

IN THE HIGH COURT AT CALCUTTA
Criminal Appellate Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

CRA 336 of 2017

IA No: CRAN 1 of 2017 (Old No: CRAN 2382 of 2017)

CRAN 2 of 2017 (Old No: CRAN 4987 of 2017)

CRAN 5 of 2023, CRAN 6 of 2024

Gobinda Saha & Anr.

Vs.

The State of West Bengal

With

CRA 255 of 2021

IA No: CRAN 2 of 2022

Debasish @ Bapi Biswas & Anr.

Vs.

The State of West Bengal

With

CRA 294 of 2017

IA No: CRAN 5 of 2023

Pranab Bar

Vs.

The State of West Bengal

With

CRA 382 of 2017

IA No: CRAN 3 of 2024

Supriya Mallick @ Rana

Vs.

The State of West Bengal

For the Appellant No. 1
In CRA 336 of 2017

: Mr. Phiroze Edulji, Sr. Adv.
Mr. Saryati Datta, Adv.

For the Appellant No. 2 In CRA 336 of 2017 and Appellant in CRA 382 of 2017	: Mr. Imtiaz Ahmed, Adv. Ms. Ghazala Firdaus, Adv. Mr. Mazhar Hossain, Adv. Mr. Sk. Saidullah, Adv. Mr. Mithun Monda, Adv. Mr. Md. Arsalan, Adv. Ms. Zannat Haque, adv.
For the appellant in CRA 294 of 2017	: Mr. Sandipan Ganguly, Sr. Adv. Ms. Priyanka Sarkar, Adv. Mr. Mazhar Hossain, Adv.
For the Appellants in CRA 255 of 2021	: Mr. Pabir Kumar Mitra, Sr. Adv. Ms. Subhasmita Ghosh, Adv.
For the State in CRA 255 of 2021	: Ms. Anasuya Sinha, Ld. APP Ms. Rajnandini Das, Adv.
For the State in CRA 382 of 2017	: Ms. Faria Hossain, Adv. Mr. Ejaj Aktar, Adv
For the State in CRA 336 of 2017	: Ms. Amita Gaur, Sr. Adv. Ms. Paramita Sahu, Adv.
Hearing Concluded on	: July 15, 2025
Judgement on	: August 14, 2025

DEBANGSU BASAK, J.:-

1. Four appeals have been heard analogously as they emanated out of the same impugned judgement of conviction and the order of sentence passed by the learned Additional Sessions Judge, Chandernagore, in Sessions Trial No. 02/2008 arising out of Sessions Case No. 138/2007.
2. By the impugned judgement of conviction, learned Trial Judge has convicted all the appellants before us under sections 120B/396/201/412 of the Indian Penal Code, 1860 and sentenced all the appellants to life imprisonment,

amongst others. Learned Trial Judge has convicted and sentenced 6 persons in aggregate.

3. One of the convicts, Pranab Bar (hereinafter referred to as PB, for the sake of convenience) has filed CRA (DB) 294 of 2017. Gobinda Saha (GS) and Suklal Sen (SS) have filed CRA (DB) 336 of 2017. Supriya Mallick (SM) has filed CRA (DB) 382 of 2017. Bapi Biswas (BB) and Tapash Karmakar (TK) have filed CRA (DB) 255 of 2021.

4. Learned advocate appearing for PB has drawn the attention of the Court to the case of the prosecution before the trial Court. He has submitted that, on the basis of the written complaint made by the prosecution witness (PW) No. 1 police registered the first information report on February 6, 2007 under sections 302/201 of the Indian Penal Code, 1860. Subsequently, another police station had registered a First Information Report dated February 9, 2007 under section 302/201 of the Indian Penal Code, 1860. Subsequently, Criminal Investigation Department, West Bengal had taken up the investigation of both the police cases. As both police cases arose out of same incident, the second police case had been clubbed with the first one.

5. Learned advocate appearing for PB has contended that, the prosecution relied upon the testimony of an approver to bring home the charges. He has contended that, testimony of the approver has to be corroborated in material particulars. The statement of approver has to be proved to be a reliable one and that, statement of the approver requires corroboration in the form of independent evidence. In the present case the same is absent for the Court to rely upon the testimony of the approver and convict the appellants.

6. Learned advocate appearing for PB has contended that, the approver being PW 8 was arrested on May 17, 2007. PW 8 had been confined by the police for more than 4 days without producing him before a judicial magistrate. PW 8 had been produced before the Court on May 20, 2007. During the period from May 17, 2007 till May 20, 2007, PW 8 had been in 4 different police stations. Therefore, according to him, the possibility of PW 8 being tutored by the police cannot be ruled out.

7. Learned advocate appearing for PB has contended that, the strangulation of the victims was allegedly done by a Gamcha (Indian towel). Such offending weapon was not identified at the trial as the same had not been produced

before the learned Trial Judge. No forensic examination had been done on the alleged offending weapon.

8. Learned advocate appearing for PB has contended that, the prosecution witnesses have made contradictory statements about the seizure of various articles. He has referred to the testimonies of PW 17 and 44 in this regard. According to him, such seizure list witnesses have given contradictory statements with regard to the place of seizure also.

9. Learned advocate appearing for PB has contended that, the prosecution cannot take advantage of Section 27 of the Evidence Act, in the facts and circumstances of the present case. He has relied upon ***All India Reporter 1947 Privy Council 67 (Pulukuri Kotayya and Others vs. King Emperor)*** in support of his contention that, a statement that the accused led the police and the witnesses to the place where he had concealed the articles is not indicative of the information given. According to him, prosecution has failed to establish the link between the discovery of the material objects and its user in the commission of the offence.

10. Learned advocate appearing for GS has referred to the so-called evidence as against GS. He has contended that, the

evidence of PW 8 clearly established that, GS never intended to commit any murder. At best, GS can be said to have planned a dacoity which never happened. He has contended that, the initial plan of committing dacoity which was allegedly communicated to PW 8 by GS did not happen. He has pointed out that, the incident of murder has happened inside the Scorpio vehicle when, GS was admittedly not in such vehicle, but driving the Bolero vehicle. Therefore, according to him, the charge of murder as against GS has not been proved. He has contended that, GS cannot be convicted on the basis of Section 120 B of the Indian Penal Code, 1860 in the facts and circumstances of the present case.

11. Learned advocate appearing for GS has pointed out that, no test identification parade was held. PW 33 had sought to identify GS at the trial, one year after the alleged incident without a test identification parade being held. He has questioned the credibility of PW 33 in this regard.

12. Learned advocate appearing for GS has contended that, at best, GS can be implicated under Section 399 of the Indian Penal Code, 1860, since the initial plan for committing dacoity did not fructify. The subsequent events have not been established to be preplanned.

13. Learned advocate appearing for the GS has relied upon **1940 SCC Online PC 27 (Mirza Akbar vs. The King-Emperor)**, **1957 SCC Online SC 15 (Shardul Singh Caveeshar vs. State of Bombay)** and **1998 Volume 4 Supreme Court Cases 351 (State of Gujarat vs. Mohammed Atik & Ors.)**.

14. Learned advocate appearing for SS and SM has referred to the police complaint, investigation, chargesheet, as well as the charges framed. He has also referred to the evidence under Section 313 of the Criminal Procedure Code.

15. Learned Advocate appearing for SS and SM has submitted that, prosecution witnesses were not eye-witness to the murder. Testimony of PW 1, according to him is hearsay. He has also referred to the testimonies of various prosecution witnesses, and contended that, such prosecution witness cannot be trusted.

16. Learned Advocate appearing for SS and SM has contended that, there are serious doubts as to the purported recovery of the seized articles. He has contended that, the seizure lists were not made in accordance with law.

17. Relying upon **1975 Volume 3 Supreme Court Cases 742 (Ravinder Singh vs. State of Haryana)** learned

Advocate appearing for SS and SM has contended that, an approver is an untrustworthy witness since, approver had bargained for his immunity. He has contended that, an approver has to establish his inculpability in the crime so as to implicate him in a manner giving rise to a conclusion of guilt beyond reasonable doubt. He has contended that, in the facts of the present case, PW 8 has not crossed such test.

18. Learned Advocate appearing for SS and SM has drawn the attention of the Court to Section 114 of the Evidence Act. He has contended that, the ingredients of Section 114 and 133 of the Evidence Act, have not been fulfilled in the facts of the present case. He has also referred to Section 138 of the Bharatiya Sakshya Adhiniyam, 2003 and contended that, there is a paradigm shift from the earlier provisions of the Evidence Act.

19. Learned Advocate appearing for SS and SM has contended that PW 22 who conducted the autopsy on one of the victims stated that, the possibility of accidental death of such victim cannot be ruled out. He has referred to the Post Mortem Report of the other victim and submitted that, final opinion with regard to the cause of death was kept pending.

20. Learned Advocate appearing for SS and SM has contended that, the prosecution failed to prove the charges as against his client beyond reasonable doubt. He has relied upon ***AIR 1968 SC 832 (Haroon Haji Abdulla vs. State of Maharashtra)*** and ***1970 Volume 2 Supreme Court Cases 122 (Sheshanna Bhumanna Yadav vs. State of Maharashtra)*** in this regard.

21. Learned Public Prosecutor has contended that, the prosecution was able to bring home the charges against the appellants beyond reasonable doubt. He has contended that the testimony of PW 8 is reliable. Other Prosecution Witnesses have corroborated the testimony of PW 8. Other Prosecution Witnesses have proved major portion of the incident. Some portions of the incident have been supplied by PW 8. They have corroborated each other.

22. Learned Public Prosecutor has contended that, initially, there was a conspiracy for the purpose of committing dacoity on a particular person. PW 8 has narrated about such incident. Thereafter, since the targeted person did not turn up, the appellants had gone ahead committed dacoity and murdered two victims. He has contended that, the prosecution witnesses cannot be said to be untrustworthy. Therefore,

according to him, the judgment of conviction and the order of sentence should be upheld.

23. Police had received two written complaints which were treated as First Information Reports by two different police stations. The first written complaint had been lodged with Singur Police Station on February 6, 2007 and the next one at Dadpur Police Station on February 9, 2007. Criminal Investigation Department of the Police of the State of West Bengal had taken up the investigations of both the cases. On completion of investigations, police had submitted a chargesheet.

24. Learned Trial Judge had framed charges against PW 8 under Section 201/34/412 of the Indian Penal Code, 1860 while as against the appellants, charges were framed under Section 120B/396/34/302/201/412 thereof.

25. In order to prove the charges, prosecution had examined 50 witnesses at the Trial Court. Prosecution had tendered various documentary and material evidences at the trial which were marked as Exhibits. On completion of the evidence of prosecution, all the appellants had been examined under Section 313 of the Criminal Procedure Code where they claimed themselves to be innocent and falsely implicated.

26. The person who discovered one of the dead bodies has deposed as PW 1. He has described the manner in which, he found the dead body. He has stated that, since he was illiterate he took the help of PW 3 to file the written complaint. He has identified his Left Thumb Impression on the written complaint which he stated was drawn up under his instructions. He has also witnessed a seizure conducted by the police. He has identified his Left Thumb Impression on the seizure list.

27. Another person who saw the other dead body lying on the side of the bypass emanating from Durgapur Expressway going towards Singur has deposed as PW 2. He has witnessed a seizure conducted by the police, identified the seizure list as also the seized articles at the trial which were marked as Exhibits.

28. Scribe of the first complaint has deposed as PW 3. He has described how he transcribed the written complaint on the instructions of PW 1. Written complaint has been tendered in evidence and marked as Exhibit 1.

29. A relative of one of the deceased has deposed as PW 4. He has stated that, the deceased was an engineer by profession. Deceased had gone for office work, and since the

deceased did not return, office of such deceased lodged a missing diary with the police on February 7, 2007. He has stated that, on February 8, 2007 he along with the police and other relatives went to the Singur Police Station. At the Singur Police Station they were informed that an unknown dead body had been discovered on February 6, 2007. Singur Police Station had shown the photograph of such dead body and the wearing apparels of such deceased. He had identified the photograph as well as wearing apparels as that of one of the victims. He has identified such wearing apparels which were marked as Material Exhibits at the trial. He has also identified the footwear of the deceased.

30. An employee of the company in which, one of the victims was working has deposed as PW 5. He has stated that, such victim was working as an engineer. He has stated that, on February 5, 2007, he has seen such victim to leave Himadri Chemicals in a Scorpio vehicle which was green in colour. He has stated that, such vehicle was driven by his relative, another victim. He has stated that, both the victims went towards Durgapur at about 5:45 PM.

31. A driver of the company in which, the victims were working, has deposed as PW 6. He has stated that, he usually

drove the Scorpio vehicle used in the criminal cases. He has stated that, on February 5, 2007, he did not drive that vehicle. One of the victims had driven such vehicle on such date. He has stated that, both the victims did not return on February 7, 2007. Subsequently on February 8, 2007 he along with the family members of one of the victims had gone to the Singur police station where they were shown the wearing apparels and shoes of one of the victims which they identified. Subsequently, on the Scorpio vehicle being recovered he had gone to the police station where the same was recovered. He did not see any number plate of the Scorpio vehicle either in the front or on the back at that point of time. As he was the driver of such vehicle, he had known where articles were kept inside the vehicle. Police had opened the vehicle and on examining it closely, he found the papers of that vehicle were missing. A tape recorder, wiper, sound system and the AC machine had also been found to be missing. Police had thereafter summoned him to which he responded. He had been shown the number plates of the Scorpio vehicle as well as the reflector.

32. PW 6 has been re-examined subsequently. The number plates of the Scorpio vehicle had been shown which were

identified by PW 6 and tendered in evidence and marked as Material Exhibits. The reflector of the Scorpio vehicle being shown to PW 6 he has identified the same and it was marked as Material Exhibit.

33. Supervisor of the company in which, the victims were working has deposed as PW 7. He has stated that, on February 7, 2007 he was at Himadri Chemicals. On February 7, 2007, both the victims had come to Himadri Chemicals in the Scorpio vehicle and after holding talks with him, both the victims left at around 5:45 PM on such date. Subsequently, he has learnt that, the victims were murdered.

34. PW 8 is one of the accused and has deposed as an approver. He has stated that, he was in custody in such police case and came to the Court from jail to depose. He has stated that, he was a driver at IBM Call Centre, Salt Lake, Sector-5, Kolkata. He has stated that he used to drive the Bolero car and that, SS was his replacement driver of the Bolero car. He has identified the owner of the Bolero.

35. PW 8 has identified all the appellants in Court. He has stated that, save and except SM, all the accused persons were from his village although, they were not relatives.

36. PW 8 has stated that, on February 4, 2007, between 7:30 PM and 8 PM, GS rang him over telephone and told him that on February 5, 2007 GS required a vehicle.

37. PW 8 has stated that, GS insisted that PW 8 provide GS with the Bolero vehicle. GS had told PW 8 that, an old man of Nabadeep area would withdraw Rs. 5,00,000/- from his account and that, they would snatch such money from such old person over the bridge at Nabadeep. GS had offered PW 8 one fifth of the snatched money. PW 8 had told GS that PW 8 will not be giving the Bolero vehicle for such job. GS had told PW 8 that since, PW 8 knew about the job if PW 8 did not come with the vehicle, GS will render PW 8 in such a condition that PW 8 would never be capable of driving.

38. PW 8 has stated in his testimony that, since his financial condition was not good and being afraid, he agreed to the proposal of GS. GS had rang PW 8 on February 5, 2007 at about 7.30 a.m to ensure that PW 8 would be with the vehicle. PW 8 had then enquired of GS as to where PW 8 should go with the vehicle whereupon, GS told him to arrive at Madhyam Gram Bridge at about 10 A.M on the same day.

39. PW 8 in his evidence has stated that after his conversation with GS he went to the PW 27 and obtained the

Bolero car. PW 8 has stated that, the PW 27 had made over the Bolero car and warned PW 8 that the owner of the car was out for four days. Thereafter, PW 8 had taken the Bolero car to the Arati Cinema Hall at Madhyam Gram within 10 a.m on February 7, 2005. TK, GS, DS and SS had come to the spot at about 10.30 a.m. They had boarded the Bolero car and reached National Highway 34 and proceeded towards Krishnanagar through that road. While proceeding towards Krishnanagar GS had told PW 8 to stop the car at Hela Battala under Barasat Police Station where, SM will board the vehicle. SM had boarded the vehicle there and all of them proceed towards Krishnanagar and ultimately towards Nabadeep. After crossing Krishnanagar, they had stopped at a hotel where PW 8, DS, SM and SS had Kachuri. GS had paid the price.

40. PW 8 has stated that, after eating, they have proceeded further and after crossing Nabadeep Bridge, they stopped at a hotel at Bahadurpur. There TK and SS had rice and fish. Since, the fish of TK was rotten, an altercation had taken place with the owner of the hotel. GS had paid the price of meal. PW 8 has stated that while waiting at that hotel, GS told them that, since all of them were together, people may become

suspicious and that they should leave the hotel. Accordingly, all of them had gone to Nabadeep Bridge and waited there. They had reached Nabadeep Bridge at about 3 p.m and waited there for about half an hour. Thereafter, two boys had come with the bike and told GS that the person who was to withdraw the money would not come today and told him to go back. When such persons had left, GS told PW 8 to go back to their house and so, he started proceeding towards their house at that point of time. Thereafter, within 5/7 minutes GS had received a phone call just after crossing Nabadeep Bridge. On receiving such phone call GS had told PW 8 to stop the vehicle whereupon, PW 8 stopped the vehicle at the side of the road. GS had alighted from the vehicle and went in front of the vehicle and talked in his mobile. GS had come back to the vehicle and told them that, as PB is waiting at Memary Road in front of Kristi Hall, they should go there.

41. PW 8 has stated that he knew PB as he was from the same village as him. After hearing of the new assignment, PW 8 had told GS it was not within the agreement. Then, GS told PW 8 that GS has nothing to do as PB called him and therefore, they must go there. PW 8 had told GS that there was insufficient fuel in the vehicle. GS had offered to purchase

the fuel. Thereafter, PW 8 was compelled to go towards Kalna Road after crossing Nabadeep Bridge. After travelling for some time towards Kalna Road, they had stopped at a petrol pump under the name of Dhatri Petrol Pump where fuel was purchased. GS had paid the price. After refueling, GS had told PW 8 that since PW 8 was frightened and would not be able to drive the vehicle smoothly, PW 8 should take a seat in the vehicle and that GS would drive the vehicle. Accordingly, GS had driven the vehicle from that point.

42. PW 8 has stated that, from such point, the vehicle took the Burdwan-Memary road and proceeded towards the Krishti Hall where PB was waiting. PB had boarded the vehicle and took a seat beside PW 8. PB had a new gamcha (Indian towel) with him.

43. PW 8 has stated that, PB told GS to go slowly towards the Highway Road. On hearing Highway Road and on seeing the Indian towel PW 8 had raised a suspicion in his mind and asked PB as to what his plan was where upon, PB told PW 8 that he would snatch a vehicle from the Highway Road. PW 8 had told PB that it was not easy to snatch any car from the Highway Road as there are many police patrol in all times and that PW 8 was a man with his family. In reply PB had told PW

8 that PB had done many severe crimes but the police could not arrest him and that for such small job they will not be able to arrest them. Then PB had GS to stop the vehicle. Accordingly, GS had stopped the vehicle on the left side of the Highway Road. PB had directed GS to come to the back seat and directed PW 8 to drive the vehicle. Accordingly, PW 8 had started driving the vehicle. PB had directed PW 8 to go towards Durgapur. They had taken the Durgapur Road and going further, they had found one green coloured Scorpio vehicle to overtake them. PB had noticed that there were two persons in such Scorpio vehicle. PB had directed PW 8 to follow and chase such Scorpio vehicle. Accordingly, PW 8 had started chasing the Scorpio vehicle. After driving for about 5 to 10 kilometers PW 8 had started driving the vehicle slowly. PW 8 had told PB that the Scorpio vehicle had gone too far and that it was not possible to catch the Scorpio vehicle after chasing it.

44. PW 8 has stated that PB being angry brought out two firearms from his waist and pointed it towards PW 8 and told PW 8 that he must catch the Scorpio vehicle or else PW 8 would not be able to return. Thereafter, PB had kept those firearms at the side of the seat of PW 8.

45. PW 8 had thereafter, started chasing the Scorpio vehicle and after travelling for about 30/40 kilometres towards Durgapur he overtook the Scorpio vehicle. PB had told him to stop the Bolero vehicle so as to guard the Scorpio vehicle and on such direction PW 8 had stopped the Bolero vehicle to guard the Scorpio vehicle.

46. PW 8 has stated that, thereafter, PB got down from the vehicle and fixed his revolver at the driver of the Scorpio vehicle. SM had also alighted from the Bolero vehicle and fixed another revolver at the head of a person sitting beside the driver of the Scorpio vehicle and compelled him to take a seat in the middle seat of the Scorpio vehicle. Then PB had compelled the driver of the Scorpio vehicle to take a seat in the back seat of the Scorpio vehicle. PB had taken the seat at the side of the person who was sitting in the middle seat of the Scorpio vehicle. TK and DB had sat in the middle seat of the Scorpio vehicle along with PB and one of the victims in the back seat which the driver of Scorpio vehicle was compelled to take. In the back seat of the Scorpio vehicle, SM had pointed his fire arms at the head of the driver of the Scorpio vehicle. SS had also sat on the back seat of the Scorpio vehicle.

47. PW 8 has stated that PB then directed GS to drive the Bolero vehicle and directed PW 8 to drive the Scorpio vehicle. Thereafter, they had proceeded towards Dankuni. GS was driving the Bolero vehicle behind the Scorpio vehicle which was being driven by PW 8.

48. PW 8 has stated that coming towards Dankuni, the Scorpio vehicle was in front of the Bolero vehicle. Before approaching the toll-tax, GS had gone ahead with the Bolero vehicle and arranged for the tickets of the toll-tax.

49. PW 8 has stated that, PB asked one of the victims, namely Jyoti Prakash Biswas (for the sake of convenience referred to as JPB) as to what such person does. JPB had stated that he was an engineer. JPB then asked PB as to what PB wanted from JPB. PB had told JPB to surrender everything in the possession of JPB.

50. PW 8 has identified the place as Gurap as he saw a writing on the side of the road. PW 8 has stated that TK and DB took the wrist watch, mobile and the silver chain from JPB. SM had snatched the mobile of Kanchan Das (KD) who was the driver of the Scorpio vehicle. PB had told JPB to surrender whatever more JPB KD had with him. JPB had voluntarily surrendered the money bag taking it out

from his pocket. PB had opened such money bag and counted Rs. 1200/-. PB had then told JPB that since JPB was an engineer why did JPB have a mere Rs. 1200/-. Thereafter, PB had started assaulting JPB. JPB with folded hands had repeatedly asked them not to kill him and take everything from him. PB had told JPB that, if they did not kill JPB they will be arrested by the police. PW 8 had told PB not to kill JPB as he had already given everything. PW 8 had advised PB to leave JPB on the side of the road after tying his hands and feet and not to kill him. On hearing such request, PB had got angry and directed PW 8 to drive the Scorpio vehicle and allow them to do their jobs.

51. PW 8 has stated that JPB was compelled to lie down in the middle of the Scorpio vehicle. TK, DB and SS had caught hold of JPB forcibly. PB had used the Gamcha (Indian towel) to strangle JPB for about 10-15 minutes through his neck. JPB had become restless, hovered and died.

52. PW 8 has stated that, KD on seeing the incident of murder of JPB burst into tears and prayed for his life. SM had started assaulting KD as he was crying. Then, PB had said that they will kill KD also.

53. PW 8 has stated that, on hearing that they would kill KD, PW 8 told PB to spare KD as KD was not their enemy, did not do anything wrong and KD maintained his livelihood by driving only. PW 8 had requested PB to spare the driver, KD.

54. PW 8 has stated that the dead body of JPB was kept at the down place in the middle seat where the passengers keep their feet. Then KD was compelled to lie down on the middle seat likewise as JPB. TK, DB, SM and SS had pressed KD in the middle seat. KD was crying and had screamed for help. As KD was crying PB had pressed his Gamcha (Indian towel) over the nose and face of KD for 10-15 minutes. KD had hovered and died. Dead body of the KD was laid over the dead body of JPB.

55. PW 8 has stated that, since the height of the dead body and height of the seat became parallel, others had sat over such dead bodies while he was driving the vehicle.

56. PW 8 has stated that, going through Durgapur Expressway they took a left turn as directed by PB. Such road had gone towards Dantpur. After going a little bit on the road with dead body PB had directed him to stop the vehicle beside a small field. PW 8 had stopped the vehicle. PB had gone down

from the vehicle and took the seat beside PW 8 at the left side. TK, DB, SS and SM had taken the dead body of the KD and threw it. Dead body of KD went rolling into the field.

57. PW 8 has stated that thereafter, they came back to Durgapur Expressway and proceeded towards Dankuni. After travelling about 10-15 Kms again, they had taken a left turn on to a road. Place was dark and PB had directed PW 8 to avail that road. At that place, the shops were closed but from a writing on the shops, PW 8 has stated that the place was Singur. After going through that left side road, the dead body of JPB was taken out of the Scorpio vehicle and thrown on the side of the road. Thereafter, they had turned towards the Durgapur Expressway and availed of the same and proceeded towards Dankuni to Rathtala.

58. PW 8 has stated that at Dankuni, they had got another toll tax, where, the Scorpio vehicle arrived first and then the Bolero vehicle. From Rathtala, they had availed of the BT Road and proceeded towards Sodepur. Just before approaching Sodepur there had stopped at a petrol pump at the left side of the road before Swadesi Bus Stand. From such petrol pump, they had purchased fuel for the Scorpio vehicle but no bill was accepted.

59. PW 8 had stated that when they approached first at the junction of Kalna Road from Sodepur PB had directed PW 8 to stop the vehicle there and so PW 8 stopped the vehicle. PB had told PW 8 to go to his house with the Bolero vehicle and that the others will go with the Scorpio vehicle. So, PW 8 had got down from the Scorpio vehicle and took the Bolero vehicle. PB had given Rs. 500/- to PW 8. TK had given a wrist watch and told PW 8 that the wrist watch was given as a gift. PW 8 has identified the colour of the dial of the wrist watch as golden and the colour of the belt to be brown. He has identified such wrist watch at the time of trial which was marked as Material Exhibit VII. He has identified his signature on the seizure list dated May 19, 2007,

60. PW 8 has stated that, he came back to his house with the wrist watch, Rs. 500/- and the Bolero vehicle at about 12.30 midnight. The appellants had gone with the Scorpio vehicle. At about 6.30-7.00 am on February 10, 2007, PB had contacted PW 8 on telephone. PB had told PW 8 that PB was sending the Scorpio vehicle with GS. PB had directed PW 8 to service the Scorpio vehicle, change the Registration number of the Scorpio vehicle and resend the Scorpio vehicle. PW 8 had denied to do so. PB however, had insisted to perform the job.

Accordingly, GS had brought the Scorpio vehicle and waited at the junction of Kalna Road of Sodepur and called PW 8. On receiving such telephone, PW 8 had gone to the Scorpio vehicle when GS gave PW 8 Rs. 300/- and keys of the Scorpio vehicle.

61. PW 8 has stated that, when he entered the Scorpio vehicle he could not see the CD player. PW 8 had enquired about the same from GS who answered that, PB removed the CD, woofer, audio system set and the A.C machine of the Scorpio vehicle. PW 8 had stated that after leaving GS he went with the Scorpio vehicle through VIP Road via Airport. PW 8 had stated that since he was a driver, he knew various service centers of Salt Lake so he wanted to go to one of such service centers. When he was going towards such service center, he saw police at the Baguihati crossing, checking vehicles. On seeing the police, PW 8 had thought that the Scorpio vehicle did not have any number plate and that the vehicle was of another person and the two victims were killed in the Scorpio vehicle so being afraid, he left his Scorpio vehicle on the side of the road and fled away. He has described the spot of his fleeing as just before approaching Baguihati towards Kolkata.

62. PW 8 has stated that he was thinking about surrendering before the police and not to flee away. So, on May 17, 2007 while he was going to Barasat from Belgharia for surrendering, police had arrested him at Belgharia Bazar. He has stated that after arrest police interrogated him. He had told the police about the wrist watch. He had also confessed to the police about the entire incident. Police had reduced his statement in writing. He has identified such recorded statement which was marked Y for identification at the trial. He has stated that, the wrist watch was seized by the police from his house. He has identified his signature on such seizure list. He has also said that, he disclosed an intention to state every incident before a judicial magistrate and that, when he was so produced, he reduced his statement in writing. He has tendered such statement which was marked as Exhibit 3 series.

63. Defence has cross-examined PW 8 extensively. However, defence has not been able to extract anything favourable to them by way of such cross-examination.

64. The supervisor of the company at which both the victims were working has deposed as PW 9. He has identified the wrist watch of JPB which was already marked as Material

Exhibit VII. He has identified the silver chain fitted with locket of JPB which was tendered in evidence and marked as Material Exhibit VIII. He has stated that, the investigating officer of the case came to the office and asked for papers in connection with the Scorpio vehicle which he supplied. He has identified his signature on the seizure list which was marked as Exhibit 4. He has identified his signature on the invoice of the Scorpio vehicle which was marked as Exhibit 5.

65. Another supervisor of the company where the victims were working has deposed as PW 10. He has stated that, the company was executing a contract to excavate and fill up the earth by Himadri Chemicals of Singur. He has stated that, JPB was the engineer of the company and that JPB used to look after the work of Himadri Chemicals. He has stated that, on February 5, 2007 JPB went out of their office to look after their work at Himadri Chemicals. He had come with KD and the green colour Scorpio vehicle. JPB had a black office bag when he came out of the office on February 5, 2007. He has stated that both JPB and KD did not return and as such they searched for them. When they could not find out about JPB and KD they had informed Arabinda Police Station on February 7, 2007. He has stated that, the owner of the

company, PW 12, had also informed the incident to the police station. On February 8, 2007 he along with the police officer went to Singur when they had come to learn about an unknown dead body lying at the morgue of Serampore Walsh Hospital. Singur Police had shown the wearing apparels of JPB which he identified as that of JPB. He has stated that, on February 9, 2007 they had come to know that in the Dadpur Police Station area an unknown dead body was recovered. They had gone to Dadpur Police Station along with the brother-in-law of KD. There, police had shown the wearing apparels of KD and that the same were identified as that of KD. He has stated that, PW 4 submitted a prayer for the dead body of JPB. As a seizure list witness, he has identified his signature on the seizure list. He has identified the bag of JPB which was marked as Material Exhibit IX. He has identified two number plates and the reflector of the Scorpio vehicle which was marked as Material Exhibits.

66. The police officer who arrested PB has deposed as PW 11. He has stated that, after arrest, PB was interrogated when, PB disclosed that there were two murder cases against PB. He has identified his signature on the seizure list.

67. The owner of the company at which the two victims worked has deposed as PW 12. He has stated that, JPB was an engineer of his company. JPB used to look after the work at Himadri Chemicals. He has stated that, on February 5, 2006 JPB had gone to Himadri Chemicals along with KD by the Scorpio vehicle bearing No. WB 40 F 9963 and they did not return on the same day. So, on the next date they had searched for JPB and KD and could not find them. He has stated that, he caused a General Diary to be entered. Subsequently, he had come to learn that both were murdered.

68. The police officer who seized the Scorpio vehicle has deposed as PW 13. He has stated that he seized an unclaimed Scorpio vehicle on February 10, 2007, green in colour and without any number plate in front of a showroom of Windsor Honda of Baguihati Kai Khali at VIP road on the airport flank. After seizing, he had brought the unclaimed vehicle to the Baguihati IC and informed the IC of Rajarhat Police Station and the Officer-in-charge of Baguihati Police Station about the same. He has also furnished a message to all police station in West Bengal. Subsequently, CID Officer had come with regard to the seized unclaimed vehicle.

69. A seizure list witness who saw the seizure of the Bolero vehicle has deposed as PW 14. He has been declared hostile by the prosecution. He did not add any value to the case of the prosecution or the defence.

70. A Technical Inspector of the Department of Motor Vehicle under the R.T.O Durgapur has deposed as PW 15. He has stated that, he inspected the Scorpio vehicle bearing police registration No. WB-40F-9963 at the investigation center of Baguihati. He has tendered the report of such inspection in evidence which was marked as Exhibit X.

71. The police officer who entered the General Diary on February 7, 2007 with regard to JPB and KD not returning to their office has deposed as PW 16. He has stated that, he registered a General Diary of such missing persons. He has also stated that, subsequent to discovery of the dead body, the relatives had come and identified the same.

72. A police officer who was present during seizure of various articles on May 19, 2007 has deposed as PW 17. He has stated that, a tape recorder was seized from DB. He has identified such tape recorder which was marked as Material Exhibit X/1. He has also identified various other material exhibits which were tendered in evidence and marked

Exhibits. He has identified his signatures on the label of such material exhibits. He has stated that, PB brought out a plastic bag from the south-western corner of the tile roof of his house which contained two pipe guns and two live cartridges. He has stated that, such articles were also seized. He has identified his signature on such seizure list.

73. PW 17 has stated that, PB brought out a silver chain fitted with the locket from beneath the Cot. He has witnessed the seizure. He has tendered such seizure list which was marked as an exhibit. The seized silver chain fitted with the locket was identified by him.

74. PW 17 has stated that, thereafter, the police party went to the house of PW 8 when PW 8 brought out a Timex wristwatch from the table inside his room which was also seized by a proper seizure list. He has identified his signature in such seizure list. He has stated that, an AC compressor was seized from the house of DB which he identified at the trial and the same was marked as a material exhibit. He has also identified his signature on the label as also on the seizure list with regard thereto. He has stated that after the firearms were seized from DB the same were kept with Ghola police

station. He has identified the seized pipe guns and live cartridges.

75. The police officer who had made over the General Diary entry in relation to the police cases has deposed as PW 18. He has tendered his signature in the seizure list in evidence.

76. Another police officer who had witnessed the seizure of another General Diary Entry in relation to the police case has deposed as PW 19. He has tendered his signature on such seizure list which was marked as an exhibit.

77. The judicial magistrate before whom, PW 8 had recorded a statement under section 164 of the Criminal Procedure Code has deposed as PW 20. He has stated that, on the strength of the order passed by the then Additional Chief Judicial Magistrate, PW 8 was produced before him with the direction to record his statement under section 164 of the Criminal Procedure Code. He has stated that, on May 22, 2007, he sent PW 8 for segregation with the direction to produce PW 8 on May 23, 2007. Accordingly on May 23, 2007 PW 8 was produced before him from jail custody and identified by a constable. PW 8 had made a statement before him on May 23, 2007 which he recorded complying with all requisite formalities. He had noted such fact in the order dated May 23,

2007. He has stated that the statement of PW 8 was recorded in question-and-answer form. Before recording the statement, he had ascertained on putting question to PW 8 whether he would make the statement voluntarily or not. He had assured PW 8 that, PW 8 can give his statement voluntarily. He has tendered the statement of PW 8 recorded on May 23, 2007 in evidence and the same was marked as Exhibit 3A.

78. A police personnel then posted at Dadpur police station has deposed as PW 21. He has stated that, on May 24, 2007 officers of CID came to the police station and directed him to hand over the two General Diary Entries bearing No. 294 dated February 6, 2007 and 446 dated February 9, 2007. He had produced those two General Diary Entries before such officers who seized the same in his presence. He has identified his signature on such seizure list. He has also tendered such General Diary Entries in evidence which were marked as Exhibit 24 and 25.

79. The medical officer who had performed the post-mortem on the dead body of KD has deposed as PW 22. He has described the apparent external injury which he found on the dead body. He has stated that in his opinion the death of KD was due to the effect of intra-cranial haemorrhage. He has

tendered his post-mortem report in evidence which was marked as Exhibit 26. He has stated that on April 17, 2007 the investigating officer had raised queries with regard to the cause of death. He has stated that, he answered such queries in writing. He has tendered enquiries received by him in evidence which was marked as Exhibit 27. He has stated that, the death of KD was homicidal.

80. The police personnel who was present during the seizure of the Bolero vehicle has deposed as PW 23. He has stated that, officers of the CID requested for assistance on March 14, 2007. He has stated that, he was on mobile patrol duty on the night of March 13, 2007. He has stated that, CID officers came along with 3 accused persons when, as per the identification of such accused persons, a Bolero vehicle was seized. He has tendered his signature on the seizure list in evidence which was marked as an exhibit.

81. The first investigating officer of the Dadpur police station case No. 20/07 dated February 9, 2007 under section 302/201 of the Indian Penal Code, 1860 has deposed as PW 24. He has stated that, on February 6, 2007, one of the Assistant Sub-Inspector of police of Dadpur Police station received a telephonic information that an unknown dead body

was found in the field at the eastern side of the highway towards Kolkata in the area near the village Ayma under the police station. Such assistant sub- inspector had in turn informed him. As such, he had gone to such place along with force. He had found the dead body lying there and there was an assembly of persons. He had taken photographs of the dead body through the digital camera of a local cameraman. He has tendered 7 photographs which were taken by such. Such 7 photographs were tendered in evidence and marked as Material Exhibit XIX series. He had registered an unnatural death case. He had made an inquest over the dead body and prepared a report with regard thereto which was tendered in evidence and marked as Exhibit 28. He has stated that, after making the inquest, he sent the dead body through a constable to the hospital along with relevant papers for post-mortem examination. He has tendered the dead body challan which was marked as Exhibit 29. He has stated that on February 6, 2007 he seized articles which were found lying nearby the dead body by a seizure list which he tendered in evidence and the same was marked as Exhibit 30. He has identified the articles seized and the same were tendered in evidence and marked as Material Exhibits. He had flashed a

message to all the officer-in-charge of the police stations in the State.

82. PW 24 has stated that, on February 7, 2007 he received the wearing apparels of KD which he seized by preparing a seizure list. He has tendered the seizure list in evidence which was marked as Exhibit 31. He has stated that on February 9, 2007 officers of Durgapur police station along with some persons visited his police station. He had shown the seized garments in the photos of the dead body when, the brother-in-law of KD had identified the dead body as that of KD. Such brother-in-law of KD had lodged a written complaint on the basis of which, Dadpur police station case No. 20/07 dated February 9, 2007 under sections 302/201 of the Indian Penal Code, 1860 was instituted. He has stated that, during investigations, he examined those persons who came to visit the police station and recorded their statements. He had visited the place of occurrence along with those persons and prepared a rough sketch marked with the index thereof. He has tendered the rough sketch map and the index in evidence which was marked as Exhibit 32. He has stated that on February 12, 2007 he went to Himadri Chemicals to verify as to whether, the victims visited such place on February 5, 2007

or not. He had collected the post-mortem report of KD. He had handed over the case to the CID on the order of his superior officer.

83. An official of the National Highway Authority has deposed as PW 25. He has stated that, upon the request of CID officers, the Project Director of National Highway Authority directed him to supply information of vehicles passing through the toll plaza. Accordingly, he had supplied such information in writing. Such writing has been marked as Exhibit 33. He has stated that he is the person who maintains the system record at both the toll plazas.

84. The doctor who performed the post-mortem on the dead body of JPB has deposed as PW 26. He has stated that, in his opinion the time of death was 36 hours from the time of autopsy. He had conducted the autopsy on February 6, 2007. He has stated that, the death was due to asphyxia due to strangulation by ligature, ante mortem and homicidal in nature. He has tendered the post-mortem report of JPB which was marked as Exhibit 34. He has stated that, the injuries he found on dissection of the dead body may be caused if anybody is strangled by means of soft articles like cloth,

gamcha (Indian towel) and napkin. Defence had declined to cross examine PW 26.

85. A person who worked as a driver of the Bolero vehicle has deposed as PW 27. He has identified the owner of the vehicle and its police registration number which was WB 25B 3561. He has stated that PW 8 also used to drive the same vehicle on shift. He has corroborated the statements of PW 8 relating to the events of February 5, 2007 when, PW 8 took the vehicle from him.

86. PW 27 has stated that, on February 5, 2007, PW 8 called him over mobile phone and asked him to go to the over bridge of Sodpur and informed him that PW 8 purchased a Scorpio vehicle which was seized by the finance company. PW 8 had also stated that, TK, DB, SM, GS and SS were also with him. He has stated that, he knew them since they were from the same village. He has stated that, he went to the over bridge and waited till 11:30 PM but PW 8 did not turn up. He had gone there to bring the Bolero vehicle back. Since PW 8 did not turn up, he had returned to his house. On the next day at about 7 AM, PW 8 had returned the Bolero vehicle with the vehicle keys and relevant papers to him. On February 7,

2007 at about 11 AM he had seen PW 8 to drive a green colour Scorpio vehicle.

87. In cross-examination, PW 27 has stated that, police detained him for about 3 days in connection with the case out of which 2 days were at Dunlop police station and one day at Serampore police station.

88. A relative of the owner of the Bolero vehicle has deposed as PW 28. He has identified his signature on the seizure list which was tendered in evidence and marked as exhibit.

89. An employee of Dhatri Gram Automobile Petrol Pump has deposed as PW 29. He has described the location of the petrol pump. He has stated that, on February 5, 2007 the petrol pump was open and that it is now closed. On March 15, 2007 police had come to the petrol pump and seized the cash memo book by a seizure list in his presence. He has identified his signature on such seizure list. He has also identified a carbon copy of the receipt in the cash book which was tendered in evidence and marked as Exhibit 36. He has stated that on March 15, 2007 police had brought 3 accused persons to the petrol pump. He has stated that, such 3 accused persons had put their signatures on Exhibit 36.

90. In cross-examination, PW 29 has stated that, the receipt issued on February 2, 2007 stated that, the fuel was of Rs. 500/-. He has identified the scribe of such receipt.

91. Another employee of such petrol pump has deposed as PW 30. He has stated that, he along with another person used to sit at the counter and issued receipts to persons who purchased fuel from the petrol pump. He has identified the handwriting on the subject receipt as written by his co-employee. He has stated that, on such receipt, the vehicle number being WB 25B 3561 was written and that, diesel for the value of Rs. 500 was purchased. The receipt had been tendered in evidence and marked as Exhibit 37. He has identified his signature on the seizure list dated March 15, 2007. He has corroborated PW 29 with regard to the police coming to the petrol pump on March 15, 2007 and bringing 3 accused persons. He has stated that, the co-employee and he put their respective signatures on Exhibit 37. He has also corroborated PW 29 that the 3 accused persons had signed the seizure list.

92. In cross-examination, PW 30 has stated that, he had no personal knowledge in the matter of selling fuel on the strength of Exhibit 37. He has also stated that, the vehicle

number was not mentioned in Exhibit 37 and subsequently, the vehicle number was mentioned when police told them to do it. He has however denied the suggestion that the entire receipt was prepared at the request of the police.

93. The owner of the Bolero vehicle has deposed as PW 31. He has stated that, the vehicle was hired by the call centre of IBM at sector 5 of Salt Lake. He has stated that on February 5, 2007 he had 2 drivers for that vehicle namely PW 8 and PW 27. He has identified PW 8 in Court. He has stated that on January 26, 2007 he went to Bihar and came back on February 12, 2007. He has stated that, his vehicle plied for 24 hours by those 2 drivers alternatively. As the owner he had kept information as to which driver plied the vehicle at what point of time. He has also stated that on February 5, 2007, his vehicle did not go to the call centre and that on such date, PW 8 had the duty to drive that vehicle. On such date, PW 8 had taken the vehicle from PW 27 along with the vehicle keys and relevant papers.

94. In cross-examination, PW 31 has stated that, he came to learn that the vehicle did not go to the call centre on February 12, 2007 and when he called PW 27 about the same,

he was informed that, PW 8 had taken the vehicle on February 5, 2007.

95. An employee of Bharti Airtel Limited Company has deposed as PW 32. He has stated that, on the letter received from the investigating officer, the company had provided the call details recording of mobile phone number belonging to KD. He has tendered the response letter of the company in evidence which was marked as Exhibit 38. He has tendered the call details record which was marked as Exhibit 39.

96. The owner of the hotel at Bahdurpur has deposed as PW 33. He has described the location of his hotel. He has stated that in the month of February 2007 he was at his hotel. He has stated that, 6/7 persons in the age group of 21 to 27 years came in an ash coloured vehicle and enquired as to whether there was rice in his hotel or not, at about 2/2:30 PM. He told them that, rice for all of them could not be available and that it can be for two persons only. Accordingly, two of them had lunch in his hotel consisting of rice, dal and fish. After taking their lunches, they told him that, the fish was not good so he did not take the price for the fish. They had given a Rs. 50 note as the price for the two dishes. He had taken Rs. 28/- and returned Rs. 22/-. He had identified all the

accused in Court. In cross-examination, he has stated that, it is possible for him to state which customer takes food of bread and which customer takes food of rice at his hotel. In cross-examination he has also stated that, he can say which of the two accused had taken rice from his hotel on that date.

97. An employee of the IBM Call Centre has deposed as PW 34. He has witnessed the seizure made by the police. He has tendered the seizure list in evidence which was marked as Exhibit 40 and his signature as Exhibit 40/1. He has identified the paper made over to the police which was marked as Exhibit 41. He has also tendered the computer statement as to the movement of a particular vehicle which was marked as Exhibit 42. He has stated that Exhibit 42 contains information of the movement of the Bolero vehicle for the period from February 1, 2007 till February 26, 2007. He has stated that, Exhibit 42 would show that, the Bolero vehicle did not come to their office on February 5, 2007. He has identified PW 8 in Court.

98. A seizure list witness of seizure made on March 18, 2007 has deposed as PW 35. He has tendered the seizure list which was marked as Exhibit 43. He has identified his signature and tendered another seizure list of the same date

which was marked as Exhibit 44. In cross-examination he has stated that, police recovered number plate, reflector and one red triangle shaped reflector, and a bag containing some papers.

99. A sub- inspector of police of Khardah police station has deposed as PW 36. He has stated that, TK and GS were arrested on April 3, 2007. He had taken both of them in police custody for 3 days in connection with Khardah police station case No. 69/07 dated March 12, 2007 under section 379 of the Indian Penal Code, 1860. He has stated that, he recovered various articles and a motorcycle from GS and TK.

100. A sub- inspector of police of Jagaddal police station has deposed as PW 37. He has spoken about the complaint being lodged by him against GS with regard to seizure of Ganja from him on March 4, 2007. He has spoken about the seizure made by the investigating officer in the present case. He has tendered the seizure list which was marked as Exhibit 46. He has identified GS in Court.

101. Prosecution has tendered PW 38 without putting any question to him. Defence has declined to cross-examine him.

102. A constable has deposed as PW 39. He has stated that, on February 6, 2007 he was posted at Dadpur police station

as a constable. On such date, he had carried the dead body of KD for post-mortem. After post-mortem examination, he had received the wearing apparels and the viscera of the deceased along with other post-mortem articles from the doctor and deposited the same with the police station. He has identified the seized articles which were tendered in evidence and marked as material exhibit. He has described the place where dead body of KD was found.

103. A seizure list witness has deposed as PW 40. He has stated that, on June 8, 2007 he was requested by CID officials to assist with regard to search of SM. He had agreed to render assistance. He has stated that, SM was searched in his presence. He has identified the articles recovered from SM including the firearms. He has tendered the seizure list which was marked as Exhibit 47. He has identified the seized articles which were marked as material exhibit. He has identified the signatures on the labels of the seized articles which were marked as Exhibits 50 and 51. He has also tendered another seizure list which was marked as Exhibit 52. He has identified SM in Court.

104. The judicial magistrate before whom, PW 27, PW 31 and another person recorded their statements under section

164 of the Criminal Procedure Code has deposed as PW 41. He has stated about the manner and method by which such statements were recorded. He has tendered such statements in evidence which were marked as exhibits.

105. The assistant sub- inspector of police who prepared the seizure list in respect of the wearing apparels and the viscera of KD has deposed as PW 42. He has identified the seizure list Exhibit 31 as also the seized articles which were already marked as material exhibits.

106. A police constable attached to Singur police station has deposed as PW 43. He has stated that on February 6, 2007 he escorted one male dead body to the hospital for post-mortem examination. He has tendered the carbon copy of the dead body challan in evidence and the same was marked as Exhibit 56. He had identified the dead body to the autopsy surgeon at the hospital. He was made over the wearing apparel and the viscera of the deceased which in turn he had made over to the Assistant Sub-Inspector of Police.

107. A Sub-Inspector of Police of Ghola police station has deposed as PW 44. He has stated that on May 19, 2007 he was a part of the raiding party. He has stated that, initially, DB led to his house where, one tape recorder, one remote

control and one amplifier, one music divider were seized. He has identified his signature on the seizure list dated May 19, 2007. He has stated that, the accused held out that the seized alat were part of the stolen Scorpio vehicle. He has stated that PB took the raiding party to his house and one packet was seized containing 2 pipe guns and two live ammunitions. He has identified his signature on the seizure list which was marked as Exhibit 14/1. He has stated that, another seizure was made comprising of one AC compressor machine and the accessories of such machine, one silver chain with a locket which he stated to belong to the murdered engineer. He has identified his signature on such seizure list dated May 19, 2007 which was marked as Exhibit 15/A. Thereafter PW 8 had taken the raiding party to his house where, the Timex branded wrist watch and the belt of such wristwatch were seized. PW 8 has stated that the same belonged to the deceased engineer. He has identified his signature on the seizure list dated May 19, 2007 which was tendered in evidence and marked as Exhibit 16/A. He has identified the seized articles as also the signature of his on the labels.

108. PW 45 has stated that, the company at which the victims worked, purchased 3 handsets of Nokia 1110 model

and that, JPB, one of the victims, used one of the 3 handsets of Nokia 1110. He has identified one of the 2 handsets as belonging to the company which was tendered in evidence and marked as material exhibit.

109. The salesman of the dealer of the Scorpio vehicle has deposed as PW 46. He has stated that, he sold the Scorpio vehicle bearing police registration number WB 40 F 9963. He has stated that, police of CID seized various documents. He has identified the seizure list and his signature therein which were tendered in evidence and marked as Exhibit 16.

110. A police personnel who formed part of the raiding team for the raid conducted on June 8, 2007 has deposed as PW 47. He has submitted that one person was arrested in front of Ananya Cinema from whom a mobile phone was seized. The arrested person had disclosed that the mobile phone belonged to JPB. He has tendered the seizure list in evidence which was marked as Exhibit 52. He has stated that, a pipe gun was recovered from the arrested person on the same date along with ammunition. He has identified the firearms and ammunition which were marked as exhibits.

111. The first investigating officer of Singur police station case No. 27/07 has deposed as PW 48. He has described the

manner of his investigation. He has tendered various evidences which were marked as exhibits. He has also tendered various material evidences which were marked as material exhibits. He has stated that, he commenced his investigation on February 6, 2007 and continued till February 12, 2007. On such date, he had made over the case diary to the CID. Subsequently, CID officer had interrogated him and recorded his statement. He has stated that he took photographs of the deceased in his personal mobile phone which was seized by the CID and subsequently returned to him.

112. The additional Chief Judicial Magistrate before whom accused persons in the Singur police station case No. 27/07 were produced has deposed as PW 49. He has stated that, he considered the bail applications of the accused from time to time. He has stated that PW 8 was produced before him. PW 8 had preferred a petition dated June 6, 2007 through the Superintendent of the Correctional Home where he was lodged. Previously, investigating officer of such case had prayed for recording of the statement of PW 8 under section 164 of the Criminal Procedure Code on May 20, 2007. He has stated that, such statement was recorded on May 23, 2007 by

the learned Magistrate. He had identified the learned Magistrate. He has stated that, the petition dated June 6, 2007 of PW 8 was disposed of on June 8, 2007. In his petition dated June 6, 2007, PW 8 had prayed that he may be treated as an approver in the case. In the order dated June 8, 2007 he had tendered pardon to the PW 8 as approver subject to the condition of his true disclosure of facts. He has tendered the order dated June 8, 2007 which was marked as Exhibit 66.

113. The second investigating officer has deposed as PW 50. He has stated that on February 16, 2007 he received a message from the DIG, CID dated February 13, 2007 for taking up the investigations of the two police cases. He had received the case diary of both the cases on different dates comprising of investigation done by the other investigating officers of the respective police stations. He has described the manner and method of his investigations subsequent to him taking charge of the investigations. He has tendered various material and documentary evidences at the trial which were marked as material exhibits and exhibits respectively.

114. Defence had cross-examined all the investigating officers in extenso and failed to elicit anything favourable from such cross-examination.

115. On conclusion of the evidence of the prosecution, each of the appellants had been examined under Section 313 of the Criminal Procedure Code where, they claimed that they were falsely implicated and innocent. They had declined to adduce any defence witnesses.

116. Out of the 50 prosecution witnesses examined at the trial, one of them, that is, PW 8 has given evidence as an approver. He had applied to become an approver by a petition dated June 6, 2007 which was allowed by an order dated June 8, 2007 being Exhibit 66. None of the appellants had challenged the order of conditional pardon granted by the jurisdictional Court to PW 8 on June 8, 2007, contemporaneously.

117. *Mirza Akbar (supra)* has held that, a common intention is said to exist at the time when the thing was said, or written by one of the conspirators. It has observed that, a statement of confession made by one of the conspirators to a 3rd party after the common intention for conspiracy was no longer operating and had ceased to exist, is not admissible against another. Similar view has been expressed in *Sardul Singh Caveeshar (supra)*. *Mohd. Atik (supra)* has considered a confessional statement recorded under Section

15 of the Terrorist and Disruptive Activities (Prevention) Act, 1987. It has held that, when the requirement stipulated in section 15 (1) of the Act of 1987 are satisfied, the confession becomes admissible in evidence and that it is immaterial whether the confession was reported in one particular case or in a different case.

118. *Pulukuri Kotayya and Others (supra)* has dwelt on section 27 of the Evidence Act. It has observed that Section 27 of the Evidence Act is based on the view that if the effect is actually discovered in consequence of information given, some guarantee is afforded thereby that the information was true and accordingly it can be safely allowed to be given in evidence. However, the extent of the information admissible must depend on the exact nature of the fact discovered with which such information is required to relate.

119. In the facts and circumstances of the present case, several articles belonging to the two deceased and the Scorpio vehicle have been recovered on the showing of the appellants and PW 8. Recovery of those articles therefore, which were within the knowledge of the appellants and PW 8 stands established.

120. *Haroon Haji Abdulla (supra)* has noticed section 133 of the Evidence Act and illustration (b) of section 114 thereof. It has observed that, cautionary provision of illustration (b) of Section 114 of the Evidence Act incorporates a rule of prudence because an accomplice, who betrays his associates, is not a fair witness and it is possible that he may, to please the prosecution, give false details of those which are true and his whole story appearing true, there may be no means at hand to sever the false from that which is true. It is for this reason that courts, before they act on accomplice evidence, insist on corroboration in material respects as to the offence itself and also implicate in some satisfactory way, however small, accused named by the accomplice. In this way, the commission of the offence is confirmed by some competent evidence other than the single or unconfirmed testimony of the accomplice and the inclusion by the accomplice of any innocent person is defeated. This rule of caution of prudence has become so ingrained in the consideration of accomplice evidence that it has become almost the standing of a rule of law.

121. *Sheshanna Bhumanna Yadav (supra)* has held that, the first test of reliability of approver and accomplice evidence

was for the Court to be satisfied that there was nothing inherently impossible in evidence. After that conclusion is reached as to reliability, corroboration is required. The rule as to corroboration is based on the reasoning that there must be sufficient corroborative evidence in material particulars to connect the accused with the crime.

122. *Ravinder Singh (supra)* has observed that, every approver who comes to give evidence in some manner is seeking to purchase his immunity and that is why to start with he is an unreliable person and the rule of caution calling for material corroboration is constantly kept in mind by the Court. It would be apposite to set out paragraph 12 thereof which is as follows: –

“12. An approver is a most unworthy friend, if at all, and he, having bargained for his immunity, must prove his worthiness for credibility in court. This test is fulfilled, firstly, if the story he relates involves him in the crime and appears intrinsically to be a natural and probable catalogue of events that had taken place. The story if given of minute details according with reality is likely to save it from being rejected brevi manu. Secondly, once that hurdle is crossed, the story given by an approver so far as the accused on trial is concerned, must implicate him in such a manner as to give rise to a conclusion of guilt beyond reasonable doubt. In a rare case taking into consideration all the factors, circumstances and situations

governing a particular case, conviction based on the uncorroborated evidence of an approver confidently held to be true and reliable by the Court may be permissible. Ordinarily, however, an approver's statement has to be corroborated in material particulars bridging closely the distance between the crime and the criminal. Certain clinching features of involvement disclosed by an approver appertaining directly to an accused, if reliable, by the touchstone of other independent credible evidence, would give the needed assurance for acceptance of his testimony on which a conviction may be based."

123. Independent of the evidence of PW 8, prosecution has been able to establish various facts at the trial. We have to evaluate as to whether or not, such evidence would be sufficient to convict the appellants or any of them.

124. The following have been proved at the trial without the testimony of PW 8: –

- (i) Testimonies of PW 27 (one of the drivers of the Bolero vehicle), PW 31 (owner of the Bolero vehicle) and PW 34 (employee of IBM call centre) have proved that, the Bolero vehicle was given on hire to IBM call centre and that, the Bolero vehicle did not report for duty on February 5, 2007.
- (ii) Testimony of PW 27 corroborated by PW 31 has established that, the Bolero vehicle was given to PW 8 on February 5, 2007.

- (iii) Testimonies of PW 5, PW 6, PW 7, PW 9, PW 10 and PW 12 have established that, both the victims were working with the company owned by PW 12. The victims had proceeded to Himadri Chemicals from Durgapur on February 5, 2007 by a green colour Scorpio vehicle driven by KD. They were supposed to return on the same day and not having returned, General Diary were lodged with the police.
- (iv) Police had received and recorded General Diaries with regard to the 2 victims missing since February 5, 2007 on February 7, 2007 as appearing from the testimony of PW 16.
- (v) PW 24 has deposed that, police received a telephonic information that an unknown dead body was found in the field at the eastern side of the highway towards Kolkata in the area near the village Ayma under the Dadpur police station.
- (vi) Such dead body had been identified as that of KD by the brother-in-law of KD who lodged the written complaint with Dadpur police station.
- (vii) PW 1 had discovered the dead body of JPB which was identified by PW 4 as that of JPB. PW 1 had

lodged a written complaint. PW 1 had discovered the dead body lying on the side of the bypass emanating from Durgapur Expressway going towards Singur. PW 2 had also witnessed the dead body of JPB at the same location.

(viii) Post-mortem reports being Exhibit 26 and 27 of the dead bodies of the 2 victims have established that, both were murdered. The post-mortem reports of the 2 victims have been Exhibits 26 and 27 have described the nature of injuries found on the dead body of the 2 victims.

(ix) PW 26, the autopsy surgeon who had performed the post-mortem on the dead body of JPB has opined that, JPB was strangled. Strangulation had been done by a soft cloth such as gamcha (Indian towel).

(x) Prosecution has established that, the Bolero vehicle and the Scorpio vehicles had crossed the toll plaza on the Durgapur Expressway through the evidence of one of the employees of the toll plaza being PW 25 and Exhibit 33.

(xi) Through PW 29 and PW 34, employees of a particular petrol pump, prosecution has established

that, fuel was purchased for the Bolero vehicle on February 5, 2007 from that particular petrol pump.

(xii) Prosecution has established through PW 33 who is the owner of hotel at Bahdurpur, that PW 8 and the appellants had come to his hotel on February 5, 2007 and two of them had fish and rice as meals at his hotel around 2:30 PM.

(xiii) PW 27 had seen PW 8 to drive the Scorpio vehicle at 11am on February 7, 2007.

(xiv) PW 9 had identified Material Exhibit VIII as the locket belonging to JPB which was seized on the showing of PB.

(xv) Wrist watch belonging to JPB had been found from PW 8.

(xvi) PW 13 has deposed that Scorpio vehicle was seized by the police in an abandoned condition on February 10, 2007 opposite Honda showroom.

125. Prosecution has therefore, independent of the testimony of PW 8, established that, the two victims were murdered. Prosecution has through the testimonies of the employees of the petrol pump and the owner of the hotel placed PW 8 and the appellants together on February 5, 2007

at the two diverse locations. That apart, PW 27 in his deposition has stated that, PW 8 told him that, PW 8 was with the appellants on February 5, 2007. PW 27 had seen PW 8 with the Scorpio vehicle.

126. These evidences as has been noticed in the preceding two paragraphs although raises strong suspicion of the involvement of the appellants and PW 8 in the murder of the two victims, are not sufficient to convict them. It is in this factual matrix that, the evidence of PW 8 has to be evaluated.

127. Although, law does not bar reliance on the testimony of an approver to convict an accused, Courts have however evolved a rule of caution and seek corroboration from other evidence before relying upon the testimony of an approver. The Court has to find the testimony of the approver reliable. It has to arrive at a finding that, there was nothing inherently impossible in the evidence of the approver. Thereafter, Court has to arrive at a finding that there is sufficient corroborative evidence in material particulars to connect the accused with the crime.

128. PW 8 has described how GS got him to obtain the Bolero vehicle on February 5, 2007. He has described how such a vehicle was used in the commission of kidnapping,

dacoity, murders and destruction of evidence. Testimonies of PW 27, PW 31 and PW 34 have corroborated the fact that, the Bolero vehicle was with PW 8 on February 5, 2007 till its return to PW 27 subsequently.

129. PW 8 has stated that, TK and SS had taken rice and fish at a hotel at Bahadarpur. The hotel owner of the hotel where TK and SS had taken rice and fish, being PW 33, has corroborated PW 8 in this regard. PW 33 had placed PW 8 along with the other appellants at his hotel on February 5, 2007 at about 2:30 PM.

130. PW 7 has stated that, both the victims left Himadri Chemicals at about 5:30 PM on February 7, 2007 by the Scorpio vehicle and went towards Durgapur. PW 8 has stated that, appellants and PW 8 chased the Scorpio vehicle, stopped it, and kidnapped the two victims at about the time on February 5, 2007 when the two victims were travelling towards Durgapur in the Scorpio vehicle.

131. PW 8 has described the dacoity committed on the two victims prior to their murder. He has also described the manner in which, the two victims were murdered.

132. Injuries suffered by the two victims prior to their death described in Exhibits 26 and 27 as also the testimonies of the

post-mortem doctors being PW 22 and PW 26 corroborate PW 8 as to the manner in which, the two victims were murdered by the appellants.

133. PW 8 has described the two places where, the dead bodies of the two victims were thrown by the appellants on February 5, 2007. Dead bodies of the two victims had been discovered at such places on February 6, 2007 by independent persons.

134. Transit of the two vehicles through the toll plaza on February 5, 2007 has been established at the trial. Purchase of the fuel for the Bolero vehicle has been established at the trial through the evidence of PW 29 and PW 30.

135. PW 8 has described the manner in which, the Scorpio vehicle in which, the two victims were travelling was intercepted, the two victims were kidnapped, dacoity committed, and they were murdered. PW 8 has also described how, the two dead bodies were disposed of and the Scorpio vehicle as also the Bolero vehicle dealt with.

136. Independent prosecution witnesses have corroborated PW 8 with regard to material particulars of the events occurring on February 5, 2007 onwards. In the facts and circumstances of the present case, it would be nearly

impossible for a tutored witness to speak in such minute, great and vivid details with regard to the commission of such crimes over such period of time. PW 8 has by this testimony, established his involvement in the crimes that the appellants stood charged with at the trial.

137. Such detailed and vivid description of the crimes committed by the appellants and PW 8 could not have been stated by PW 8, if he was a tutored witness and did not partake in the crimes himself. Materials established at the trial and the testimony of PW 8 cannot be said to be inherently impossible or contradict each other. His testimony has been corroborated in substantial portion linking him and the appellants to the crimes committed.

138. It has been contended that, testimony of PW 8 was exculpatory in nature and therefore, no reliance should be placed thereon. From the tenor of the testimony of PW 8, we are unable to arrive at a finding that, such testimony of PW 8 was exculpatory in nature. PW 8 has described the commission of the crimes and his involvement therein. Had he not been an approver, he would have been convicted and sentenced.

139. Role of GS as appearing from the facts established vis a vis the conviction and sentence awarded by the learned Trial Judge requires consideration. Contention on behalf of GS is that, although, a dacoity was planned, the same never occurred. The subject murders were not pre planned and that it happened at the Scorpio vehicle while GS was driving the Bolero vehicle. Therefore, GS cannot be convicted for murder or under section 120 B of the Indian Penal Code, 1860.

140. Section 396 of the Indian Penal Code, 1860, under which, GS has been convicted, falls under Chapter XVII of the Indian Penal Code, 1860 which deals with offences against property. Section 378 has laid down that, whoever intending to take dishonestly any movable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit theft. Section 390 of the Indian Penal Code, 1860 has stipulated that, in all robbery there is either theft or extortion. It has specified that, if, in order to committing of theft, or in attempting to commit the theft, or in carrying away or attempting to carry away property obtained by theft, the offender, for that end voluntarily causes or attempts to cause to any person death or hurt or wrongful restraint, or fear of

instant death or of instant hurt, or of instant wrongful restraint then theft is robbery.

141. Robbery becomes dacoity in terms of Section 391 of the Indian Penal Code, 1860 when five or more persons gets involved. Section 391 has stipulated that, when five or more persons conjointly commit or attempt to commit a robbery, or where the number of persons conjointly committing or attempting to commit a robbery, and persons present aiding such commission or attempt amounts to five or more, every person so committing, attempting or is said to commit dacoity.

142. Dacoity complied with murder is dealt with in Section 396 of the Indian Penal Code 1860 which has stipulated that, if anyone or five or more persons, who are conjointly committing dacoity, commits murder in so committing dacoity, every one of those persons shall be punished with death or imprisonment for life or rigorous imprisonment for a term which may extent to ten years and shall also be liable to fine.

143. Murder used in Section 396 has the same meaning as that of Section 300 of the Indian Penal Code, 1860. Under Section 396 of the Indian Penal Code, 1860, if anyone of the five persons involved in dacoity, commits murder, while

committing the dacoity, then every person involved in the dacoity is to be punished in accordance with the provisions of such section.

144. Section 396 of the Indian Penal Code, 1860 has created a legal fiction that when in the commission of the dacoity, which necessarily involves five or more persons, anyone of such persons involved, commits a murder, then, the legal liability for commission of such murder, shall befall all of the persons involved in the dacoity and be punished in accordance with Section 396 of the Indian Penal Code, 1860.

145. Therefore, under Section 396 of the Indian Penal Code, 1860, the prosecution has to establish there is a murder within the meaning of Section 300 of the Indian Penal Code, 1860 and that, the murder was committed is an incident involving dacoity. In other words, prosecution has to establish that the murder occurred during dacoity and that they are not two separate incidents.

146. The test, therefore, which a Court needs to apply under Section 396 of the Indian Penal Code, 1860 is whether the murder occurred during a dacoity or are the two incidents separate.

147. In the facts and circumstances of the present case, GS was present in the Bolero vehicle when, the appellants including GS and PW 8 had decided to commit dacoity in respect of a vehicle from the highway. In pursuance to such criminal conspiracy, the Scorpio vehicle had been stopped containing the two victims with the object of committing dacoity of such Scorpio vehicle. GS had participated in the commission of dacoity in respect of the Scorpio vehicle. Appellants including GS had taken possession of the Scorpio vehicle from the lawful occupants thereof. GS had taken the wheels of the Bolero vehicle in order to aid and facilitate the proceeds of the crime that is the Scorpio vehicle to continue to remain with the appellants including GS. GS had facilitated the passage of the Scorpio vehicle through the toll-tax. GS had boarded the Scorpio vehicle later at Kolkata when, PW 8 was given the Bolero vehicle. GS had brought the Scorpio vehicle to PW 8 subsequently on February 10, 2007.

148. Murder of the two victims had been committed in the Scorpio vehicle when, GS was driving the Bolero vehicle. Commission of the murders as transpiring from the evidence on record was to ensure that the two victims did not stay alive to implicate the appellants in the dacoity. Appellants had

murdered the victims in aid of the dacoity. Although, GS was not physically present within the Scorpio vehicle when the murder had been taking place, nonetheless, GS was a part of the congregation of more than five persons while the dacoity was committed. GS had continued to aid the other appellants and PW 8 in dealing with stolen Scorpio vehicle subsequent to the murders.

149. In the facts and circumstances of the present case, we are not in a position to segregate the act of murders from the act of dacoity in order to arrive at a finding that GS was not involved in the two murders committed during dacoity.

150. In our view therefore, the learned Trial Judge, after noting that GS was not in the same vehicle in which, the murders took place, had rightly proceeded to convict the appellants including GS, inter alia, under Section 396 of the Indian Penal Code, 1860.

151. Notably learned Trial Judge has not sentenced any of the appellants for murder under Section 302 of the Indian Penal Code, 1860 in view of Section 71 thereof.

152. Learned Trial Judge has discussed the quantum of punishment to be imposed after taking note of the fact that, Section 396 of the Indian Penal Code, 1860 permitted death

sentence also. Learned Trial Judge has noted the aggravating circumstances as against the appellants including, the existence of criminal cases against some of the appellants. Learned Trial Judge has however found mitigating circumstances so as not to impose the death penalty.

153. We do not find that, the quantum of sentence imposed by the learned Trial Judge suffers from the vice of perversity or can be classified as excessive or not proportionate to the crimes established at the trial.

154. In such circumstances, we uphold the judgement of conviction and the order of sentence impugned before us.

155. Sentences awarded by the learned Trial Judge and as upheld by us, will run concurrently. Period of detention suffered by the appellants, at the time of investigation, trial, and post-conviction shall be set off against the substantive sentences awarded.

156. Bail granted to the appellants or such of them, as the case may be, during the pendency of the appeals stand cancelled. Such appellants shall surrender forthwith to undergo the remainder of the sentences. In default of any of the appellants on bail not surrendering, jurisdictional Court will take appropriate steps.

157. A copy of this judgement and order along with the Trial Court records be transmitted to the appropriate Court forthwith.

158. CRA 294 of 2017, CRA 336 of 2017, CRA 382 of 2017, and CRA 255 of 2021 along with all connected application stands disposed of accordingly.

[DEBANGSU BASAK, J.]

159. I agree.

[MD. SHABBAR RASHIDI, J.]