golam Mustafa, was convicted under Section 302/201/411/34 of the Indian Penal Code. This accused was also convicted for committing the offence punishable under Sections 25 and 27 of the Arms Act. The accused Rejuan @ Sk. Rejuan and Amrez @ Sk. Amrez were convicted under Sections 302/201/34 of the Indian Penal Code. The accused Mustafa @ Golam Mustafa, Rejuan @ Sk. Rejuan and Amrez @ Sk. Amrez were sentenced to suffer imprisonment for life and to pay fine of Rs. 10,000/- each, in default of payment of fine to suffer further rigorous

imprisonment for a period of six months each on their conviction under Section 302 read with Section 34 of the Indian Penal Code. So far as the offence under Section 201 of the Indian Penal Code is concerned, the convicts Mustafa @ Golam Mustafa, Rejuan @ Sk. Rejuan and Amrez @ Sk. Amrez were sentenced to undergo rigorous imprisonment for three years each and to pay fine of Rs. 2000/- each, in default of payment of fine to undergo simple imprisonment for two months. So far as the offence under Section 411 of the Indian Penal Code is concerned, the convict Mustafa @ Golam Mustafa was sentenced to undergo rigorous imprisonment for two years. The accused Mustafa @ Sk. Golam Mustafa was further sentenced to undergo imprisonment for three years with fine of Rs.3,000/- and in default of payment of fine, to undergo simple imprisonment for three months for commission of offence under Section 25 of the Arms Act. So far as the offence under Section 27 of the Arms Act is concerned, the convict Mustafa @ Sk. Mustafa was sentenced to undergo rigorous imprisonment for three years with fine of Rs. 3000/- and in default of payment of fine to undergo simple imprisonment for three months.

3. Being aggrieved and dissatisfied with the said impugned judgment and order of conviction the convict Mustafa @ Sk. Mustafa preferred an appeal being CRA 95 of 2023 and other two convicts namely, Rejuan @ Sk. Rejuan and Amrez @ Sk. Amrez preferred another appeal challenging the said impugned judgment and order of conviction being CRA 94 of 2022.

4. In short campus the story of the prosecution is as follows:

“The FIR was lodged before Nandigram Police Station by one Jahanara Khatun, the wife of the deceased Sk. Kurban on 28.10.2006 on the basis of information gathered from her daughter Mamoni Khatun. It is stated in the written complaint that on that day at about 12 noon, the husband of the de-facto complainant was returning towards his house from the matrimonial home of his daughter Mamoni Khatun at village Sarberia under P.S. Nandigram on a bicycle. Their daughter Mamoni Khatun was also with the deceased. On reaching near Khalparh, village Dakshin Nandigram, the deceased stopped his bicycle and asked

her daughter to wait there since the accused Mustafa called him. The accused Mustafa was standing at a distance of around 100 cubits away from Mamoni Khatun. It is further stated that during conversation Mustafa shot fire on the head of the deceased Sk. Kurban from a fire arm and as a result the deceased fell down having sustained gunshot injury. Thereafter, the accused Rejuan @ Sk. Rejuan and Amrez @ Sk. Amrez along with other accused persons came to the place of occurrence and started assaulting on the deceased. The daughter of the deceased Mamoni Khatun who was at the place of occurrence started shouting and rushed to the house of the sister of the deceased namely, Manu Bibi which is situated near to the place of occurrence. After sometime Mamoni Khatun along with Manu Bibi came to the place of occurrence and saw that the accused Mustafa @ Golam Mustafa, Rejuan @ Sk. Rejuan and Amrez @ Sk. Amrez were taking the dead body of the deceased on a motor-cycle towards

Samsabad. The accused Mustafa was driving the motor-cycle and other two accused persons namely, Rejuan @ Sk. Rejuan and Amrez @ Sk. Amrez were assisting him. It is stated that the accused persons had thrown the dead body of the deceased into the water of a 'khal' (canal) at Amgachi, Samsabad and they fled away from the spot. It is the case of the prosecution that the accused Mustafa @ Sk. Golam Mustafa, Rejuan @ Sk. Rejuan and Amrez @ Sk. Amrez snatched the motorcycle being registered no. WB-30C/3301 from one Sk. Kurban, son of Sk. Israfil of Sarberia by which the dead body of the deceased was carried from Dakshin Nandigram Khalparh to Samsabad."

5. Over the complaint lodged by the de-facto complainant a case being Nandigram P.S. Case No. 69/2006 dated 28.06.2006 under Section 302/201/392/34 of the Indian Penal Code and under Sections 25 and 27 of the Arms Act was started against the accused Mustafa, Rejuan and Amrez.

6. After completion of investigation charge-sheet was submitted by the prosecuting agency against these appellants/convicts along with other accused persons under Section 302/201/392/411/120B/34 of the Indian Penal Code and under Sections 25(1A)(1B)/27 Arms Act. Trial Court framed charge against these appellants along with other accused persons under Sections 302/201/392/411/120B/34 of the Indian Penal Code and the separate charge was framed under Sections 25 and 27 of the Arms Act and under Section 411 of the Indian Penal Code against the accused Mustafa @ Sk. Golam Mustafa.

7. In this case, 18 (eighteen) witnesses were examined by the side of the prosecution and documents were marked as exhibit 1 to exhibit 16 on behalf of it. In this case, two seized articles viz., one fire arm and one motorcycle were marked as Material Exhibits I and II on behalf of the prosecution. Neither any oral, nor any documentary evidences were adduced on behalf of the defence.

8. Mr. Anand Keshari, learned Advocate for the appellant/convict Mustafa @ Golam Mustafa said that the evidences on record does not justify the conviction of the

appellants and as such, the impugned judgement and order of conviction does not stand under the eye of law. It is said by the learned Advocate that the conviction of this appellant is based on the testimony of the sole eye-witness (PW2) who is the daughter of the deceased, who has deposed about the role played by the appellants, but said deposition is clouded with suspicions and doubts. It is said by the learned Advocate that the evidences of the prosecution witnesses is exaggerated and there is exaggeration of the fact and as such, no reliance can be placed on the oral evidence of PW1, Jahanara Khatun (wife of the deceased), PW2, Mamoni Khatun (daughter). It is further submitted by the learned Advocate that PW1 is not an eye-witness and the entire case of the prosecution suffers from defects. There are contradictions and omissions in the statements of these witnesses for which the evidences of the prosecution cannot be said to be trustworthy. As per submission of the learned Advocate the ballistic report is not matching with the seized gun and there is no signature or thumb impression of the accused persons on the disclosure statement on the basis of which the alleged fire arm and stolen motorcycle were

recovered. Merely, recovery of articles by the police on the basis of statement by the accused only proves the recovery but it does not prove the guilt of this accused.

9. It is said by Mr. Nayaab Mulla, the learned Advocate for the appellants in CRA (DB) 94/2022 that the prosecution has failed to prove any reliable evidence regarding involvement of the other two accused persons i.e. Rejuan and Amrez. It is contended that the prosecution has failed to prove that they conspired to murder the deceased Sk. Kurban and it has not been proved that in furtherance of common intention all the accused persons committed murder the deceased Sk. Kurban.

10. Mrs. Anasuya Sinha, learned Advocate for the State said that there is nothing material on record for which the impugned judgment and order of conviction may be interfered with. It is said by the learned Advocate that PW2, Mamoni Khatun, the daughter of the deceased and the de-facto complainant is the witness to the incident. The deposition made by PW2 gets corroboration from the other witnesses i.e. PW1, Jahanara Khatun (wife of the deceased) and PW3, Manu Bibi (sister of the deceased) as well as supported

by the medical evidence. It is contended by the learned Advocate that evidence of solitary eye-witness if it is found wholly reliable can form the basis of conviction. The fire arm used in this crime has been recovered on the pointing out of the accused Mustafa and motorcycle which was snatched from Sk. Kurban (PW4) and was used to carry the dead body of the deceased was recovered at the instance of the accused Mustafa. So, it is said that the prosecution has proved the case against these appellants/convicts beyond reasonable shadow of doubt. It is prayed that the instant appeal may be dismissed outright and the impugned judgment and order of conviction may be affirmed.

11. We have considered the rival submissions advanced by both the parties and have gone through all the materials on the record.

12. PW2, Mamoni Khatun, the daughter of the deceased Sk. Kurban is the solitary eye-witness to the incident. She stated in her evidence that on the relevant date i.e. on 28.10.2006 at about 10.30/11.00 A.M. she left her matrimonial home with the deceased and started proceeding to her father's house by sitting on the carrier of the bicycle of his father and when they reached

near at Khalparh at Dakshin Nandigram, the deceased stopped his bicycle and asked her to wait there as the accused Mustafa called him. It is further stated by this witness that his father (deceased) proceeded towards the accused Mustafa who stood at a distance about 100 cubits from her and thereafter conversation between the deceased of the accused Mustafa was started. It is said that during such conversation the accused Mustafa shot fire from his pistol on right side of the head of his father, just before his right ear and then the deceased fell down at the side of 'khalparh'.

13. PW2 in her evidence further stated that the house of PW3 Manu Bibi (sister of the deceased) is at near the said 'khalparh' and when the deceased fell down sustaining bullet injury, the accused persons namely, Rejuan @ Sk. Rejuan and Amrez @ Sk. Amrez along with other accused persons came to the spot and started to assault her father. Then, this PW2 started shouting and rushed to the house of PW3 and reported her about the incident and thereafter this witness and PW3 came back to the place of occurrence and found the accused Mustafa was taking the dead

body of the deceased on a motorcycle and at that time the accused Rejuan @ Sk. Rejuan and Amrez @ Sk. Amrez along with other accused persons were assisting the accused Mustafa to take the dead body of his father to the motorcycle. The said motorcycle was driven by the Mustafa and this witness (PW2) started running behind the motorcycle and noticed that when the said motorcycle was going to 'uchhu-pool' dead body of her father along with others fell down on the ground with the said motorcycle. Thereafter, these accused persons again took the dead body on the motorcycle. During cross-examination this PW2 reiterated that on hearing the sound of firing, she realised that her father sustained bullet injury. This witness has stated in his evidence that these accused persons were taking the dead body of the deceased towards Samsabad on a motorcycle. It is said that this PW2 along with PW3 went to the house of the deceased and informed PW2 who is wife of the deceased about the incident happened.

14. PW1, Jahanara Khatun lodged the written complaint before the police station after having come to know about the incident

from her daughter Mamoni Khatun (PW2). The names of the accused Mustafa @ Sk. Golam Mustafa, Rejuan @ Sk. Rejuan and Amrez @ Sk. Amrez were mentioned in the written complainant, PW1 has stated in her evidence that the incident took place on 28.06.2006 at about 1.30 P.M. at village Dakshin Nandigram by the side of a Khal and on that date at about 7-00 A.M. her husband, the deceased Sk. Kurban left home and proceeded for the matrimonial home of their daughter (PW2) and on the same date when the deceased was returning home along with PW2 from the matrimonial home of PW2, the accused Mustafa who stood at Dakshin Nandigram by the side of a 'khal' called him. It is said by this witness that the deceased stopped his motorbike and keeping PW2 with motorbike at place, he went to the accused Mustafa and during conversation the accused Mustafa shot fire on the head of the deceased by a pistol and as a resultant effect the deceased fell down in a nearby 'khal'. It is further said by this witness that on seeing her husband in that condition, the accused Rejuan @ Sk. Rejuan and Amrez @ Sk. Amrez along with other accused persons came to the spot and started assaulting her husband with knife

and other weapons. This witness is not the witness to the incident and she stated in her evidence that she did not see any incident and she reached to the place of occurrence after about an hour of incident. So, this PW1 lodged complaint on the basis of the information getting from PW2 who is their daughter and only eye-witness to the incident.

15. PW3, Manu Bibi in her evidence has stated that when she and PW2 (Mamoni Khatun) rushed to Khalparh of village Dakshin Nandigram, then she noticed that the dead body of the deceased was on a motorcycle and two persons caught hold the dead body of the deceased and one person was driving the motorcycle. Although, this witness could not identify the accused person but what it is evident from her deposition that three persons were involved in the crime.

16. PW4, Sk. Kurban has stated in his evidence that on the relevant date and time of incident he was proceeding towards Dakshin Nandigram on his yellow coloured motorcycle bearing no. WB-30-C/3301 and when he was crossing Khalparh at village Samsabad, then two persons, whose faces were under black cloth,

suddenly intercepted him and forcefully got him down from his motorcycle and thereafter they left the place with his motorcycle. This incident of snatching motorcycle was reported to the concerned police station by this PW4 and after 20/25 days from the date of incident police informed about the recovery of his motorcycle.

17. The carbon copy of post-mortem report is marked as exhibit in this case and from which it appears that the autopsy surgeon opined that the cause of death of the deceased was due to the effect of gunshot injury –ante-mortem homicidal in nature. The autopsy surgeon who conducted the post-mortem report was not examined in this case but the carbon copy of the said report with original signature and seal of the surgeon has been marked as exhibit 14 on the basis of petition under Section 294 of Cr.P.C. filed by the side of the prosecution. The genuineness of the said post-mortem report was not disputed by the side of the defence and the same was marked as exhibit in connection with this case before the Trial Court. The post-mortem report indicates that the dead body was of the deceased Sk. Kurban was brought from

Samsabad to the District Hospital, Purba Medinipur, Tamluk for conducting post-mortem examination.

18. PW15 in his evidence has stated that during investigation he arrested the accused Golam Mustafa and when the accused was in police custody, he recovered one country made pipe gun and one motor cycle under a seizure list dated 13.11.2006 at the instance of Sk. Golam Mustafa. The seizure list dated 13.11.2006 and the disclosure statement of accused Golam Mustafa are marked as exhibits 5/1 and 13 respectively in this case.

19. In this case, the seized fire arm was sent for getting opinion from the ballistic expert. The ballistic report is marked as exhibit in this case by PW13. At the time of giving deposition PW13 has said that he conducted test firing in the laboratory and performed microscopic examination on the basis of which he came to the conclusion that the pistol was in working order, it was fired through previously; the improvised ammunition was not live. But PW13 could not be able to give opinion definitely as to whether bullet was fired from the pistol or not due to insufficient data. It appears from the post-mortem report that the cause of death of

the deceased Sk. Kurban was due to effects of gunshot injury. PW2 who is solitary eye-witness to the incident has stated in her evidence that the accused Mustafa shot fire on the head of her father.

20. It is the well-settled principle that evidence of solitary eye-witness if it is found wholly reliable can form the basis for conviction and there is no legal impediment in basing the conviction of the accused solely on the testimony of a single witness. In the instant case, the sole eye-witness PW2 (Mamoni Khatun) has stood firm during examination and cross-examination. She has given a cogent, consistent and natural account of the incident. There is no material contradiction in her version and the Trial Court came to the conclusion of the guilt of the accused Mustafa @ Sk. Golam Mustafa upon her testimony to be natural, convincing and reliable. The presence of the accused Mustafa at the time of occurrence is proved. It is further proved that the accused Sk Mustafa used fire arm to murder the victim. There is no legal bar in convicting a person of sole testimony of a single witness, but the evidence as solitary witness must be

scrutinized with care and caution, but once the Court is convinced of truthfulness of the witness, the conviction can be sustained.

21. It is contended by the learned Advocate for the convict Golam Mustafa that no reliance can be placed upon the carbon copy of the Post Mortem Report which is marked as exhibit in the case. It is a settled principle of criminal jurisprudence that the prosecution is required to prove its case beyond reasonable doubt. Ordinarily, when a post-mortem report is relied upon, the examination of the doctor who conducted the autopsy is necessary to establish the cause of death and to clarify any medical findings recorded therein. However, there may be circumstances where the autopsy surgeon is not available or does not come to depose before the Court. In the present case, although the autopsy surgeon did not enter the witness box, the carbon copy of the post-mortem report has been duly brought on record and marked as an exhibit without objection from the defence. The said document forms part of the official record and has been proved through proper custody. In such a situation, when the genuineness of the report is not challenged, the Court is not precluded from taking into account its

contents, especially where it corroborates other substantive evidence on record. Non-examination of the doctor who conducted the post-mortem is not necessarily fatal to the prosecution's case, particularly when the report is admitted into evidence and supports the prosecution version in material particulars. Carbon Copy of the Post Mortem Report is of the victim Sk. Kurban and bears the original signature of the autopsy surgeon and original seal of the Medical Officer, District Hospital Purba Medinipur. Therefore, in the present case, the carbon copy of the post-mortem report having been admitted in evidence and duly exhibited, carries evidentiary value under Section 294 Cr.P.C read with Section 65 of the Evidence Act. The defence did not demand the presence of the medical officer nor disputed the authenticity of the report. Hence, the report can be safely relied upon to support the prosecution's case, particularly where it aligns with the ocular and circumstantial evidence on record. The Trial Court is thus justified in placing reliance on the post-mortem report even in the absence of oral testimony by the autopsy surgeon, especially when the

chain of evidence otherwise remains unbroken and the guilt of the accused is established beyond reasonable doubt.

22. It is well settled that the criminal justice system does not require a case to be proved with absolute perfection. Minor discrepancies or technical defects in the chain of evidence do not necessarily vitiate the prosecution's case when the core evidence remains intact and reliable. In the present case, although the ballistic expert's report reflects slight variations in the description of the seized firearm, the fact remains that the firearm was seized at the instance and in presence of the accused Golan Mustafa, under a duly recorded seizure memo. Variations in the ballistic report do not go to the root of the prosecution's case unless the identity of the weapon itself is seriously disputed or evidence suggests tampering. The Trial Court observed that the recovery of a firearm is proved and is made in the presence of the accused, then minor discrepancies in its description between the seizure memo and expert report do not warrant acquittal, unless it affects the authenticity of the recovery itself. In the case at hand, the accused was present at the time of seizure, and there is no

allegation of fabrication or substitution of the weapon. The firearm has been consistently referred to throughout the investigation and trial. Therefore, the Court is entitled to place reliance on the recovery and ballistic evidence, despite minor discrepancies, and such variations cannot be a ground for acquitting the accused when the substantive evidence of recovery is otherwise trustworthy.

23. Coming to the facts with the present case, the eye-witness Mamoni Khatun (PW2) has given a consistent, coherent and credible narration of the events that unfold on the date of incident. Her testimony has remained unshaken during cross-examination and is found to be natural and truthful. She had no enmity with the accused and had no reason to falsely implicate him. The presence of this witness (PW2) on the spot is also established through circumstantial details and no material inconsistencies have been brought out by the defence to discard her testimony. Her statement is also inconsonance with the medical evidence on record i.e. (post-mortem report) regarding the nature of the injuries and cause of the death. So, in this case this PW2 being a

solitary eye-witness is found reliable and trustworthy and her evidence is sufficient to base conviction. We have carefully scrutinised her evidence and it inspires our confidence and as such, there is no impediment in restricting conviction solely on her testimony.

24. The incident occurred at a short distance, giving PW2 a clear and unobstructed view of the occurrence. Her testimony is consistent in material particulars with the contents of the promptly lodged FIR. The cross-examination of PW2 did not yield any material contradictions or omissions that would shake the core of his narrative. The defence has not brought on record any cogent material to show that PW2 had a motive to falsely implicate the accused. In fact, the spontaneity of her conduct in immediately reporting the incident to the defacto complainant lends assurance to her truthfulness. We are not unmindful about the proposition of law that the law does not require plurality of witnesses; even the evidence of a single witness is sufficient, cogent, reliable and trustworthy conviction can be made on the basis of the testimony of solitary eye-witness. The appellant

Mustafa @ Sk. Mustafa has failed to shake the credibility of the sole eye-witness in any meaningful manner. Merely because no other person has been examined or no corroboration of other witnesses produced it cannot be a ground to discard otherwise reliable testimony. In view of these circumstances, this Court is satisfied that PW2's evidence is of sterling quality — consistent, cogent, and free from any taint of false implication. The trial court, after careful scrutiny, recorded a finding of guilt on this basis. Such a finding, grounded in settled legal principles and supported by the factual matrix, calls for no interference in appeal.

25. It appears from exhibit 5 i.e. the seizure list dated 13.11.2006 wherein the accused Sk. Gulam Mustafa puts his signature and received a copy of the said seizure list. On the basis of which the motorcycle bearing no. WB-30C/3301, used for carrying the dead body of the deceased and one fire arm were recovered. Thus, Exhibit-5 stands proved beyond doubt, and the recovery of the motorcycle and the firearm in the presence of the accused, constitutes an important link in the chain of circumstances connecting the accused to the offence. This

recovery when taken together with the other evidence on record, unerringly points towards the guilt of the accused and is wholly inconsistent with any hypothesis of his innocence.

26. Upon careful appreciation of the entire evidence on record, it is evident that the prosecution has failed to bring on record any cogent or convincing material to conclusively establish the involvement of the accused persons namely Rejuan @ Sk. Rejuan and Amrez @ Sk. Amrez with the alleged offence. PW2 has stated that the accused Mustafa fired by his fire arm aiming the head of the deceased and she found only one bullet injury on the body of her father (deceased). Mere suspicion, however strong, cannot take the place of legal proof. In the absence of trustworthy and reliable evidence linking the accused to the offence beyond reasonable doubt, they are entitled to the benefit of doubt.

27. As such, the conviction against those two accused persons namely, Rejuan @ Sk. Rejuan and Amrez @ Sk. Amrez is not sustainable under the eye of law. Accordingly, judgment and order of conviction passed by the learned Trial Court against these two accused persons is hereby set aside. But considering the totality of

the circumstances we are of the view that the prosecution has successfully proved its case beyond reasonable shadow of doubt against the accused Mustafa @ Sk. Golam Mustafa.

28. Accordingly, the impugned judgment and order of conviction passed by the learned Trial Court dated 27.04.2022 and 28.04.2022 passed in connection with S.T. Case No. 05(03)17 is hereby affirmed against the accused Mustafa @ Sk. Golam Mustafa.

29. The appeal being **CRA 95 of 2023** is hereby **dismissed**.

30. The impugned judgment and order of conviction passed by the learned Trial Court against the accused persons namely, Rejuan @ Sk. Rejuan and Amrez @ Sk. Amrez is hereby set aside.

31. The appeal being **CRA 94 of 2022** is hereby **allowed**.

32. All connected applications, if any, filed in connection with this appeal are hereby disposed of.

33. In view of provision of Section 437A of Cr.P.C. the appellants namely, Rejuan @ Sk. Rejuan and Amrez @ Sk. Amrez shall have to execute bail bonds with sureties and such bail bonds shall be in force for six months.

34. Let a copy of this order along with the Trial Court Records be sent down to the Trial Court immediately for taking necessary steps in this regard.

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

[PRASENJIT BISWAS, J.]

36. I Agree

[DEBANGSU BASAK, J.]