

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 Ajay Kumar Gupta**

CRA 522 of 2017

**Kamal Singha @ Kadam & Ors.
– Vs. –
The State of West Bengal & Anr.**

For the Appellants:	Mr. Mujibar Ali Naskar, Md. Habibur Rahman, Ms. Shaguffa Parveen.
For the State:	Mr. Saibal Bapuli, Id. APP, Mr. Bibaswan Bhattacharya.
Heard on:	02.12.2025 and 04.12.2025.
Judgment on:	December 4, 2025.

Rajasekhar Mantha, J.:

1. The instant appeal is directed against the judgment of conviction dated 15th May, 2017 and order of sentence dated 17th May, 2017 passed by the learned Additional Sessions Judge, Fast Track, 2nd Court, Islampur, Uttar Dinajpur in Sessions Trial No. 15 of 2012 (CIS No. 275 of 2015) arising out of Sessions Case No. 113 of 2011.
2. All the appellants were convicted under Section 302 read with Section 34 of the Indian Penal Code and Section 323 read with Section 34 of the Indian Penal Code. They were sentenced to life imprisonment and were directed to pay a fine of Rs. 25,000/- each under Section 302

read with Section 34 of the IPC. They were also sentenced to suffer rigorous imprisonment of one year for offences under Sections 323 read with Section 34 of the IPC. The other accused persons who were charge sheeted were acquitted.

THE PROSECUTION CASE:

3. On 27th May, 2006 at about 3:00 P.M. in the afternoon, the appellants came in a group with the other accused persons carrying sticks, sickles, sword, Hasua, bows and arrows and were forcefully plucking raw mangoes from the garden claimed to have been owned by one Nishikanto Singha (PW-1).

4. Seeing the appellants plucking the mangoes, the victims, Sudhir Singha, son-in-law of the complainant Nishikanto Singha and Prasenjit Singha (PW-7) and Pabitra Kumar Singha (PW-8), nephews of PW1, rushed to the garden to resist the appellants. The appellants got infuriated and attacked the family of the victims, particularly, Sudhir Singha (deceased), Pabitra Kumar Singha and Prasenjit Singha. The appellants also assaulted PW-3, Tapan Roy.

5. Upon hue and cry raised by the victims, the local villagers arrived thereat. The appellants immediately fled the place with their weapons. The victim Sudhir Singha was taken to Karandighi Rural Hospital first and was later referred to Raiganj Sadar Hospital. Due to a Doctors' strike at the Raiganj Sadar Hospital, he was taken to a Private Nursing Home called Paramount Nursing Home, where he died after three days.

6. A complaint was filed on 30th May, 2006 three days after the incident. FIR No. 116 of 2006 was registered by the Karandighi Police Station under Islampur Sub-Division on 28th May, 2006 under Sections 143/341/326/506 of the Indian Penal Code against the appellants, Kamal Singha @ Kadam, Jhatku Singha, Budhu Singha, Ganu Singha, Shakuntala Singha, Sibani Singha, Malati Singha, Jharu Singha @ Prakash Singha, Fatik Singha and Gannu Singha.

7. Upon completion of investigation, charge-sheet was filed. Initially, on 7th March, 2012, charges were framed by the Trial Court under Sections 323/324/34 against the aforesaid accused excepting Jharu Sindha and Fatik Singha (who were absconding) and the trial commenced. 15 witnesses were examined during the said trial.

8. Later, after the arrest of Fatik Singha and JharuSingha, charges were added on 30th June, 2016 against all accused persons under Sections 302/109/326 of the Indian Penal Code.

THE EVIDENCE ON RECORD

9. In course of first part of the Trial, the following witnesses were examined.

10. **PW-1 was NishikantoSingha**, the de facto complainant and the claimant to the ownership of the Mango Garden. He deposed that on 27th May, 2006 that was a Saturday around 3:00 P.M., the accused persons, namely, Kadam @ Kamal, Jhatku, Budhu, Ganu, Shakuntala, Shrabani, Malati, Jharu @ Prakash, Fatik had killed his son-in-law, namely, Sudhir.

11. At that relevant point of time, PW-1 was taking lunch that is around 3:00 P.M, when he heard a hue and cry and rushed to the Mango Garden along with his son-in-law, Sudhir, nephew Prasenjit and Pabitra. He deposed that the accused Kadam, Jhatku, Budhu and Ganu were armed with Hasua, sword, bows, arrows and sticks.
12. PW-1 initially tried to pacify the accused persons requesting them to go back but the appellants were adamant. Kadam assaulted the victims with a Hasua and inflicted a deep cut on his head. The victim Prasenjit (PW-7) tried to save the other victims when Jhatku gave a sword blow to the right arm of PW-7. It resulted in a cut injury on the arm and his left index finger was severed. The other accused persons, namely, Jhatku and Duba came out of their house and assaulted the deceased victim and Pabitra and Prasenjit.
13. Six injured persons were taken to Karandighi Hospital in a Bolero vehicle of Nishikanto Singha.
14. PW-1 later went to Karandighi Police Station to lodge a First Information Report but was told by the police to attend to the victims first.
15. The Doctors at Karandighi Hospital referred the victims to Raiganj Hospital. All other victims were treated at Raigunge Hospital. Sudhir, however, was referred to North Bengal Medical College and Hospital at Siliguri where there was a strike by the Doctors. He was thereafter taken to Paramount Nursing Home on 28th May, 2006.

16. FIR was registered on the same day. The victim Sudhir Singha died on 30th May, 2006. PW-1 was a Former Assistant Public Prosecutor practicing in Islampur Court. He admitted in cross-examination that there was a dispute with regard to ownership of Mango Orchard in question.
17. **PW-2 was NantuSingha**, another person, who was injured in the assault. He was the son of the deceased Sudhir. He identified the accused Jhatku, Budhu, Kadam, Srabani, Shakuntala Singha, Gonu Singha in Court. He deposed that the accused persons were plucking Mangoes from the Garden of Nishikanto Singha when the incident occurred.
18. He stated that he was taken to the Hospital by PW-1. He confirmed in cross-examination that his father Sudhir Singha and cousins Pabitra and Prasenjit went to the Mango Garden to resist the appellants from stealing mangoes.
19. He deposed that Gonu Singha assaulted his father with a stick on his leg, who fell down on the ground. At the same time, the appellants Kamal Singha @ Kadam gave a Hasua blow to the head of their father. Hasua was deeply entrenched in the head of the victim.
20. He deposed Jhatku and Budhu assaulted Prasenjit and Pabitra with a sword when the latter were saving Sudhir. He confirmed to the police in course of interrogation that he was present in the Mango Garden at the time of incident. His deposition also indicates that there were disputes between

the appellants and the victims' family with regard to ownership of the Mango Garden.

21. **PW-3 was Tapan Ray.** He was a neighbour. He confirmed the prosecution case and evidence of PW-1 against the accused persons. He narrated the incident in some detail. He indicated the role of the appellants and other accused persons in their assault of the victims. He admitted in cross-examination that he worked as a labourer in the Mango Orchard in the land of PW-1.

22. **PW-4, Tultuli Singha** was an agricultural labour in the Karandighi. She lived adjacent to the mango garden. She came out of her house hearing the commotion. She narrated the incident as stated by PW-1. She deposed that the appellants and other accused persons were stealing mangos in the garden of PW-1 when Sudhir Singha (deceased), Pabitra (PW-7) and Prasenjit (PW-8) nephews of PW-1 tried to prevent the appellants from stealing mangoes on the date and time of the incident.

23. She deposed that the appellant Gonu hit Sudhir Singha with a lathi when he fell down. He confirmed that the appellant Kadam inflicted a head injury with a sword on Sudhir. PW-7 and PW-8 were also assaulted by the appellants. She also deposed that she was interrogated by the police on the day following the incident.

24. **PW-5, Hemanta Kr. Sinha**, was declared hostile. He deposed that the land of the father of PW-1 was vested in the State and a portion was given to PW-1 by Patta. He had only heard about the dispute in the mango garden of PW-1.

25. **PW-6 was Sukumar Ghosh**, who was posted as Sub-Inspector of Karandighi Police Station on 28th May, 2005 and received the written complaint from PW-1.

26. **PW-7, Prosenjit Singha** was a victim and nephew of PW-1. He was injured in the scuffling during the assault of the victims by the appellants and other accused persons. He stated that he went to resist the appellants from plucking mangos along with the deceased Sudhir and his brother Pabitra Kr. Sinha (PW-8). He was surrounded by appellants Kadam, Jhatku, Gonu and others.

27. He deposed that Jhatku Singha was carrying a sword. Gonu Singha was carrying a lathi. They hit the deceased Sudhir on his legs with his lathi as a result of which, he fell down. Kadam Singha is stated to have assaulted the victim on the head with a hansua (sickle) and the same were deeply entrenched on the head. The hansua was then pulled out and he tried to rescue Sudhir when Jhatku assaulted him with his sword on his head and right hand. He received injuries on the head and hand. He latter raised hue and cry as a result of which neighbours assembled at the place and the appellants ran away.

28. He confirmed that he was initially treated at Karandight BPHC. He confirmed that Sudhir was referred by Karandight BPHC to Raiganj Zilla Hospital and later was admitted to Paramout Nursing Home, Siliguri. PW-7 stated that he was treated for 6-7 days at the Raiganj Zilla Hospital. In re-examination, he produced the medical treatment papers of Raiganj Zilla Hospital. Those were marked X for identification.

29. **PW-8, Pabitra Kr. Sinha, was another nephew of PW-1.** He narrated the entire incident as stated by PW-7. He stated that he was treated at Raiganj Sadar Hospital. Medical papers were produced by him and marked by identification.

30. **PW-9, Tapas Ray,** was a Ward Boy attached to Paramount Hospital, Siliguri. He signed the inquest report.

31. **PW-10, Dipak Kar,** was attached to Siliguri Police Station as a Home Guard. He was a witness to the inquest.

32. **PW-12, Ramchandra Mitra,** was the Sub Inspector of Police at Mathabhanga Police Station, who conducted the inquest on the deceased.

33. **PW-13, Dr. Prabir Kumar Deb,** was the Medical Officer, attached to North Bengal Medical College. He conducted the post mortem on the deceased Sudhir Singha and identified all the injuries. He confirmed that the death was ante mortem due to the injuries inflicted by sharp and heavy weapon. He proved the post mortem report.

34. **PW-14, Dr. Anup Kumar Hazra** was the Superintendent of Raiganj District Hospital. He proved the admission and discharge certificates of PW-7 and PW-8 as regards the treatment at the said hospital.

35. **PW-15, S.I. Abdul Maleque, was the investigating officer.** He confirmed that the second investigating officer S.I. Bidhan Banerjee had completed investigation and submitted charge sheet. S.I. Bidhan Banerjee collected the inquest and post mortem report and recorded the statements of the witnesses under Section 161 of the Cr.P.C. The charge sheet was filed by S.I. Bidhan Banerjee. In cross-examination, he deposed that witnesses Nantu Singha, Tapan Roy did not name the appellants.

36. This Court thus does not wish to place much reliance on the cross-examination of PW-15, since the investigation was actually carried out and completed by the second investigating officer S.I. Bidhan Banerjee, who had recorded the statement of the witnesses.

37. Later in course of trial, accused **Fatik Singha** and **Jhatku Singha** were arrested. The charges came to be modified and sections 302 and 109 were added and framed against all the accused.

38. PW-1 to PW-10 were recalled and they confirmed their evidence as deposed earlier. The Cross-examination of the said witnesses earlier was adopted by the appellants.

39. The defence produced one witness, namely, **Dr. Anamitra Barik.** She, however, could not say whether she treated the appellant Kamal Singha @ Kadam, for any injury. The accused persons were thereafter examined under Section 313 of the Cr. P.C.

40. Based on the evidence on record, the Trial Judge found the appellant guilty of offences and sentenced them as stated above.

ANALYSIS OF THIS COURT

41. Learned counsel for the appellants would argue before this Court that the inconsistencies between the collective evidence of PW-7 and PW-8 on one side and that of PW-1 and PW-2 on the other side have the effect of discrediting the evidence of injured eye-witnesses, namely, PW-7 and PW-8. Counsel would argue that even the evidence of the injured witnesses cannot ipso facto be taken as sacrosanct. He submits that PW-7 and PW-8 did not depose about the so called attempt at pacification and settlement efforts made by PW-1 before the assault took place.
42. He further submits that the failure on the part of the PW-7 and PW-8 to deliver the bed-head tickets and treatment papers to the Investigating Officer at the first instance and the omission of the Investigating Officer to collect blood sample at Raiganj Hospital, and the injury reports PW-7 and PW-8, render the evidence of PW 7 and PW 8 unreliable.
43. He further submits that since the victim's family, particularly, PW-7 having admitted that he had removed the Hasua from the head of victim Sudhir, he may have contributed to the actual death. It is submitted that, the removal of an entrenched sharp cutting instrument from the head of the victim can by itself lead to death.
44. Learned Counsel for the appellants has next argued that the statements of some witnesses were recorded 9 months after the incident. This would by itself discredit the prosecution case. He points out several loopholes in the prosecution.

45. Lastly, learned Counsel for the appellants has argued that even if it is assumed that the prosecution has been able to bring home the charges against the appellant, there was no premeditation in commission of the crime and the death of Sudhir Singha.
46. This Court has carefully considered the arguments advanced by the learned counsel for the appellants and the learned counsel for the State.
47. Learned counsel for the State has fairly admitted that the investigation could have been more effective and comprehensive. He further submits that a defective investigation ipso facto would not and cannot throw out the prosecution case and acquit the appellants of the charges, which are supported by some evidence.
48. While it is true that there are some minor omissions in the evidence of PW-7 and PW-8 (injured witnesses) when compared with the evidence of PW-1, PW-2 and PW-3, such inconsistencies are, however natural. In fact, if each of the injured eye-witnesses and the complainant's version were absolutely similar or carbon copies of one another, that would itself be a suspicious circumstance to hold the evidence of such persons as parrot like.
49. The evidence of an injured eye witness stands on higher pedestal and wields more credence than the other witnesses, more so when the injured eye witness is the relative of the victim. It is natural that the relatives of the victim, who stay with the victim, will be present with him or her when the latter faces any incident. Consequently, the relative will also suffer injuries with the deceased victim. Reference in this regard may be made to the

decision in **Balu Sudam Khalde and Anr. vs. State of Maharashtra**, reported in **2023 SCC OnLine SC 355**, wherein it was held as follows:-

“26. When the evidence of an injured eye-witness is to be appreciated, the under-noted legal principles enunciated by the Courts are required to be kept in mind:

(a) The presence of an injured eye-witness at the time and place of the occurrence cannot be doubted unless there are material contradictions in his deposition.

(b) Unless, it is otherwise established by the evidence, it must be believed that an injured witness would not allow the real culprits to escape and falsely implicate the accused.

(c) The evidence of injured witness has greater evidentiary value and unless compelling reasons exist, their statements are not to be discarded lightly.

Emphasis applied

50. This Court is of the view that it is proved beyond reasonable doubt that the accused persons and PW-1 had a dispute with regard to the title and ownership of the mango orchard. The accused persons anticipating some resistance came to the mango orchard with sword and sickle and sticks, and assaulted the victims when confronted by the latter. Proof beyond reasonable doubt does not entail proof beyond all doubts. Minor omissions here and there will not discard an otherwise trustworthy and rock solid case of the prosecution. The parameter for a conviction is not establishment of a completely water tight case. Reference in this regard may be made to the decision in **Goverdhan & Anr. State Of Chhattisgarh reported in 2025 INSC 47**

20. **It is also to be noted that the law does not contemplate stitching the pieces of evidence in a watertight manner, for the standard of proof in a criminal case is not proof beyond all doubts but only beyond reasonable doubt.** In other words, if a clear picture emerges on piecing together all evidence which

indicates beyond reasonable doubt of the role played by the accused in the perpetration of the crime, the court holds the accused criminally liable and punishes them under the provisions of the penal code, in contradistinction to the requirement of proof based on the preponderance of probabilities as in case of civil proceedings,

Emphasis applied

51. It could be argued that such weapons were brought to pluck raw mangoes from the trees. Carrying such weapons, therefore, by itself cannot mean or lead to any inference that the appellants had premeditated the murder of Sudhir.
52. The appellants upon being resisted by the victim's family, in the fit of rage assaulted the victims. The nature of injuries caused indicates that there was one lathi blow inflicted on Sudhir which brought him to the ground and on his knees. The appellant Kamal Singha @ Kadam, inflicted one sickle blow on the head of the victim. No other injuries were inflicted with the sickle on Sudhir.
53. If indeed, the appellants were desirous of killing Sudhir, they would have inflicted further injuries on the body of Sudhir with the sickle and the sword they were carrying. PW-7 was assaulted with the sword when he was trying to protect Sudhir. The injuries inflicted on the victim were in course of an altercation between two sets of persons. The vital organs of the victims were not targeted. Reference in this regard may be made to the the decision in **KUNHIMUHAMMED @ KUNHEETHU V. THE STATE OF KERALA** in reported in 2024 INSC 937, wherein it was held as follows:-

25.17.....Courts have consistently held that intent can be inferred from the nature and severity of injuries, as well as the choice of weapon and the manner of its use. **The use of a lethal weapon and the**

deliberate targeting of vital parts of the body are strong indicators of such intent.

Emphasis applied

54. In a death which occurs as a sequel to an altercation, the mens rea to commit murder of another becomes doubtful, when the attending circumstance creates a possibility that the accused may not have the intention to commit the crime. Reference in this regard may be made to the decision in **NARAYAN YADAV v. STATE OF CHHATTISGARH reported in 2025 INSC 927**, wherein it was held as follows:-

41. A “sudden fight” implies mutual provocation and the exchange of blows on both sides. In such cases, the homicide committed is clearly not attributable to unilateral provocation, nor can the entire blame be placed on one side. If it were, Exception 1 would be the more appropriate provision. *There is no prior deliberation or intention to fight; the fight breaks out suddenly, and both parties are more or less to blame. One party may have initiated it, but had the other not aggravated the situation by their own conduct, it may not have escalated to such a serious level. In such scenarios, there s mutual provocation and aggravation, **making it difficult to determine the precise share of blame attributable to each participant.*** The protection of Exception 4 may be invoked if death is caused: (a) without premeditation; (b) in a sudden fight; (c) without the offender having taken undue advantage or acted in a cruel or unusual manner; and (d) the fight must have been with the deceased.

Emphasis applied

55. The action of the appellants falls under Exception 4 to Section 300 of the IPC. The said exception is attracted when the death has occurred as result of a sudden fight in absence of premeditation on part of the assailant. In the present case, the scuffle and altercation between the parties was admitted but the injuries and blows inflicted on one and other were done on the spur of the moment. It may be noted that while the action of the appellants, has in fact resulted in the death of the victim, the death occurred, at least 3 days after the main incident.

56. This Court is, therefore, of the view that the appellants are guilty of offence under Section 304's Part-1 of the IPC since they knew that the assault with a sickle could cause death but may not have actually intended to cause death. They caused the death in mid of a sudden fight.
57. In the light of the discussions above, this Court is of the view that the appellants must be sentenced to imprisonment for a period of 10 years.
58. The appellants who are on bail shall surrender forthwith and/or be taken into custody by the police and shall undergo imprisonment for 10 years. The sentence of the appellants shall be set off against the total period of imprisonment suffered by them. The accused on bail shall be taken to custody to serve out the remainder of the sentence imposed above.
59. The impugned judgment shall stand modified accordingly.
60. The instant criminal appeal is allowed in part and disposed of.
61. The trial court records along with a copy of this judgement be sent down at once to the learned trial court for necessary action.
62. Urgent photostat certified copy of this order, if applied for, be supplied to the parties as early as possible.

(Rajasekhar Mantha, J.)

I agree.

(Ajay Kumar Gupta, J.)