

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Gaurang Kanth

C.R.A. 566 of 2018
(CRAN 2 of 2023)

Haren @ Harendranath Murmu & Anr.
-Vs-
State of West Bengal

W I T H

C.R.A. 233 of 2020

Bikash Murmu
-Vs-
State of West Bengal

For the Appellants : Mr. Kalyan Kumar Bhattacharya, Adv.
[in CRA 566/2018] Mr. Sukumar Ghosh, Adv.
Ms. Sahina Khatun, Adv.

For the Appellant : Mr. Soumyajit Das Mahapatra, Adv.
[in CRA 233/2020] Ms. Madhurai Sinha, Adv.
Mr. Ranabeer Halder, Adv.

For the State : Mr. Debasish Roy, Id. P.P.
Ms. Amita Gaur, Sr. Govt. Adv.
Ms. Eshita Dutta, Adv.

Heard on : 14.01.2025 & 15.01.2025

Judgment on : 15.01.2025

Joymalya Bagchi, J. :-

1. Appeals are directed against the judgment and order dated 29.09.2018 and 01.10.2018 passed by learned Additional District & Sessions Judge, 2nd Court Jhargram, Paschim Medinipur in Sessions Case No. 16 (01) of 2013 arising out of Sessions Trial No. 43 (02) of 2015 convicting the appellants for commission of offence punishable under Sections 449/34 of IPC and Sections 302/34 IPC and sentencing them to suffer rigorous imprisonment for life and to pay a fine of Rs. 20,000/- each, in default, to suffer further rigorous imprisonment for two years more for the offence punishable under Sections 302/34 IPC and to suffer rigorous imprisonment for seven years and to pay a fine of Rs. 5,000/-, in default, to suffer further imprisonment for five months each for the offence punishable under Section 449 IPC; both the sentences shall run concurrently.

Prosecution case:-

2. On 26.05.2012 at 2.10 A.M, Belarani Saha, (P.W 1) and her husband Sudhir Kumar Saha (P.W 2) heard shouts coming from outside the main door situated on the southern side of their house. They heard someone calling '*Master Mosai come out*'. As the voice was that of a known person, Sudhir and Belarani enquired who was calling. The caller stated "*I am Bikash. Haren has sent us. There is some discussion with you*". The house of Sudhir comprised of a mud building which was occupied by him and his wife Belarani and one storied pucca building which was occupied by his son Shyamal and his wife

Mayna Saha. The entire property had a boundary wall. Sudhir did not open the door and called his son and daughter-in-law who were inside the pucca building. At that time, he noticed some persons were climbing on the tile roof of the cowshed. Out of panic, he jumped from the first floor of the pucca building and became senseless. His son Shyamal and his wife Belarani came out of the building. Bikash asked Shyamal to give him water. Shyamal opened the door. Miscreants started searching for Sudhir in order to kill him. When they were unable to trace Sudhir, Bikash and Bhairab assaulted Shyamal with a '*kurul*' (axe). Shyamal died at the spot. The miscreants left the spot threatening that they had formed a protection committee in the area and no one should support Trinamool.

3. Police came to the spot. Belarani (P.W 1) lodged written complaint which was scribed by Rajib Mahato (P.W 5). Written complaint was treated as First Information Report and Belpahari P.S Case No. 24/2012 under Sections 302/120B/109/427/34 IPC was registered against twenty-two accused persons including Bikash and Haren.

4. During investigation Investigating Officer (P.W 16) arrested Haren and others. From interrogation involvement of Sushanta and Shyamapada transpired. On the showing of Haren offending weapon i.e. axe was recovered from in front of his house under a mango tree. On the showing of Shyamapada one *kathari* (dagger) was recovered near Haren's house. Bikash and Sushanta made confessional statements before the Magistrate. Upon completion of investigation, charge sheet

was filed against the appellants and Shyamapada Sardar. In course of trial, prosecution examined 16 witnesses and exhibited a number of documents. During trial Shyamapada died.

5. In conclusion of trial, learned Trial Judge by impugned judgment and order dated 29.09.2018 and 01.10.2018 convicted and sentenced the appellants as aforesaid.

Arguments at the Bar:-

6. Mr. Soumyajit Das Mahapatra, learned Advocate for Bikash Murmu (appellant in CRA 233 of 2020) submits the prosecution case has not been proved. As per FIR, the manner in which Shyamal was murdered is at variance with the deposition of witnesses including the de-facto complainant (P.W 1) in Court. In the FIR, P.W 1 claimed 22 persons had come to their house, they were variously armed. They started breaking the tile roof; her son and daughter-in-law opened the door. Bhairav (not sent up for trial) asked for water and she provided water. Then all the accused shouted they would kill her husband and when they could not find him, they asserted that they would kill Shyamal. Thereupon Bhairav and Bikash struck Shyamal with an axe resulting in his death. In court, P.W 1 named seven persons including the appellants. She deposed Bikash had asked for water and when Shyamal gave water, they searched for her husband. When they were unable to trace him, they hit Shyamal with an axe resulting in his death. Variation in the prosecution case is so palpable that it is rendered inherently improbable.

7. Registration of FIR is also shrouded in mystery. P.W 1 and the scribe (PW 5) stated they went to the police station to register the FIR whereas the Investigating Officer (PW 16) claimed the written complaint was received at the spot by the IC and forwarded to the police station. Original FIR received at the place of occurrence was substituted and a subsequent FIR was prepared at the behest of a political leader (PW 5). He also contends PWs 2 and 6 are not the eyewitnesses to the incident. No arm was recovered from Bikash Murmu. No charge under Arms Act had also been framed. Bikash made an exculpatory statement before Magistrate explaining away the circumstances in which Shyamal was murdered. Accordingly, he prays for acquittal.

8. Mr. Kalyan Kumar Bhattacharya, learned Advocate for Haren Murmu and Sushanta Sardar (appellants in CRA 566 of 2018) submits none of these appellants were present at the spot. Complicity of Haren is based on the statement of co-accused i.e. Bikash Murmu which is inadmissible in evidence. Recovery of axe from Haren is doubtful. Independent witnesses have not supported the recovery. FSL report does not show presence of blood on the seized article. In respect of Sushanta, he contends he was not named in the FIR. P.W 1 disclosed his presence for the first time in court. Though P.W 6 disclosed the role of Sushanta in court for the first time, she is not an eyewitness. Sushanta retracted his statement before Magistrate. Even if the retraction is ignored, Sushanta's statement before Magistrate is

exculpatory and shows he was not present at the time of attack. Accordingly, he prays for acquittal of the appellants.

9. Learned Public Prosecutor with Ms. Gaur submit incident occurred in the dead of night at P.W 1's residence. She is the mother of Shyamal and eyewitness to the incident. Roles of the appellants are clearly depicted in the FIR as well as in court by prosecution witnesses. In his exculpatory statement Bikash admits his presence at the place of occurrence as well as the fact that he had asked for water which lured Shyamal to come out of the house. Thereupon he was brutally assaulted by Bikash and others.

10. Haren is the mastermind of the crime. His presence is noted in the FIR as well as by P.W 1 and others. On his leading statement, weapon of offence i.e. axe was recovered. Due to lapse of time blood had degenerated and could not be detected as noted in the FSL report.

11. Sushanta's involvement in the murder is also disclosed by PWs. 1, 6 and 14. In his confessional statement, Sushanta admitted he called P.W 2 and was present with other accused at the place of occurrence. Accordingly, the appeals are liable to be dismissed.

Evidence on record:-

12. P.Ws 1, 2 and 6 are the relations of the deceased. They are the most vital witnesses. P.W 1 Belarani is his mother and the de-facto complainant. She deposed she knew the appellants. On the fateful day, Haren had sent Bikash and others to her house at 2.10 A.M to murder her husband. She and her husband were in the mud built house.

Shyamal and his wife were in the pucca building. Her husband fled away by breaking open the tile roof. He fell down and became senseless. He had broken his waist. She called Shyamal. He came out. Bikash asked Shyamal to give him water. When the miscreants could not find her husband they assaulted Shyamal with a '*kurul*' (axe). Shyamal sustained serious injury on his nose and head. He died on the spot. Accused persons fled away from the spot. Her daughter-in-law also came out. When the miscreants assaulted Shyamal she raised alarm. She lodged written complaint scribed by Rajib Mahato (P.W. 5). During cross examination, she stated she went to Beliapara P.S. and lodged complaint after 4 hours. When her daughter-in-law came out of her house, the accused had already fled away. Her husband was a supporter of Trinamool. Maoists were active in that area. She knew Bikash as he was a boy of the village.

13. P.W 2 Sudhir Kumar Saha is the father of the deceased. He deposed on 26.05.2012 around 2.10 – 2.15 A.M there was a knock on his door. First the miscreants called '*dadu dadu*' and then they called '*kaku kaku*'. When he enquired, one of them replied "*I am Bikash. Haren has sent me to have a discussion with you. Open the door*". He refused to open the door. Then the miscreants gave a blow on the door. Apprehending danger he went to the one-storied building where his son and daughter-in-law were sleeping. Hearing disturbance his son had woken up. He saw two persons climbing up the tile roof of the mud house. He jumped from the roof of the one-storied building. His waist

was broken and he lost his senses. Subsequently, he found his son had been murdered. He knew Bikash and Haren from before. During cross examination he stated he had regained his senses after 3 to 4 hours. At that time Maoists had murdered a number of persons in their locality and looted houses.

14. P.W 6 is the daughter-in-law. She stated Haren, Bikash, Sushanta and Shyamapada knocked on their door at 2.10 – 2.15 A.M on 26.05.2012. She was in the one-storied building and her parents-in-law were in the mud house. Her father-in-law called them. She, her husband and her daughter came out. The miscreants asked them to open the southern gate. Some of them tried to climb through the tile roof of the mud house. At that time one of them asked for water. Her husband opened the door and gave water. They enquired about her father-in-law. When they could not find him, they assaulted her husband. Bikash and Shyamapada assaulted her husband with '*kurul*' and '*kathari*'. Then the miscreants left threatening that they would face similar consequences if they supported Trinamool. During cross examination, she deposed she stated to police that she learnt the names of the assailants from her parents-in-law. She told police that '*harmad*' came to their house. By '*harmad*' she meant Maoists. She stated the names and surnames of accused to police.

15. P.W 14, Jatindranath Hansda is an acquaintance and a reported witness. He deposed his house is situated one kilometre away from the place of occurrence. Hearing the news he went to the residence of

Sudhir and his wife told him that Bikash called Sudhir at 2.10 AM. Bikash told them Haren had asked him to meet Sudhir. Sudhir fled away from the house. Bikash tried to enter the house by cutting the door. At that time Sudhir's son, wife and daughter-in-law came out of the house. Bikash and Sushanta in all probability enquired about Sudhir. When they could not find him, they murdered Shyamal and fled away.

16. P.W 15 is the Post Mortem Doctor. He found the following injuries:-

- (i) Soft tissue swelling left parental area measuring 3cmx2.5 cm with small central laceration measuring 0.5 cmx0.25 cm skin deep, On dissection, I found scalp haematoma (sic) 5 cm diameter.*
- (ii) Soft tissue swelling on right side of vault of skull measuring 2.5 cmx2 cm, on dissection scalp haematoma (sic) measuring 4cmx3.5cm transversally directed.*
- (iii) Deep sharp cutting injury on left side of nose starting from medial end of left eyebrow progressing down and medially upto up half of left side of upper lip measuring 6cmx.5cm. The structure of that area including nasal bone and maxillary bone on left side anteriorly Involved Hge ++.*
- (iv) Lacerated injury on left side of forehead oval in shape measuring 1.5cmx1cm Hge++ vertically directed*
- (v) Deep sharp cutting injury on back side of left neck starting from mid line progressing to left stabling little down measuring 7.5cm x 1.5 cm and extending upto cervical spinal cord posterior left Hge++.*
- (vi) Lacerated injury posterior aspect middle portion of right arm measuring 1cm x 0.25 cm, partial skin thickens deep."*

He opined death was due to shock and hemorrhage. Injury Nos. (iii) and (iv) are sufficient to cause death and are ante mortem and homicidal in

nature. Injuries were caused by a heavy cutting weapon and a blunt object.

17. P.W 13 is the S.I., Raja Naskar. He deposed he received written complaint from Belarani Saha.

18. P.W 16 is the Investigating Officer. He deposed on 26.05.2012 duty officer Raja Naskar intimated him that a murder had taken place at village Barsol. Receiving the information, he along with the then I.C, Belpahari went to the place of occurrence. At the place of occurrence he found the dead body of Shyamal in front of the house of Sudhir. I.C, Belpahari received one written complaint from Belarani. On the basis of such written complaint a case was started. He conducted inquest over the body. He proved the inquest report (Exhibit 5/1). The body of the deceased was taken to Jhargram S.D.O Hospital where autopsy was conducted. He prepared rough sketch map of the place of occurrence with index (Exhibit 8). He seized blood stained earth and controlled earth. He proved the seizure list (Exhibit 3/2). He examined witnesses and recorded their statements. He apprehended Bikash Tudu and Haren Tudu. He also apprehended Mrityunjay Ghosal, Taran Madhyana. On 27.05.2012 he apprehended Senapati Murmu. During investigation involvement of Sushanta transpired. He arrested Sushanta. Sushanta made confessional statement before the Magistrate. On 31.05.2012 he arrested Bikash Murmu. Pursuant to statement of Bikash Murmu, he recovered an axe from the land in front

of the house of Haren Murmu beneath a mango tree. He identified the axe.

19. Seizure list witnesses Minati Murmu (P.W 7) and Jyotsna Murmu (P.W 9) while admitting their signatures however claimed that they signed the seizure list upon the instruction of police.

20. Based on the statement of Shyamapada, P.W 16 recovered a 'kathari' near the house of Haren. He identified the 'kathari' in Court. He proved the seizure list (Exhibit 4/1), which is signed by Jaleswar Tudu (P.W 8) and Churamoni Murmu (P.W 10). P.Ws. 8 and 10, however, stated they signed the seizure list on the instruction of police. Bikash made confessional statement before Magistrate. He sent the seized articles for FSL examination. He submitted charge sheet. After collection of FSL report he submitted supplementary charge sheet. FSL report (Exhibit 15) showed presence of blood on the seized weapons but serological report was inconclusive.

21. Confessional statements of Bikash Murmu and Sushanta Sardar were exhibited as Exhibits 13 and 14 respectively. The statements are exculpatory in nature. Bikash stated as follows:-

"On the fateful night he was consuming alcohol in Haren Murmu's house. He, Haren and Shyamapada were present. In an inebriated condition he and Shyamapada went to the house of Sushanta Sardar. They took Sushanta Sardar to the house of Sudhir Saha (Master Mosai). Shyamapada told Sushanta to call Master Mosai. Sushanta called him. Hearing the calls Master Mosai's wife and son came out. He had asked for water. He was unaware Shyamapada had brought an axe from Haren's house. When he was drinking

water Shyamapada assaulted Shyamal with the axe. He ran away from the spot.”

22. Sushanta stated as follows :-

“One night in the month of May he along with his relations were sleeping in the house. Bikash forcefully took him out of the house. Bikash said they wanted to abduct Sudhir Master. When he refused Bikash threatened that he would kill him. They went in front of the house of Sudhir. Bikash was in an inebriated condition. Another person was also present with Bikash. Bikash asked him to call Sudhir Master. He called out Sudhir Master referring to him as ‘dadu’, There was no response and Bikash threw him on the ground. He ran away from the spot.”

Analysis and findings:-

(i) Is the FIR a manufactured document?

23. PW 1 is the eyewitness and the first informant. Learned Advocates for the appellants have seriously assailed the registration of the FIR lodged by her. They contend P.W 1 stated she had gone to the police station and registered FIR which was scribed by P.W 5. P.W 5 also stated he scribed the complaint at the police station. But deposition of the Investigating Officer (P.W 16) as well as the endorsement in the FIR shows it was received at the village and forwarded to the duty officer for registering of a specific case. P.W 1 is a rustic lady. She had lost her son to a brutal attack by a *Maoist* group. In Court she stated she had handed over the FIR at police station.

24. PW 5 is the scribe. He claimed he scribed the complaint at Belpahari Police Station.

25. However, the notings in the written complaint (Exhibit 1) show it was received at Barsol village and forwarded to the police station. P.W 16 (Investigating Officer) also states the then IC had received the complaint from P.W 1 at the spot. This dichotomy where the written complaint was received does not improbabilise the fact that it was lodged by P.W 1 and received by the then IC of Belpahari Police Station. Whether it was received at the spot or at the police station is of little consequence as the complaint had been lodged promptly i.e. within a couple of hours of the incident. Promptitude in lodging the complaint rules out the possibility of substitution or manufacture of a new complaint as argued by the defence.

(ii) Credibility of the eyewitness: P.W 1:-

26. Learned Advocates for the appellants also argued the genesis of the incident as per the FIR is at variance to the case made out by P.W 1 and other witnesses in court. In the FIR, 22 persons were named as the members of the group who had assembled to commit murder. In Court, P.W 1 named seven persons including the appellants. It is also submitted while in FIR it is alleged Bhairav demanded water, during trial P.W 1 deposed Bikash had done so.

27. I have given anxious consideration to the aforesaid issues raised on behalf of the appellants.

28. Prosecution case is that on 26.05.2012 in the dead of night a group of *Maoist* had attacked the house of P.W 2, Sudhir Kumar Saha. Sudhir belonged to a different political party. Bikash asked Sudhir to

come out stating Haren had sent them. Sudhir was unwilling to come out of the house. Miscreants started breaking the tile shed. Fearing for his life Sudhir jumped from the first floor of the *pucca* building and broke his waist. Hearing cries of his parents, Sudhir's son, Shyamal came out and opened the door to give water to Bikash. Thereafter, the miscreants searched for Sudhir and as he could not be found, they murdered his son Shyamal.

29. The aforesaid narration depicts the chilling violence unleashed by an extremist group on a hapless family. P.W 1's FIR has to be appreciated in the backdrop of these extreme circumstances. She had seen the unruly mob attacking the house, search for her husband and thereafter murder her son. She named 22 persons in the FIR. However, during investigation apart from the appellants and one Shyamapada Sardar (since deceased) no evidence transpired against the other FIR named accused. Accordingly, they were discharged. P.W 1 disputed the discharge and prayed for further investigation. Learned Judge turned down her prayer observing the discharged accused may be summoned if evidence is adduced against them. Thereafter P.W 1 and other witnesses were examined after a lapse of three years. Possibly due to lapse of time P.W 1 was unable to recollect the names of all the miscreants. However, she was able to name the appellants and specifically disclosed their roles in the murder.

30. It is trite appreciation of evidence of witness in a case of mob violence requires to be done with caution. There is always a tendency

on the part of the witness to cast the net too wide and drag in as many persons possible in the array of accused. If the witnesses' version has a ring of truth, exaggerations on her part should not be a ground to disbelieve her in *toto*. The principle '*falsus in uno, falsus in omnibus*' is inapplicable in Indian jurisprudence. Given this situation, duty is cast on the court to weigh the evidence of P.W 1 on the anvil of other evidence on record and broad probabilities to separate the grain from the chaff to bring out the truth of the matter.

31. I have undertaken this exercise *qua* each of the appellants.

(iii) Role of Bikash:-

32. Bikash Murmu is one of the principal accused. In the FIR it is stated in the dead of night P.W 1 heard a voice calling her husband stating '*I am Bikash, Haren has sent us, please come out*'. In court, P.W 1 reiterated the said version and stated Haren had sent Bikash and others to her house on the fateful night to murder her husband. P.W 1's version is corroborated by her husband (P.W 2) who also claimed he initially heard someone calling him '*Dadu Dadu*' & '*Kaku Kaku*'. When he enquired, he heard '*I am Bikash, Haren has sent me, we have to discuss a matter, please open the door.*'

33. These pieces of evidence corroborate the prosecution case in the FIR that a group of miscreants had assembled in the dead of night in front of the house of P.W 2. They had called P.W 2 as '*Dadu Dadu*' & '*Kaku Kaku*'. When he enquired, he heard Bikash stating they had been sent by Haren for a discussion and that he should come out. In his

exculpatory statement (Exhibit 14), Bikash admits he was present (at the spot) with others. His admission corroborates PWs 1 and 2 and proves Bikash was present at the spot and had called P.W 2 and stated Haren had sent them to have a discussion with him.

34. Next comes the role of Bikash demanding water which had prompted Shyamal to come out and give water to him. Mr. Mahapatra argues as per FIR Bhairav (not sent up for trial) and not Bikash had demanded water.

35. I would have given credence to this submission but for the fact that Bikash in his exculpatory statement before Magistrate admitted that he had asked for water which prompted Shyamal to come out and give water to him. Though exculpatory confession is of little evidentiary value, admissions made therein which find corroboration from legally admissible evidence may be utilised by the prosecutor against the accused. Ordinarily Bikash's conduct to demand water may appear to be innocuous but when seen in light of other evidence on record it assumes strategic relevance.

36. Appellants are said to be members of a *Maoist* group. In spite of repeated calls, P.W 2 and other inmates had not opened the door. The miscreants were trying to enter the house by breaking the tiles. At this juncture, Bikash used a ploy by calling upon the inmates to give him water. This was done to lure the inmates to open the door and come out of the house. The ploy worked and Shyamal came out of the house. This gave opportunity to the miscreants to search for P.W 2 but the

latter could not be found as he had jumped from the first floor of house, fallen down behind the house and broken his waist. As the miscreants could not find P.W 2, in a frenzy of violence they killed his son, Shyamal. The aforesaid circumstances prove the overt act of Bikash to demand water and thereby compel Shyamal to open the door enabling the accused to search for his father and when his father could not be traced ultimately kill Shyamal.

37. Finally comes the brutal assault on Shyamal. In the FIR, P.W 1 stated Bhairav and Bikash assaulted Shyamal. In Court, she did not name Bhairav and implicated the appellants. This variation in her deposition does not affect the consistent role of Bikash in assaulting Shyamal with others resulting in his death. In his exculpatory statement Bikash also admitted Shyamal was assaulted at the spot with an axe. However, he tried to save himself by stating Shyamapada (since deceased) had assaulted him.

38. In *Nishi Kant Jha vs. State of Bihar*¹, the Apex Court held when a confession is exculpatory, incriminating parts of the confession may be accepted while rejecting the exculpatory parts which do not find corroboration.

39. Bikash's exculpatory stance that it was Shyamapada who had assaulted Shyamal with an axe is rendered hollow by the clear and unequivocal depiction of Bikash's role in the assault as noted in the FIR and the deposition of P.W 1.

¹ (1969) 1 SCC 347 (para 23)

40. Hence, I am of the opinion the manner and circumstance in which Bikash had called P.W 2 and played a ploy to persuade Shyamal to open the door and come out of the house to give him water and thereafter assault him with an axe proves his role in the murder beyond doubt.

(iv) Role of Haren:-

41. Prosecution states Haren is the mastermind of the crime. As per FIR, Bikash stated it was Haren who had asked them to come to the spot and discuss a matter with P.W 2. During trial, P.W 1 deposed the miscreants had been sent by Haren to their house. She also identified Haren in court as one of the miscreants. P.W 1 is corroborated by her husband (PW 2) who also claimed Bikash stated he and others had been sent by Haren to their house for a discussion.

42. Mr. Bhattacharya contends Bikash's exhortation that Haren had sent them for a discussion is the statement of a co-accused which cannot be the sole basis of conviction. Bikash's exhortation is corroborated by other evidence on record. PWs. 1 and 2 deposed they had heard Bikash stating Haren had sent them to their house for a discussion. P.W 1 also noted presence of Haren amongst the miscreants and identified him in Court.

43. In light of the aforesaid clinching evidence on record, it is clear Haren was the leader of the group of *Maoists* who had come to the house of P.W 1 to murder P.W 2. When they could not find him, they

murdered his son (Shyamal) in order to strike fear in the hearts of the family so that they would not participate in democratic politics.

44. Whether an accused shared common intention to murder has to be inferred from various attending circumstances. Evidence on record shows Haren was the person who had sent Bikash and others to the spot to commit the crime. Prosecution case against Haren is further bolstered by recovery of weapon of offence i.e. axe near his house. Investigating Officer (PW 16) deposed his disclosure statement led to the recovery of the offending weapon i.e., axe. His intention to murder P.W 2 or any of his family members is proved beyond doubt.

45. Mr. Bhattacharya argues recovery is not supported by independent witnesses. This is of little consequence as Haren himself during his examination under Section 313 of the Code of Criminal Procedure, admitted to the recovery of the weapon of offence i.e. axe pursuant to his leading statement. Due to lapse of time blood stains on the weapon disintegrated. This explains why blood could not be detected by the FSL report.

(v) Role of Sushanta:-

46. Coming to the role of Sushanta we note the latter is not named in the FIR. Learned Public Prosecutor admits the FIR is an elaborate document naming 22 accused. Had Sushanta's presence been noted by P.W 1, it would certainly have found place in the FIR. But it is not so. Investigating Officer (PW 16) also admits Sushanta was implicated in

the case on the strength of source information as well as statement of co-accused.

47. Solitary evidence against Sushanta comes from the mouth of P.W 1 for the first time in court. She did not mention his presence even in the FIR. Sushanta's implication by P.W 1 during trial appears to be an afterthought and I do not consider it prudent to rely on her sole deposition to hold Sushanta guilty. Sushanta had also retracted his confession. Even if the retraction is ignored, the confession is an exculpatory one. Sushanta stated due to threats he was forced to accompany the miscreants and call P.W 2 as '*Dadu Dadu*'. Thereafter, he ran away from the spot. The exculpatory version i.e. he ran away from the spot appears to find corroboration from the fact as P.W 1 did not name him as one of the persons present at the spot in the FIR. This persuades us to accept the defence version that Sushanta may not have been present at the spot when the incident occurred.

48. It is true P.W 6 referred to Sushanta's role in the murder. However, reading the entire evidence on record, it appears she is a post occurrence witness and admitted she had heard the names of the assailants from her father-in-law (PW 2) who is also not an eyewitness. Before police, P.W 6 had not named Sushanta. Her deposition is of little substance.

49. Similarly, P.W 14 who stated Sushanta probably assaulted the victim is a hearsay witness who also does not deserve credence.

50. Accordingly, I am of the opinion prosecution case against Sushanta is too shaky and it cannot be said he was present at the place of occurrence and shared common intention to commit murder. However, his acquittal does not affect the prosecution case proved against the other two appellants on the strength of consistent and reliable evidence.

Conclusion:-

51. Accordingly, I am inclined to give the benefit of the doubt to Sushanta Sardar (*appellant no.2 in CRA 566 of 2018*). His conviction and sentence are set aside.

52. Conviction and sentence of Haren @ Harendranath Murmu (*appellant no.1 in CRA 566 of 2018*) and Bikash Murmu (*appellant in CRA 233 of 2020*) are upheld.

53. CRA No. 233 of 2020 is dismissed. CRA 566 of 2018 is allowed to the aforesaid extent.

54. In view of disposal of the appeals, connected application being CRAN 2 of 2023 is also disposed of.

55. The appellant in CRA 566 of 2018 viz. Sushanta Sardar shall be released from custody, if not wanted in any other case, upon execution of a bond to the satisfaction of the trial Court which shall remain in force for a period of six months in terms of Section 481 of the Bharatiya Nagarik Suraksha Sanhita, 2023.

56. Period of detention suffered by Haren @ Harendranath Murmu (*appellant no.1 in CRA 566 of 2018*) and Bikash Murmu (*appellant in*

CRA 233 of 2020) during investigation, enquiry and trial shall be set off against the substantive sentence imposed upon them in terms of Section 468 of the Bharatiya Nagarik Suraksha Sanhita, 2023.

57. Trial court records along with a copy of this judgment be sent down at once to the learned trial Court for necessary action.

58. Photostat certified copy of this judgment, if applied for, be given to the parties on priority basis on compliance of all formalities.

I agree.

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)

as/akd/sd