

Form No. J(1)

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

Present :

**The Hon'ble Justice Rajasekhar Mantha
And
The Hon'ble Justice Rai Chattopadhyay**

CRA 417 of 2018

**Alamgir Sk & Anr.
– Vs. –
The State of West Bengal**

For the Appellants: Mr. Sabir Ahmed,

Mr. Md. Kutubuddin,

Mr. Dhiman Banerjee ,

Mr. Quazi Ezaz Ahmed,

For the State: Mr. Saibal Bapuli,

Mr. Bibaswan Bhattacharya,

Heard concluded on: 07th November, 2025

Judgment on: 17th November, 2025

Rajasekhar Mantha, J.:

1. The present appeal is directed against the judgment of conviction dated May 29, 2018, and the order of sentence dated June 2, 2018, passed by the Learned Additional Sessions Judge, Fast Track Court-1, Lalbagh, Murshidabad, in Sessions Trial No. 3(1) 2015 and Sessions Serial no. 23 of 2014. The appellants were convicted under Section 302 read with Section 34 of the IPC, and further convicted under Section 25 and 27 of the Arms Act, 1959. The appellants were sentenced to suffer rigorous imprisonment for life for the offence under Section 302/ 34 of the Indian Penal Code. They were directed to pay a fine of rupees 10,000 each; in default of such payment, they were directed to undergo rigorous imprisonment for 6 months each. The appellants were further sentenced to suffer rigorous imprisonment for 5 years each, for the offence under section 27 of the Arms Act, 1958. The appellant Alamgir was sentenced to suffer rigorous imprisonment for 3 years for the offence under section 25 of the Arms Act, 1959.

THE PROSECUTION CASE:

2. On July 12, 2014, the victim and his wife, PW 3, went, by scooter, to Achra village to attend the last rites of a relative of PW 3. On their way back home around 10:00 A.M., their scooter was stopped at Hazipukur, Anatapur by the appellants, who came riding on a black-colored motorcycle. The appellants dragged the victim and his wife by their hair out of the scooter and fired 4 successive bullets at the victim. The appellants snatched the purse from the victim. The appellants spared the life of the wife of the victim, after the wife made repeated requests in that regard.

3. One bullet failed to hit the victim. The appellant Airuddin is stated to have fired one bullet and Alamgir fired three bullets. The local people assembled at the PO after the 4 bullets were fired. The appellants thereafter fled the scene towards Anantapur village.
4. Complaint scribed by PW 10 and was lodged by PW 3 and on the basis of which, FIR was registered around 1:20 PM. Investigation started. In course of investigation, the police came to learn that the appellants may have committed the murder, from the villagers. The police arrested the appellants on a tip-off. The police recovered a pipe gun and cartridges from the appellant Airuddin.
5. Inquest was conducted at 1:15 P.M. The inquest report recorded that the victim has suffered a deep injury at the right ear which spread till the right eye. Gunpowder was found at the said injury site. The next injury was on the left chest. Another injury was found at the back of the right side of the waist. These three injuries appeared to have been caused by gunshot wounds. There were other injuries as well. The body was sent for post-mortem to Murshidabad medical College and Hospital at Behrampur at PM which started at 2 PM. The appellants were arrested on July 24, 2014. A pipe gun and cartridges were recovered from the person of the appellant Airuddin.
6. Charge-sheet was filed after investigation was completed. Charges were framed under Section. 341/302/34 of the IPC and 25 and 27 of the Arms Act, 1959 against the appellants. Sanction to prosecute under the Arms Act was obtained from the office of the District Magistrate, Murshidabad, under Section 39 of the Arms Act, 1959.

7. The trial commenced. The prosecution examined 27 witnesses. The appellants were examined under Section 313. The accused stated during examination u/s 313 CrPC, that the wife of the victim is their family relation; the wife of the victim knows all the family members of the appellants. The case of appellants was one of false implication. The Trial court found the appellants guilty of charges for the offence and sentenced them as stated above.

THE EVIDENCE ON RECORD

8. **PW 1, Sanatan Pal, is the co-villager of the victim.** He arrived at the PO after the victim was shot dead. He noticed two empty cartridges and one unused cartridge at the PO. The victim was taken to the hospital; however, he did not go to the hospital since he was guarding the articles of the victim and his wife at the PO. He is a witness, inter alia, to the recovery of the said cartridges from the PO. He identified the said cartridges in Court. According to him, the police arrived at 4:00 p.m. at the PO.
9. **PW 2, Gour Kishore Banerjee, is the Inquest Officer.** He stated that when he arrived at the PO, he found 4 persons, apart from the wife of the victim. The names of the four persons mentioned by him did not, however, include PW 1. He reiterated the findings of the inquest report as stated above.
10. **PW 3 was, Sakila Bewa, the wife of the victim.** She reiterated what she said in the complaint. She however clarified that the said purse, which she stated in complaint to have been taken by the appellants, were found in the house of the victim.

11. She was unequivocal in stating that her husband accompanied her to participate in the last rites of her relative at Anantapur village. She stated that the distinguishing physical feature between the two appellants was that one of them was tall and the other was short. The appellant Airuddin was the tall man, and the appellant Alamgir was the short one. She deposed to the acts of the appellants with reference to their height.
12. She stated that the tall person stopped the motorcycle. He instructed the short person to pull out the arms. The short person loaded the cartridge and shot the first shot at the right waist of the victim. The second bullet was fired by the tall person at the forehead on the right side. The short person fired the third bullet. It failed to fire. The short person again fired the fourth bullet at the right side of the victim. She identified the two participants in the TI parade and also before the trial Court.
13. She admitted that she had come to learn the names of the appellants from the villagers, who identified the appellants from the physical description given to them by her. She said that she knows Biltu, brother of the appellants who was murdered 3 years ago, from the date of the murder of the victim. She, however, stated that she does not personally know the appellants. Her statement u/s 164 CrPC was recorded 2 months after the incident.
14. **PW 4, Nazrul Sk., was a co-villager.** He reached the PO with PW 1. He reached the place after the murder of the victim. He stated that the local people took the victim to the hospital. He, however, did not go to the hospital. He and PW 1 guarded the articles of the victim. He stated that three cartridges were found at the PO. The evidence of PW 4 is the

reflection of the evidence of PW 1 since both of them arrived at the PO together.

15. **PW 5, Mamon Sk, was a co villager.** He admitted that he is one of the accused in the murder case of Biltu, the brother of the appellants. He stated that he saw the two appellants loitering with a black Bajaj motorcycle in the village. He saw them when he was returning from Anantapur Village. He saw the appellants before the commission of the murder. He saw the appellants after the commission of the murder. In fact, he saw the appellants near the PO just after he heard the sound of bullets being fired. He saw the appellants when he was rushing to the PO. He heard the sound of the three bullets being fired. At the PO, however, he saw 4 cartridges, one of which was unused.

16. **PW 6, Monirul Sk., was a co-villager.** He reiterated what PW 5 said. PW 6 admitted that he is one of the accused persons in the murder case of Biltu, the brother of the appellants.

17. **PW 7, Sadek Sk., was a co-villager.** He was a bystander. He is a witness to the murder of the victim. He was cultivating crops on an agricultural field near the PO. He saw the crime from the agricultural field. He stated that the two appellants fired bullets. He recognized the identity of the appellants when they were firing bullets. He has identified the victim's scooter. His evidence has remained uncontroverted in cross-examination.

18. **PW 8, Haider Sk, was a co-villager.** He is a witness to the recovery of the black Bajaj motorcycle, which is stated to have been used in the murder of the victim. He and the appellant Airuddin were taken to the

house of Asadul of Daspara. The motorcycle was recovered therefrom. He identified the motorcycle in the Court.

19. **PW 9 was Nurul Huda.** He admitted that he is one of the accused persons in the murder case of Biltu, the brother of the appellant. He was taken by the police when the police searched the appellant Airuddin. A pipe gun with a cartridge was recovered from Airuddin. He identified the same pipe gun in the court.

20. **PW 10, Anjumanowara Bibi, was the daughter of the victim.** She wrote the complaint to the police on behalf of PW 3, the wife of the victim. On that fateful day, she came from her matrimonial house to the hospital where the victim was admitted. PW 3, her mother related to her how the victim was killed. She confirmed that her mother was not able to tell her the name of the appellants.

21. She stated in her deposition that her mother told her that the complaint to the police mentioned that the appellants took out the purse from the person of the victim. PW 3, the mother of PW 10, was under the impression that the victim was supposed to pay money to some persons in connection with the hardware business of the victim. Thus, PW 3 thought that the victim was carrying his purse. PW 3, however, subsequently discovered that the victim on that fateful day forgot to take his since the purse was found at home. She informed the police about it. The purse story was related to PW 10, 2 months after the incident. It was related to PW 10, when the police visited them.

22. **PW 11, Sahajamal Sk., was a co villager.** He is a witness to the recovery of the motorcycle, used in the crime. He confirmed the presence of

PW 8 during the recovery of the motorcycle. He confirmed that a Bajaj motorcycle was recovered from the house of Asadul at Daspara. He identified the motorcycle upon placing specific reliance on the red colour, bordering the wheel of the motorcycle. He admitted that his brother Meenu is one of the accused persons in the murder case of Biltu, the brother of the appellants.

23. **PW 12 was Asdar SK. He was a villager.** He reiterated what Nurul Huda, PW 9, said. PW 12 is also a witness to the recovery of the pipe gun from the person of Airuddin. He confirmed that the police officers asked PW 12 and PW 9 to search the police officers. PW 12 stated that he found that the police officers did not possess any guns. Thereafter, the police officers in front of PW 12 and PW 9 searched the appellant, Airuddin, and found a pipe gun with a cartridge loaded. Airuddin was wearing a lungi at that time. From the fold of his lungi, another cartridge was found. He admitted that he is one of the accused persons in the murder of Biltu, the brother of the appellant.

24. **PW 13, Arman Hossain, was a co villager.** He reached the PO upon hearing the sound of the gunfire. He reached the spot after the death of the victim. He said that the wife of the victim told him about how the victim was killed. His version of the crime corroborates with the version, narrated by the wife of the victim to the police. He stated that on his way to the PO, he saw two persons unknown to him fleeing from the PO towards Anantapur village.

25. **PW 14 was Piyush Khan** was a photographer. He took out printouts of the pictures of the dead body of the victim from his computer. The pictures

were taken by the Officer in Charge of the police station. He stated that he was instructed by the OC to come to the police station, where the officer in charge handed him the camera, from which PW 14 took 18 photographs, and printed them out from his computer.

26. **PW 15 was Mostafa Sk @ Bandu. He is a co villager.** He was declared hostile. He was cross-examined. He denied the prosecution's case. He stated that he did not tell the police anything about the murder of the victim.
27. **PW 16 was Ainal Haque.** He is a co villager. He is a witness to the wife of the victim crying when the victim was lying dead beside her. He knows the appellants as the son of one Azibur. The victim was shot and died in front of his house.
28. **PW 17, Kundan Bhattacharjee, was the head clerk of judicial Munshikhana,** which is under the aegis of the District Magistrate of Murshidabad. He confirmed that a request for a sanction for invoking the Arms Act was sent by the police to the office of the District Magistrate. He confirmed that the gun and any material related to the gun were not sent to the office of the District Magistrate for considering the application for the grant of sanction.
29. **PW 18, Jyotirmoy Bagchi, was the officer in charge of the Nabagram police station,** which investigated the murder of the victim. He confirmed that he has taken certain pictures of the body of the victim. He confirmed that the wife of the victim has lodged a written complaint with the police.
30. **PW 19, Dibyendu Chakraborty, was the duty officer of the said police station.** He is a witness to the seizure of bloodstained clothing of

the victim. He confirmed that the wife of the victim has lodged a written complaint with the said police station.

31. **PW 20, Mahadeb Sharma, was the police constable.** He was on duty at Malkhana (a place where unclaimed and crime-related articles are kept by the police). He confirmed that a blue coloured Lungi was deposited in the Malkhana on the fateful day. He identified the said lungi in the court. He signed the document, which recorded the list of articles deposited in the malkhana on that fateful day. He, however, stated that he cannot recall all the details of the Alamats (the articles recovered from the crime scene). The articles recovered from the PO were shown to him in court. He stated that the packet containing the said articles does not contain his signature.

32. **PW 21 was Salema Bibi.** She is a co villager. She was declared hostile by the prosecution. She denied having stated to the police that she heard the sound of gunfire. She, however, stated that she had learnt from the villager that the victim has been murdered.

33. **PW 22, Kamal Kanti Majumder, is the postmortem doctor.** He confirmed the presence of injuries in the person of the victim, has been caused by bullets. He stated that such bullets have been fired from a close range. He stated that there was no exit of such bullets from the body. He stated that there were three bullet injuries to the person of the victim. The details of the injuries are set out herein below:-

“(1) One barrel shaped deep lacerated injury seen over middle of right gluten region with an oblique direction, from lateral side to medial side, with an oblique direction, which approximately 70 degree angle from the entry point to the medial side, penetrating in the gluten muscle. It measures opening 1½" of diameter circular in shape, almost parallel side with 3" deep with blind end i.e. no opening or exit.

Upon opening of the wound I observed the following:

(a) is more or less circular with a abraded colour with conducting irregular indrawn margin.

(b) Mixed with gut.

(c) Rinse of power and deposit of power. Blood smoke was seen in the empty of the wound.

Foreign body of the end on synthetic probably of nylon, red in colour, dumble shaped, having length 1 ½" in two disc shaped ends jointed by three interrupted pillars of ½" length, which detected from the cavity of the wound.

32" metallic pellets of small peanut size were detected from the wound which were preserved and handed over the same to the constable."

34. **PW 23, Bimal Das, was the police constable.** He accompanied the Additional Sub Inspector of Police, who was entrusted with the duty of seeing that the postmortem gets done. He saw the postmortem doctor handing over the wearing apparel of the victim to the said ASI. He saw a blue coloured Lungi being handed over. He identified the said Lungi in the court.
35. **PW 24, Goutam Singha Roy, was the Arms Expert** employed with the DIG(AP) cell Barrackpore. He examined the pipe gun and cartridges. He conceded that conclusive opinion can be formed as to whether the empty cartridges were fired from the said pipe gun.
36. **PW 25 was Mir Salek Ali.** He is a co villager. He stated that he arrived at the PO and found the victim lying dead. He stated that the brother of the appellants, who has been murdered, is known to the wife of the victim. The wife of the victims is related to Biltu by some family relation. All the family members of Biltu are known to the wife of the victim.
37. **PW 26, Sanjib Mandal, was the Investigating Officer of this case.** He came to learn the names of the appellants from the villagers, Minu Sk, Sadek Sk and Mir Salek Ali. Based on tip-offs, he arrested the two

appellants. He thereafter made the recovery of the pipe gun and the cartridges from the custody of the appellant, Airuddin. He did not send the pipe gun and the empty cartridges for an FSL report.

38. He stated that he has come to learn that there were in fact two pieces of information relating to the death of the victim which reached the said police station. FIR was however not lodged based on the first piece of information. He stated the first piece of information was the never supplied to him. He stated that FIR was lodged, based on the second piece of information. However, he did not say that he has reasons to believe that the first piece of information was improved upon in the second piece of information. He did not state the contents of the first piece of information. He did not say that the first piece of information was in favor of the appellants.

39. **PW 27, Purba Kundu, was the judicial magistrate.** In his presence the TI parade was conducted. He also recorded the 164 statement of the wife of the victim.

ANALYSIS OF THIS COURT

40. The question involved in the present appeal is whether the prosecution has been able to link the appellants to the murder of the victim. Otherwise, the prosecution has been able to prove that the victim died from bullet shots. Two people fired bullets at the victim. The wife of the victim has unequivocally stated that 2 people came on a black colored motorcycle, stopped the scooter on which the victim and his wife were heading back home, and fired bullets at the victim. The medical evidence has also confirmed that bullet shots have caused injuries to the victim.

41. However, the following circumstances create substantial doubts in the mind of this Court regarding the true identity of the assailants of the victim:-

- A. The conduct of the police in the preliminary stages of investigation;
- B. The manner in which the evidence was collected;
- C. The conduct of the PW 3, the wife of the victim. Was she at all with the victim when he was shot at? ;
- D. The silence of PW 7, a bystander. He has deposed that he has seen the appellants firing bullet shots at the victim. However, he did not reveal it to the police.

42. The investigating officer, PW 26, has deposed that the said police station received two pieces of *information in writing* relating to the death of the victim. The first piece of information did not result in the FIR. The first piece of information was not even examined by the PW 26. He has deposed that he has compared the first piece of information with the second. He however did not state that whether there was any difference between the first piece of information and second one, or how and from whom he received the first information.

43. The alleged first piece of information has neither been brought on record nor its non-production has ever been explained by the prosecution. The FIR was lodged based on the second piece of information. The receipt of two pieces of information relating to the death of the victim appears to have a link with the unbelievable timings of the lodging of FIR, the conduction of the inquest, and the commencement and completion of the post-mortem.

44. The murder took place between 10:00 and 10:15 A.M. The FIR records that information of the crime was received at 1:25 P.M., pursuant to which the said FIR was lodged. The inquest officer however reached the PO earlier i.e. at 1.15 P.M. The evidence on record is silent on whether any corresponding general diary entry exists as regards the time when the inquest officer received the information of the death of the victim and the time when he left the police station for the conduction of the inquest. The post-mortem commenced from 2 pm and was completed at 3 pm.
45. The first doubt that flows from FIR itself is the timing of the general diary entry as regards the receipt of information of the victim's death. The FIR indicates that the entry in the 'general diary' as regards the time of receipt of information relating to the death of the victim has been made at 1.25 P.M. A general diary of a Police Station records the description and timing of every activity of the police officers and every event connected to the police station in a day. The inquest officer therefore would first enter the time of receipt of the information and the brief nature thereof in the general diary, before heading towards the spot for conducting the inquest.
46. Therefore, the inquest in the present case could not have been conducted on and from 1.15 P.M., that is, 10 minutes before the entry made in the general diary as regards the death of the victim. The police admittedly did not bring on record any UD case registered in respect of the death of the victim.
47. In the present case, the FIR was lodged based on the written complaint of the wife of the victim. The inquest officer reached the spot based on the receipt of oral information, as would be evident from the comparison

between the time at which the inquest commenced and the time when the entry in the general diary was made. The inquest started at 1:15 P.M. The entry in the general diary stating the time of receipt of information of the death of the victim was made at 1:25. The inquest, therefore, commenced before a general diary entry in that regard could have been made.

48. If the police station had lodged the FIR based on oral information of the crime, pursuant to which the inquest officer then and there also left for the PO, then the time in the general diary and the time when the first information was received would have been the same. The FIR has recorded the time of receipt of information concerning the death of the victim at 1:25 PM so also has the general diary entry, notwithstanding that the FIR was not lodged based on the information, pursuant to which the inquest officer left for the PO.

49. Secondly, the FIR was lodged just 12 minutes after the inquest officer reached the PO. It is nearly impossible for the inquest officer to complete the inquest within 12 minutes. It is equally impossible that when the inquest officer was conducting the inquest, the wife went to the police station and lodged the written complaint. If the FIR can be lodged just 12 minutes after the inquest officer arrived at the PO, why then was the FIR registered, during the span of 3 hours, from 10 AM to 1:25 PM. The police ought to have been proactive in lodging the FIR and starting an investigation in the instant case which is that of murder.

50. The police appear to have become proactive only after the commencement of the inquest. The post mortem was started just 45 minutes after the inquest commenced. The inquest commenced at 1:15

P.M. and the post mortem at 2 P.M. If the time span between the commencement of the post mortem and the lodging of the FIR is calculated then the post-mortem commenced just 35 minutes post-FIR. The time taken to reach the Mushidabad hospital from the Nabagram Police station is at least an hour. The prosecution in their written notes have stated that the distance between the said hospital and police station is 23 kilometers. The unbelievably short time span between the registration of the FIR and commencement of the post-mortem has remained unexplained. The distance of 23 Kms with heavy traffic cannot be covered within 35 or 45 minutes.

51. PW 10, the daughter of the victim and PW 3, has deposed that she came from her matrimonial home to the Police station to write the complaint on behalf of her mother, PW 3. As to who informed PW 10 about the death of her father is not clear. The distance between the matrimonial home of PW 10 and the said PS is about an hour. Thus, a doubt arises as to why PW 10, who resides far from the PS, would be called to attend such an incident, where every second is vital. The arrival of PW 10 for writing the complaint is suspicious, given the discrepancies in the time of lodging of the FIR as stated above.

52. PW 7 has deposed that he has clearly seen the face of the assailants of the victim. He has deposed that the assailants were the appellants. He was cultivating crops at an agricultural field, when he saw the appellants firing bullets at the victim. The rough sketch prepared of the PO and its surroundings indicates the existence of an agricultural field close to the PO. Curiously however, after the murder, he maintained an unexplained silence

as regards the fact that he has seen the assailants of the victim. It was normal for PW 7 to reveal the identity of the assailants of the victim, when identity of the victim was looming large.

53. The FIR was lodged against unknown persons. Thus, PW 7 was the vital witness who could have assisted the police in nabbing the appellants immediately. The police, in fact, did not come to learn of the identity of the assailants of the victim from PW 7. The wife of the victim gave the physical description of the assailants of the victim to the villagers. The police learned from the villagers that the assailants are the appellants. The stark silence of the PW 7, therefore, renders his evidence unreliable.

54. The PW 3, the wife of the victim, has deposed that she has seen the assailants of the victim. However, the assailants were not known her. She specifically stated that the assailants came on a black coloured motorcycle. She orally told the police and the villagers that she could identify the assailants if they are brought before her.

55. She told the police and villagers that the one of the assailants was tall. The other was short. This is only description that the PW 3 gave to the villagers and police. Her complaint to the police however did not mention the said description. It was normal for the wife of the victim to give physical descriptions of the assailants in the complaint, given the fact that the assailants were unknown.

56. The daughter of the victim, PW 10, has deposed that her mother, PW 3, related to her the entire incident. PW 3, however, was unable to recognise the assailants when they shot at the victim. PW 10 confirmed that PW 3

was confident that if the assailants were brought before her, she would surely be able to identify them.

57. PW 3 has deposed that she knew the brother of the appellants, Biltu. She has deposed that she was also aware that Biltu was murdered. Therefore, it is but normal that PW 3 would also know who the brothers of Biltu are. The appellants were the brothers of Biltu. The brothers of the Biltu would have surely been known to many, after Biltu was murdered.

58. It is possible that PW 3 who was traumatised by the death of her husband may not be able to recollect the identity of the victims. She continued to deny that she knows the appellants till the cross-examination. It is however difficult to reconcile that PW 3 was able to recollect the colour of the motorcycle riding which the assailants came. Therefore, it cannot be ruled out that PW 3 in fact knew the appellants. In course of 313 examination both the appellants clearly stated that the PW-3 was a family relation and knew them. Her refusal to reveal the identity of the assailants immediately throws doubts as to whether appellants were at all the actual assailants who shot the victim.

59. PW 5 and 6 stated that they had seen the appellants loitering close to the PO with a black colored Bajaj motorcycle, before the commission of the crime. They thereafter heard the firing of the bullets. PW 5, deposed that he saw the appellants rushing out from the PO when PW 5 was rushing towards the PO upon hearing the sound of bullet shots. PW 5 and 6 are the accused persons in the murder of one Biltu, who was the brother of the appellants. Learned Counsel for the appellants seeks to impeach the

evidence of PW 5 and 6 on this count. He submits that PW 5 and 6 were stock and or tutored witnesses who deposed falsely.

60. Under section 155 of the Indian Evidence Act, 1872, the credibility of a witness can be impeached by 3 methods. Sec. 155 is set out below:-

S. 155 Impeaching credit of witness- The credit of a witness may be impeached in the following ways by the adverse party, or with the consent of the Court, by the party who calls him—

By the evidence of persons who testify that they, from their knowledge of the witness believe him to be unworthy of credit;

By proof that the witness has been bribed, or has accepted the offer of a bribe, or has received any other corrupt inducement to give his evidence;

By proof of former statements inconsistent with any part of his evidence which is liable to be contradicted;

61. PW 5 and 6, being accused persons in the murder of a family member(brother Biltu) of the appellants, will not automatically disqualify them under any of the three heads under Section 155. The defense needs to do any one of three positive acts, under Sec. 155, to impeach the credibility of PWs 5 and 6.

62. The defense has suggested to the PWs that the appellants are the complainant and/or cited as witnesses to the murder of their brother Biltu. PW 5 and 6 would therefore have a motive to send the appellants to Jail. Doubts, however, are cast on the evidence of PW 5 and PW 6 from the nature and pattern of the witnesses, cited by the prosecution.

63. Further, an accused may be cited as a witness to a crime if he has witnessed it. It is, however unusual that the aforesaid PWs, who are the

accused persons in the murder of the brother of the appellants have found themselves being witnesses to a murder, allegedly committed by the appellants.

64. PW 9 and 12 were made witnesses to recovery of the pipe gun from the possession of the appellant, Airuddin. The said pipe gun is alleged to have been used for firing bullets at the victim. PW 9 and 12 also happen to be accused persons in the murder of Biltu, the brother of the appellants. The pipe gun recovered was 12 bore and was 12 inches in length as deposed by the IO and the seizure witnesses. The gun produced in the trial court was found to be 8 inches long and bore not label of seizure.

65. Further, PW 11 has been cited as a witness to the recovery of the black Bajaj motorcycle. The said motorcycle is alleged to have been used to reach the PO and left therefrom. PW 11 also happens to be an accused in the murder of Biltu.

66. The evidence of the aforesaid prosecution witnesses eminently establishes a pattern. The pattern indicates that the prosecution seeks to rely on the persons who has motive to ensure that the appellants remain in jail. It was therefore unavoidable for the prosecution to explain why the investigating officer picked up such persons as witnesses, who are made accused in the murder of Biltu, the brother of the appellants. No plausible explanation is available on record.

67. The presence of PW 5 and 6 near the PO may therefore be an afterthought. It cannot be ruled out that the police did not have any leads as regards the identity of the assailants. The prosecution therefore procured and prepared witnesses against the appellants who were accused in their

brother's case and would willingly depose falsely for the asking. They were otherwise under the threat of being convicted in the Biltu murder case. The aforesaid PWs may also be stock witnesses and cannot be trusted.

68. PW 26, the investigating officer has indicated that the appellants were arrested based on a tip-off. The IO has deposed that he was unable to ascertain the identity of the assailants when he initially reached the PO. He thus activated his sources to ascertain the identity of the assailants. The said statement is unbelievable because just after the commission of the crime, the villagers suspected that the appellants were the assailants, based on the physical description of the assailants provided by the PW 3. The IO therefore is supposed to have learnt as to who are the suspects immediate upon his arrival at the PO.

69. The events preceding the arrest of the appellants indicate that the IO acted blindly on the assumption and/or suspicion of the villagers. It is interesting to note that IO did not come to learn the identity of the assailants from the PW 7, who has deposed that he has clearly seen the appellants firing bullets at the victim.

70. The IO has deposed that on July 13, 2014, a day after the crime, he went to the village of the victim, Mohorul. From the villagers, he came to learn that the assailants could be the appellants. The IO, however, did not prepare any sketch of the assailants. The villagers have arrived at the conclusion that the assailants could be these appellants based on the physical description given by PW3.

71. The IO therefore was required to cause preparation of a sketch portrait of the assailants from their physical description, provided by the

PW 3. The IO then ought to have compared the sketch with the appellants. The said exercise would have demonstrated whether the suspicion of the villager is correct.

72. On July 14, 2017, the IO is stated to have unsuccessfully attempted to nab the appellants. There is no clarity as to whether there was any sketch of the appellants with the IO when the IO attempted to arrest the appellants. The IO has not deposed as to which of the appellants, the IO attempted to arrest on that day.

73. On July 24, 2014, 10 days thereafter based on a tip-off, the IO arrested the appellant Airuddin. On the same day, the IO arrested the appellant Alamgirh.

74. It is interesting to note that the only physical description of the assailants that was given by PW 3 was that the height of the assailants. One of them was stated to be tall, and other short. A person cannot be identified based on this generalized physical description. So many villagers may have been of the same height as the assailants. The wife of the victim, therefore, must have said something very specific about the assailants, which has the core minute details concerning the physical features of the assailants.

75. Such details about a person cannot be provided by another unless the latter knows the former. The PW 3 was under trauma when the victim was shot. She therefore could not have noticed such details when the murder was unfolding. To therefore believe that the villagers suspected the appellants based on the said description given by PW 3, it must also be believed that PW 3 knew the identity of the assailants. However, she did not

divulge their identity either in the complaint or her deposition or even in the Statement under Section 164 CrPC. The said statement was curiously recorded 2 months after the incident.

76. PW 3 appears to have no motive to suppress the identity of the assailants of her victim husband. Hence, it follows that the villagers have completely surmised the name of the appellants as assailants.

77. The Prosecution has not proved that the appellants have criminal antecedents. Thus, the villagers did not have the occasion to suspect the appellants based on the fact that whenever a crime is committed in their village, the involvement of appellants is a foregone conclusion.

78. The above indicates that the PW 3, therefore, either had very clearly observed the physical features of the appellants or she knew the identity of the assailants of the victim. It is therefore possible that the assailants of the victim were different from the appellant. The villagers surmised the name of the appellants.

79. PW 3 has mentioned in her complaint that the assailants of the victim snatched the victim's purse and fled away. A motive, therefore, was attributed to the assailants. Before trial could commence, PW 3, however, informed the police that the purse of the victim was found in the house. The said retraction may be explained by saying that the victim made a bona fide mistake. Her retraction well before the commencement of the trial may be read in her favor. However, the said retraction assumes significance from what PW 10, the daughter of PW 3 and the victim, has deposed.

80. PW 10 has deposed that PW 3, after 2 months after the murder, told her that the purse was found in the house of the victim, and PW 3 informed

it to the police. PW 3 further stated to have told PW 10 that she was under the impression that the victim was supposed to pay some money on that fateful day to some persons in connection with the hardware business of the victim. Thus, PW 3 thought that the victim was carrying purse on that day.

81. This Court is of the view that PW 3 mentioned the snatching of the purse in her complaint, not because she actually saw the assailants snatch away the purse. Rather, PW 3 assumed that the victim was murdered because of the money that the victim owed to some persons in connection with his hardware business. Therefore, the possibility of the victim being murdered by the persons, who were entitled to get money from the victim cannot be ruled out. There was no investigation in this regard.

82. PW 3 has deposed that she was out with the victim solely for the purpose of attending the last rites of a relative of PW 3. PW 3 has deposed that the victim was merely accompanying her to drop her off at the house of a deceased relative. There is no independent witness to corroborate this part of the evidence of PW 3. It may therefore be a case that the victim alone was out to pay his creditors. The assertion and subsequent retraction by PW 3 of the snatching of the purse of the victim is therefore not without doubt.

83. The recovery of the black motorcycle is not free from doubt. The motorcycle is recovered from Asadul's house. Asadul was never cited as a PW. The IO stated that he took Airuddin to the house of Asadul. The motorcycle was recovered from the house. The IO was not clear as to whether there was any confession from Airuddin that the said motorcycle

was used in the murder. The motorcycle has not been proven to have been used in the murder. PW 3 stated that she has seen the assailants riding a black motorcycle. PW 5 has stated that he has seen the appellants on a black Bajaj motorcycle. The police, however, have not ascertained the ownership of the motorcycle. The motorcycle was not linked to the other appellant Alamgir.

84. The IO stated that the pipe gun was recovered from Airuudin when he was arrested. The cartridge was recovered from the lungis of Airuddin. The PWs 9 and 11, who have been witnesses to the recovery of the pipe gun, were the accused in the murder of Biltu. In fact, the measurement of the pipe gun recovered from Airuddin and that produced before the Court varied.

85. PW 20, the police constable, denied that he was aware of the details of the recovery. He first said he was not examined by the IO. He, during cross-examination, admitted that he had been so examined. He, however, was unable to recognize his signature on the seized materials.

86. Having regard to the above discussion this court is of the view that the role of the appellants in the murder of the victim has not been proved at all much less beyond reasonable doubt. The prosecution has miserably failed to prove the identity of assailants.

87. The appeal is therefore allowed. The appellants are acquitted on the benefit of doubt. The impugned judgment and order of conviction are set aside. The appellants shall be set free forthwith.

88. The appellants shall be set at liberty forthwith from the custody, if not wanted in any other case, upon execution of a bond to the satisfaction of the

Learned Trial Court, which shall remain in force for a period of six months under Section 437A of the Code of Criminal Procedure corresponding to Section 481 of the BNSS, 2023.

89. CRA 417 of 2018 is allowed and disposed of.
90. There shall be no order as to costs.
91. Urgent certified photocopy of this judgment, if applied for, be supplied to the parties upon completion of all requisite formalities.
92. All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

1.

(Rajasekhar Mantha, J.)

I agree.

(Rai Chattopadhyay, J.)