

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

PRESENT:

The Hon'ble Justice Rajarshi Bharadwaj
And
The Hon'ble Justice Apurba Sinha Ray

C.R.A. 387 of 2018

Ram Mandal

-Vs-

The State of West Bengal

For the Appellant : Mr. Kusal Kumar Mukherjee
Mr. Diptangshu Basu

For the State : Mr. Arijit Ganguly
Ms. Trisha Rakshit

Reserved On : 29.04.2025

Pronounced On : 14.08.2025

Rajarshi Bharadwaj, J.:

1. The appeal is directed against the judgement and an order passed by the Court of Learned Additional Sessions Judge, 3rd Court at Malda, dated May18, 2018 in Sessions Case No. 153 of 2015, convicting the appellant under Sections 302 of the Indian Penal Code (hereinafter referred to as 'IPC') read with Section 27 of the Arms Act, 1959 and sentencing him to suffer imprisonment for life and to pay fine of Rs. 500/- in default to suffer rigorous imprisonment for a further period of one month for the offence under section 302 IPC.

2. The present case arises out of English Bazar P.S. Case No. 1039/2014 dated December 14, 2014, registered under Sections 341, 326 and 307 of the

IPC on the basis of a First Information Report (FIR) and a written complaint lodged by one Rekha Mandal, who is the de facto complainant in the matter.

3. It is the prosecution's case that on December 14, 2014, the Sub-Inspector of the English Bazar Police Station received telephonic information stating that the appellant, one Ram Mandal, had been detained by the local residents in a school at Balupur, following his alleged assault on one Panchanan Mandal, the victim herein, with an iron rod. It was further informed that the appellant had sustained a gunshot injury. Upon receipt of the said information, the police personnel arrived at the location, recovered the appellant from the custody of the local residents and subsequently arrested him.

4. Following the investigation, a charge sheet was submitted against the appellant under Section 302 of the IPC. Upon submission of the charge sheet, the Learned Chief Judicial Magistrate, Malda, took cognizance of the offence and, upon compliance with Section 207 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "Cr.P.C"), committed the case to the Court of Sessions under Section 209 of Cr.P.C.

5. Thereafter, the matter was placed before the Court of the Learned Additional Sessions Judge, 3rd Court, Malda and registered as Sessions Case No. 153 of 2015, corresponding to Sessions Trial Case No. 43 of 2015.

6. Upon consideration of the case records and hearing both parties, the Learned Additional Sessions Judge framed charges against the appellant under Section 302 of the IPC and Section 27 of the Arms Act, 1959. The appellant pleaded not guilty and claimed to be tried.

7. In the course of the trial, the prosecution examined twelve (12) witnesses and produced several documents and material objects marked as Exhibits 1 to 17. The appellant did not lead any evidence in defence but was examined under Section 313 of Cr.P.C.

8. Upon completion of the trial, the learned Additional Sessions Judge, by judgment and order dated May 18, 2018, convicted and sentenced the appellant in accordance with law.

9. The Learned Counsel for the appellant has challenged the findings of the Learned Trial Court on multiple grounds, primarily highlighting inconsistencies in the prosecution's case and procedural lapses during investigation and trial.

10. It is submitted that key prosecution witnesses being P.Ws. 4, 5, 6 and 7, who claimed to be eyewitnesses, did not disclose the same in their statements under Section 161 of the Cr.P.C. Their trial depositions contained several improvements and omissions, raising serious doubts about the credibility of their testimonies. For instance, P.W.5 did not state before the Investigating Officer (IO) that he witnessed the assault or that the appellant concealed himself in his house. Similarly, P.W.7 failed to mention his presence at the scene or that he narrated the incident to P.W.1. These discrepancies undermine the prosecution's version of events.

11. The investigation suffered from significant irregularities. The IO admitted to not examining key witnesses like one Baidyanath Pramanick, one Atul Karmakar and one Nagen Murmu. Despite the appellant sustaining a gunshot injury, no separate inquiry was conducted regarding the same. The recovery of the weapon is doubtful as the appellant did not mention the exact location and no inquiry was made regarding the condition of the house where the weapon was allegedly found. The seized weapon was also not sent for forensic examination and no labels were affixed to the seized articles.

12. It is further submitted that the appellant's examination under Section 313 of the Cr.P.C was not conducted in accordance with law. Several incriminating circumstances were not put to the appellant, thereby denying him an opportunity to offer an explanation.

13. The Learned Counsel appearing for the State submitted that the impugned judgment and order of conviction passed by the Learned Additional Sessions Judge is based on clear direct and consistent evidence. It is submitted that the prosecution has established the guilt of the appellant beyond all reasonable doubt, through the testimony of multiple witnesses, both direct and circumstantial, supported by medical and documentary evidence.

14. It is submitted that several prosecution witnesses, including P.Ws. 1 to 7, have clearly deposed that the appellant inflicted repeated blows to the head of the victim, Panchanan Mandal, with an iron rod. The intention to cause death can be clearly inferred from the nature, number and location of the injuries, all of which were directed at a vital part of the body. The post-mortem report corroborates this version and the medical expert, P.W.8, has confirmed that the death was homicidal in nature.

15. The prosecution further submits that the subsequent conduct of the appellant is highly incriminating. Immediately after the assault, the appellant fled from the place of occurrence, concealed himself in his house and later attempted to escape towards the sluice gate. The fact that he locked himself inside his house and emerged later with a gunshot injury raises serious questions. During this time, he had full opportunity to tamper with or destroy material evidence, including the weapons used in the offence. What transpired inside the house is not known and the possibility of manipulation or fabrication of evidence cannot be ruled out.

16. Learned Counsel further contended that the seizure of the iron rod and improvised firearm from the appellant's house in the presence of seizure witnesses is a critical link in the chain of events and supports the prosecution case.

17. It is also submitted that the contradictions or omissions in the statements of some prosecution witnesses under Section 161 Cr.P.C are minor

in nature and pertain only to peripheral details. The core version of the incident being that the appellant brutally assaulted the deceased with an iron rod on his head in the early morning near the Gambhira temple, fled from the scene and was later apprehended with injuries and weapons remains undisputed and consistent. Therefore, it is submitted that the conviction of the appellant is based on legal evidence, corroborated by medical and seizure documents and that the Learned Trial Court rightly found the appellant guilty under Section 302 IPC.

18. We have heard learned Advocates for the parties and have gone through the evidence of record meticulously which reveals as follows:

- I.** P.W.1 deposed that the deceased, Panchanan Mandal, was his father and that on December 14, 2014 at around 7:00 a.m., the accused one Ram Mandal, herein the appellant assaulted his father with an iron rod near Balupur Darshalla while he was on his way to open his grocery shop. He further stated that Ram Mandal attempted to fire at his father with an improvised gun, but the gun fell and injured Ram Mandal himself. According to him, after the firing sound, people fled and Ram Mandal took the opportunity to go home and conceal the iron rod and the gun, and later fled to a switch gate where villagers apprehended him and detained him in a local club. He stated that his father was taken to Malda Medical College & Hospital and later referred to Kolkata, where he succumbed to his injuries at around 1:00 a.m. on December 15, 2014. He identified Ram Mandal in court and claimed that on December 17, 2014, the police seized one iron rod and one improvised pipe gun with one fired cartridge from the house of the accused in his presence. He signed the seizure list, which was marked as Exhibit-1 and identified the iron rod, gun, and cartridge as Mat. Exhibits I, II, and III respectively.

During cross-examination, he stated that he took his father to the hospital in a taxi along with one Pankaj Mandal and one Dipak Karmakar and that one Menoka Pramanik and Joydeb Ghosh told him about the incident. He further stated that the occurrence took place near his father's grocery shop and that the houses of Atul Karmakar and Baidyanath Pramanik are adjacent to that of the accused.

II. P.W.3, who is the niece of the victim, Panchanan Mandal, lodged the F.I.R. against the appellant. She deposed that on December 14, 2014 at around 7:00 a.m., she witnessed the incident near the Gambhira temple, Balupur. She described how the appellant assaulted the victim with an iron rod on his head, causing him to fall to the ground. She also mentioned that after the assault, the appellant pulled out a pistol and, in the process, accidentally shot himself in the leg. He then fled the scene but was later apprehended by the villagers at the sluice gate. P.W.3 identified the iron rod and the pistol as the weapons used in the incident. She also confirmed that the police seized these items from the appellant's house on December 17, 2014.

III. P.W.2, who was known to the victim, Panchanan Mandal, deposed that the incident took place on December 14, 2014 at around 7:00 a.m. near the Gambhira temple, Balupur. She witnessed the accused, Ram Mandal, assault Panchanan Mandal, the victim with an iron rod on his head. As a result of the assault, the victim fell to the ground. P.W.2 further mentioned that the victim was taken to Malda Sadar Hospital and referred to Kolkata for treatment but succumbed to his injuries on the way. She also stated that Ram Mandal sustained a gunshot injury to his leg, concealed himself in his house and fled to the sluice gate area, where he was apprehended by the villagers. She confirmed that the iron rod, the weapon of assault, was recovered from Ram Mandal's house.

- IV.** P.W.4, a neighbour of the deceased herein the victim, deposed that on December 14, 2014 at around 7:00 a.m., he was returning from his morning walk with his friends when he saw the appellant running away with an iron rod in his hand. PW 4 further mentioned that after hearing a noise, they met Menoka Mandal, who informed them that Ram Mandal had assaulted Panchanan Mandal with the rod. Upon reaching the scene, he saw the victim being injured was lying on the ground. He also stated that they refrained from intercepting Ram Mandal due to fear, as he was holding an improvised firearm. Later, Ram Mandal fled to his house and the villagers apprehended him at the sluice gate. P.W.4 also confirmed the seizure of the iron rod and the improvised pipe gun from Ram Mandal's house. He clarified that one Menoka Pramanik and Rekha Mandal were the direct eye witnesses to the incident.
- V.** P.W.5, who was known to the victim Panchanan Mandal, deposed that the incident took place on December 14, 2014 at around 7:00 a.m. near the Shiva/Gambhira temple in Balupur Darsallaha. He witnessed the assault, stating that Ram Mandal attacked Panchanan Mandal with an iron rod to the head from behind, causing him to fall to the ground. He further described how the appellant attempted to shoot the victim with a pistol, but the gunshot injured the appellant himself. After the incident, Ram Mandal fled to his house, locked the door and later fled towards the sluice gate. He was apprehended by the villagers and confined in a school premises before being taken into police custody. He also mentioned that Panchanan Mandal was initially treated at Malda Medical College & Hospital but passed away on the way to Kolkata. Additionally, P.W.5 signed the inquest report in the presence of the police. He identified the iron rod as well as the pistol as the weapons used during the assault.

- VI.** P.W.6, who was known to the victim, deposes about the same incident that occurred on December 14, 2014 at approximately 7:00 a.m. near the Shiva/Gambhira temple in Balupur Darsallaha. He confirmed witnessing Ram Mandal assault the victim with an iron rod to the head, causing the victim to fall. After the assault, Ram Mandal fled the scene and was later apprehended by villagers and confined in a school. The police were informed and took Ram Mandal into custody. He also confirmed that Panchanan Mandal was initially taken to Malda Medical College & Hospital but was referred to Kolkata, where he succumbed to his injuries. He also signed the inquest report. During cross-examination, PW 6 maintained that he witnessed the assault and provided accurate details to the investigating officer.
- VII.** P.W.7, a neighbour of the victim, deposed that on December 14, 2014 at around 7:00 a.m., he was present near the Shiva/Gambhira temple in Balupur Darsallaha when the appellant assaulted the victim with an iron rod to the head from behind. He also described how Ram Mandal pulled out a firearm and shot himself in the thigh before fleeing the scene towards the sluice gate. After being apprehended by villagers, Ram Mandal was confined in a school and the police were informed. He confirmed that the victim was taken to the Malda Medical College & Hospital and later referred to Kolkata, where he died from his injuries. P.W.7 further deposes that other individual, including one Menoka Pramanik, Hemanta Mandal, Debangshu Mandal, Rekha Mandal and Pankaj Mandal, witnessed the incident. He confirmed sharing the details of the assault with Sanatan Mandal, the son of the deceased herein P.W.1 and gave a statement to the investigating officer.
- VIII.** P.W.10, an officer-in-charge of Pukhuria Police Station, deposed that on December 14, 2014, he was posted as a Sub-Inspector of Police at

English Bazar P.S. On that day, he recorded English Bazar P.S. Case No. 1039/14, based on the written complaint of one Rekha Mandal. The FIR was formally drawn up by him and he confirmed that it bears his handwriting and signature. After recording the FIR, he directed S.I. Pabitra Mahato to take up the investigation. During cross-examination, he stated that he had no knowledge of the case beyond recording the FIR.

- IX.** P.W.9, the police officer who wrote the First Information Report (FIR), deposed that the FIR was drafted based on the statement of one Rekha Mandal of Balupur, Darshalla herein P.W.3. After writing the FIR, he read over and explained its contents to one Rekha Mandal. Upon confirming that she understood and agreed with the details, P.W.3 affixed her signature to the document. He confirmed that the FIR bears their handwriting and signature as the writer.

During cross-examination, the defence challenged the witness's statement, asserting that P.W.9 did not explain the contents of the FIR to one Rekha Mandal and they claimed no personal knowledge of the occurrence.

- X.** P.W.12, a Sub-Inspector of Police posted at Habibpur P.S., deposed that on December 14, 2014, he was stationed at English Bazar P.S. under the direction of the I.C. to investigate the case. He was informed by the Duty Officer about the detention of a person, one Ram Mandal, by the public at Balupur. He went to Balupur and found Ram Mandal detained in a room at the local Primary School. Despite the public's anger and desire to lynch the accused, he pacified the crowd and took the appellant to Malda Medical College & Hospital, where he was treated for a gunshot injury to his leg. After the accused's admission, he made a General Diary (G.D.) entry at the police station and began his investigation. The G.D. entries, prepared and signed by him, were submitted as Exhibits-10, 11, and 12.

After taking over the investigation, he visited the scene of the crime, prepared a sketch map and questioned witnesses. He arrested the appellant based on witness statements regarding his involvement in the assault. He also performed an inquest over the body of the deceased, Panchanan Mandal, who succumbed to his injuries on December 15, 2014. The inquest report and the body challan were submitted respectively. Additionally, P.W.12 recovered weapons from the appellant's house following his statement, including a handle used for bending rods and a firearm. The seizure list was signed by him and witnesses. During his investigation, he collected the CFSL report on the examination of the seized firearm. The investigation concluded with the submission of the charge-sheet.

During cross-examination, PW12's actions were challenged. The defence pointed out that the witness did not specifically note the details of the house's condition when Ram Mandal retrieved the weapons and claimed that some of the witnesses did not provide consistent statements. Additionally, the defence contested the thoroughness of PW12's investigation, questioning his failure to examine certain individuals or properly record all statements and evidence.

XI. P.W.8, the Assistant Professor at Malda Medical College & Hospital, conducted the post-mortem examination of Panchanan Mandal's body on December 15, 2014. During the examination, P.W.8 recorded various injuries on the body and opined that the cause of death was due to the effects of the injuries, which were anti-mortem and homicidal in nature. The post-mortem report was signed by him.

During the course of cross-examination, he clarified that similar injuries could be caused if multiple individuals were involved in the assault or if

the victim falls from a height, though the likelihood of such injuries resulting from a fall was low in the present case.

XII. P.W.11, an Associate Professor in the Department of Surgery at R.G. Kar Medical College & Hospital, testified that on December 14, 2014, he was posted at Malda Medical College & Hospital. On that day, a patient named Panchanan Mandal, herein the victim was admitted under his care for treatment. The patient had head and scalp injuries and he recommended a CT scan. Upon reviewing the scan, he diagnosed an intracranial haemorrhage. He could not provide details about the patient's subsequent treatment due to the absence of further treatment records. The patient records and treatment sheets, written and signed by him, were submitted as evidence. He further explained that he had extracted a bullet from the thigh of a patient named one Ram Mandal, who had a gunshot wound. The defence cross-examined P.W.11, suggesting that such an injury could occur if one were shot at.

19. The prosecution case, as unfolded through the deposition of P.Ws. 1 to 7, sought to establish that on the morning of December 14, 2014, the appellant, Ram Mandal, assaulted the victim, Panchanan Mandal, with an iron rod near the Gambhira temple at Balupur and attempted to shoot him with an improvised firearm. The victim later succumbed to his injuries and the appellant was apprehended by villagers while attempting to flee. Seizure of the iron rod and firearm was made from his house.

20. Several key prosecution witnesses, namely P.Ws. 4, 5, 6 and 7, claimed to be ocular witnesses during trial but failed to disclose this material fact in their statements under Section 161 Cr.P.C. These omissions and contradictions, established during cross-examination and corroborated by the Investigating Officer's testimony, reveal significant afterthoughts and embellishments, rendering their testimonies unreliable. Notably, P.W.4 did not mention to the

Investigating Officer that P.Ws. 2, 3, 5 and 7 were direct eye-witnesses, nor did P.W.5 claim to have seen the appellant conceal himself in his house or that others witnessed the occurrence. P.W.6 did not affirm seeing the assault himself and P.W.7's deposition about sharing the account with P.W.1 or witnessing the assault jointly with others also lacks prior mention.

21. The Supreme Court in ***State of U.P. v. Krishna Master*** reported in **(2010) 12 SCC 324** held:

*“17. In the deposition of witnesses, there are always normal discrepancies, howsoever honest and truthful they may be. These discrepancies are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition, shock and horror at the time of occurrence and threat to the life. It is not unoften that improvements in earlier version are made at the trial in order to give a boost to the prosecution case, albeit foolishly. Therefore, it is the **duty of the court to separate falsehood from the truth**. In sifting the evidence, the court has to attempt to separate the chaff from the grains in every case and this attempt cannot be abandoned on the ground that the case is baffling **unless the evidence is really so confusing or conflicting that the process cannot reasonably be carried out**. In the light of these principles, this Court will have to determine whether the evidence of eyewitnesses examined in this case proves the prosecution case.”*

22. However, in the present case, the improvements by key witnesses are not trivial, but go to the root of the prosecution story. The contradictions and procedural lapses render the evidence so conflicting that the process of separating truth from falsehood becomes unreasonably speculative, thereby necessitating benefit of doubt to the appellant.

23. The investigation is marred by multiple irregularities and procedural gaps. The Investigating Officer admitted that he did not examine critical potential witnesses such as one Baidyanath Pramanick, Atul Karmakar and Nagen Murmu, whose houses were in close proximity to the place of occurrence. Moreover, although the appellant had sustained a gunshot injury, no separate inquiry was conducted to ascertain the cause and circumstances

surrounding such injury. Neither was the condition of the appellant's house (whether locked, open or occupied) verified at the time of recovery of the purported weapons, nor were proper labels affixed to the seized items.

24. Importantly, the offending weapon was not sent for forensic examination to CFSL, a grave lapse which leaves a significant evidentiary vacuum. Furthermore, the ballistic expert report, heavily relied upon by the prosecution and Trial Court to acquit the appellant of the Arms Act charge, has not been given appropriate weightage in evaluating the prosecution's overall case. The Learned Trial Court failed to appreciate that if the expert report casts doubt on the appellant's possession or use of the weapon, it also undermines the entire chain of events alleged by the prosecution.

25. Moreover, the post-mortem report by P.W.8 stated that the injuries on the victim could possibly have been caused by more than one person, further clouding the prosecution's theory of a solitary assailant and opening the possibility of alternate hypotheses, which ought to have been resolved in favour of the accused.

26. Furthermore, P.W.3 claimed to have witnessed the assault from her residence, but the sketch map as per Exhibit 13 shows her house to be far from the place of occurrence, making it implausible that she could have seen the incident unfold with such clarity.

27. Also, crucial inconsistencies exist in the chain of narration. P.W.1, who is the informant, admitted he was not present at the scene and came to know of the incident from P.W.2. However, P.W.2 herself did not mention how the appellant sustained the gunshot injury, which is a major event that logically should not have been omitted by an ocular witness.

28. The Supreme Court in ***Lakshmi Singh v. State of Bihar*** reported in **(1976) 4 SCC 394** held:

*“12. In these circumstances, therefore, it was the bounden duty of the prosecution to give a reasonable explanation for the injuries sustained by the accused Dasrath Singh in the course of the occurrence...**It is well settled that fouler the crime, higher the proof, and hence in a murder case where one of the accused is proved to have sustained injuries in the course of the same occurrence, the non-explanation of such injuries by the prosecution is a manifest defect in the prosecution case and shows that the origin and genesis of the occurrence had been deliberately suppressed which leads to the irresistible conclusion that the prosecution has not come out with a true version of the occurrence.** This Court clearly pointed out that where the prosecution fails to explain the injuries on the accused, two results follow: (1) that the evidence of the prosecution witnesses is untrue; and (2) that the injuries probabilise the plea taken by the appellants.*

“In State of Gujarat v. Bai Fatima [(1975) 2 SCC 7: 1975 SCC (Cri) 384] one of us (Untwalia, J.) speaking for the Court, observed as follows: [SCC p. 13: SCC (Cri) p. 390, para 17]

In a situation like this when the prosecution fails to explain the injuries on the person of an accused, depending on the facts of each case, any of the three results may follow:

(1) That the accused had inflicted the injuries on the members of the prosecution party in exercise of the right of self-defence.

*(2) **It makes the prosecution version of the occurrence doubtful and the charge against the accused cannot be held to have been proved beyond reasonable doubt.***

(3) It does not affect the prosecution case at all.

The facts of the present case clearly fall within the four-corners of either of the first two principles laid down by this judgment. In the instant case, either the accused were fully justified in causing the death of the deceased and were protected by the right of private defence or that if the prosecution does not explain the injuries on the person of the deceased the entire prosecution case is doubtful and the genesis of the occurrence is shrouded in deep mystery, which is sufficient to demolish the entire prosecution case.”

It seems to us that in a murder case, the non-explanation of the injuries sustained by the accused at about the time of the occurrence or in the course of altercation is a very important circumstance from which the court can draw the following inferences:

*“(1) that the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version;
(2) that the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and therefore their evidence is unreliable;
(3) that in case there is a defence version which explains the injuries on the person of the accused it is rendered probable so as to throw doubt on the prosecution case.”*”

29. This Court, being the first appellate court, has the responsibility to re-appreciate the evidence in entirety. Even if the defence has not cross-examined the ballistic expert or certain witnesses exhaustively, it does not preclude the Court from taking judicial notice of the lapses apparent in the investigation and testimonies. The cumulative effect of such contradictions, omissions and investigative flaws give rise to serious doubts as to the veracity of the prosecution case. Where two views are possible, the one favouring the accused must prevail. Hence, the benefit of doubt must be extended to the appellant. The prosecution has failed to prove the guilt of the accused beyond reasonable doubt.

30. Therefore, upon thorough examination of the evidence on record, the criminal appeal identified as CRA 387 of 2018 is hereby allowed. The impugned judgment and order of conviction and sentence dated May 18, 2018, issued by the Learned Judge, are accordingly quashed and set aside. Any pending related applications are consequently disposed of.

31. The appellant is hereby exonerated of all charges ascribed to him and shall be released forthwith, provided there are no other outstanding warrants or cases against him.

32. Copy of the judgement along with Trial Court Records shall be sent back to the trial court at once for necessary compliance.

33. Urgent Photostat certified copy of this order, if applied for, be supplied expeditiously after complying with all requisite legal formalities.

[Rajarshi Bharadwaj, J.]

I Agree.

[Apurba Sinha Ray, J]