

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

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

CRA (DB) 224 of 2024

Babar Ali Kotal & Anr.

vs.

The State of West Bengal

With

CRA (DB) 243 of 2024

Nabial Mondal @ Nabyal Mondal & Anr.

Vs.

The State of West Bengal

With

CRA (DB) 294 of 2024

Lal Md. Bhuinya & Anr.

Vs.

State of West Bengal

With

CRA (DB) 336 of 2024

Husen Ali Mondal @ Hossain Mondal

Vs.

The State of West Bengal

For the Appellants

In CRA (DB) 224/2024 : Mr. Dipanjan Dutt, Advocate
Mr. Souma Subhra Ray, Advocate
Ms. Neelam Kumari, Advocate

For the Appellants

In CRA (DB) 243/2024 : Mr. Souma Subhra Ray, Advocate
Ms. Neelam Kumari, Advocate

For the Appellants

In CRA (DB) 294/2024 : Mr. Satadru Lahiri, Advocate
Mr. Safdar Azam, Advocate
Ms. P. Dey, Advocate

For the Appellant

In CRA (DB) 336/2024 : Mr. Gunjan Kumar Singh, Advocate
Mr. Vijay Verma, Advocate

For the State

: Mrs. Amita Gaur, Ld. Sr. Govt. Advocate
Ms. Nandini Chatterjee, Advocate

Heard and Judgment on: 22.07.2025

Md. Shabbar Rashidi, J.:-

1. Four appeals are directed against the judgment of conviction dated July 9, 2024 and order of sentence dated July 10, 2024 passed by the learned Additional Sessions Judge, Bishnupur, Bankura in Sessions Trial No. 01(1)2014 arising out of Sessions Case No. 14(06)2013.
2. By the impugned judgment, the appellants were convicted for the offence punishable under Sections 302/324/325/149 as well as Sections 147/148 of the Indian Penal Code, 1860. By the impugned order, the appellants were sentenced to imprisonment for life and to pay a fine of Rs.25,000/- each and in default of payment of such fine to undergo simple imprisonment for further of three months for the offence punishable under Sections 302/149 of the Indian Penal Code.

They are also sentenced to suffer rigorous imprisonment for three years for the offence punishable under Sections 324/149 of the Indian Penal Code. They were further sentenced to rigorous imprisonment for seven years and to pay fine of Rs. 10,000/- for the offence punishable under Sections 325/149 of the Indian Penal Code. At the same time, the appellants were also sentenced to undergo rigorous imprisonment for 2 years for the offence punishable under Section 147 of the Indian Penal Code. They were further sentenced to undergo rigorous imprisonment for three years for the offence punishable under Section 148 of the Indian Penal Code. The sentences were directed to run concurrently.

3. It is submitted on behalf of the learned advocate for the appellants in CRM (DB) 294 of 2024 that, the incident was said to have taken place due to misappropriation of fund by one Ali Box Bhuiyya appertaining to Indira Abas Yojana. However, the said Ali Box Bhuiyya was acquitted by the learned Trial Court. Learned advocate for the appellants also submitted that, the prosecution has not been able to establish any motive behind the incident.
4. Learned advocate appearing for the aforesaid appellants further submitted that, P.W.14 has claimed himself to be eyewitness to the incident. However, no defence evidence has been adduced on behalf of

the prosecution to establish that, the P.W.14 was present at the place of occurrence at the time of incident.

5. It was further contended that, P.W.14 has claimed that, he carried the victim in an injured condition from the place of occurrence to the hospital, however, his wearing apparels were not stained with blood.
6. It is further submitted on behalf of the aforesaid appellants that, there has been unexplained delay in the examination of P.W.14. He was examined on behalf of the prosecution after seven years of the incident.
7. It is also contended on behalf of the appellants that, there are no criminal antecedents as against the appellants.
8. Learned advocate appearing for the appellants further submitted that, P.W.14 has claimed to be an eyewitness to the incident. He carried the injured to the hospital. However, at the time of inquest conducted upon the dead body of the victim, the P.W.14 was present and at that time, he did not disclose the name of any of the assailants.
9. Learned advocate for the appellants further contended that, F.I.R was lodged within three hours of the incident which names at least 41 assailants. According to the learned advocate for the appellants, naming of 41 persons in the First Information Report within three hours of the incident seems to be unbelievable.

10. Learned advocate for the appellants also submitted that 41 persons were named in the First Information Report for assaulting the victim. Out of 41, 28 persons were not chargesheeted which included the three leaders named in the First Information Report.
11. It is contended on behalf of the learned advocate for the appellants that the F.I.R was lodged out of political rivalry and grudge. There are material contradictions in the evidence adduced on behalf of the prosecution.
12. Learned advocate for the appellants also submitted that there is nothing in the evidence that the incident was pre-mediated or pre-planned. An incident started in course of an altercation between two groups. Intention to commit murder cannot be attributed.
13. In support of their contention learned advocate for the appellants relied upon **(2025) 9 Supreme Court Cases 44 (State of Uttar Pradesh versus Satveer and Ors.)**, **(2023) 18 Supreme Court Cases 783 (Narendrasinh Keshubhai Zala versus State of Gujarat)**, **(2022) 6 Supreme Court Cases 576 (Gadadhar Chandra versus State of West Bengal)**, **2024 SCC OnLine SC 107 (Velthepu Srinivas & Ors. Versus State of Andhra Pradesh (Now State of Telangana) & Anr.)** and **(2014) 14 Supreme Court Cases 22 (Deny Bora versus State of Assam)**.

14. On the other hand, learned advocate for the State submits that, the evidence on record establishes the charges levelled against all appellants. It was also contended on behalf of the learned advocate for the State that in case of prosecution under Section 149 of the Indian Penal Code, an offence committed by any member of an unlawful assembly shall be held guilty of such offence committed in furtherance of common object of the unlawful assembly or if the members of such assembly knew to be likely to be committed in prosecution of such object. Every member of an unlawful assembly can be liable for offence committed by any member of unlawful assembly.
15. Learned advocate appearing for the State also submits that, P.W.14 has been able to prove the case made out in the First Information Report. His presence at the place of occurrence has not been denied at the time of cross-examination of prosecution witnesses and also during the examination of the appellants under Section 313 of the Code of Criminal Procedure.
16. It is submitted by the learned advocate for the appellants that, testimony of sole witness can be relied upon to secure conviction. In support of such contention learned advocate for the State relied upon **2023 (5) SCC 391 (Ravasaheb @ Ravasahebgouda etc. versus State of Karnataka.**

17. P.W.14 lodged a written complaint with Joypur Police Station under Bankura district on January 2, 2012. As per the allegations made in the written complaint, one Lal Mohammad Bhuiyya and Ali Box Bhuiyya made defalcation in the Indira Abas Yojana an allotment of Harinasuli village. In connection with such defalcation on January 1, 2012 at about 4 p.m. the accused persons named in the First Information Report gathered in the village. At that time, the brother of P.W.14, the de facto complainant was passing through the road. At that time, under the active leadership of Rabiul Middya, Yamin Sk, Babar Ali Kotal, Yunus Kotal persons named in the written complaint started assaulting brother of the de facto complainant namely, Golam Kuddus as a result of such assault the victim fell down and in the process he received injury by stone on his head. De facto complainant along with others took the victim to Bishnupur Hospital wherefrom he was referred to Bankura Hospital. The victim died during his treatment at Bankura Hospital.
18. On the basis of such written complaint, Joypur Police Station Case No. 2 of 2012 dated January 2, 2012 under Sections 147/148/149/324/325/307/302 of the IPC was started against 41 FIR named accused persons.
19. The police conducted investigation and on completion of the investigation, filed charge sheet in the case.

20. On the basis of the materials in the case diary, charges under Sections 147/148/149/324/325/302 of the IPC were framed against 13 accused persons including the appellants on January 7, 2014. The appellants pleaded not guilty to the charges and claimed to be tried.
21. In order to substantiate the charges, prosecution examined 15 witnesses in all. In addition, prosecution also relied upon one of the documentary evidences.
22. A resident of local village deposed as P. W. 1. He stated that he knew the victim Golam Kudus who is dead. He further stated that the written complaint was scribed by him which was admitted in evidence and marked as Exbt. 1. He, however, denied any knowledge about the incident. He also failed to identify the appellants in the Court. In his cross-examination, P.W. 1 admitted that he had no knowledge that as to how Golam Kudus died.
23. Another person from the village deposed as P.W. 2. He did not identify the defacto complainant or his son. He even did not identify the victim. He stated in his deposition that he was not interrogated by police in connection with the case. Such witness was declared hostile by the prosecution and in his cross-examination on behalf of the prosecution. P.W. 2 denied having made his statement before the police.

24. Another person from the locality deposed as P.W. 3. He stated that he knew the defacto complainant Usuf Ali Sk., but he did not know the victim Golam Kudus. He had no knowledge of the demise of the victim, nor did he hear anything about the incident.
25. Another person of the locality was examined as P.W. 4. He identified the signature on the seizure list which was marked as Exbt. 2. He further stated that he put his signature on such document in presence of the police. He did not know the defacto complainant or about the incident. He was also not interrogated by the police. This witness was also declared hostile by the prosecution and in his cross-examination by the prosecution, he denied having made any statement before the police.
26. P.W. 5 also stated about his ignorance with regard to the incident involved in this case. He was also a seizure list witness. He signed on the seizure list as requested by the police. This witness was also declared hostile by the prosecution.
27. P.W. 6 is another person from the locality. He did not identify the defacto complaint. He happens to be a hearsay witness to the incident.
28. P.W. 7 is an injured witness. He stated that he sustained injuries in connection with the case. According to him, the incident took place about four years ago (On September 26, 2016) at about 2.30/3.00

p.m. in the afternoon. He stated that at his house he heard shouting. He further stated that he did not go to the place of occurrence. He sustained injury on his neck by falling down and he was medically treated at Kamarpukur B.P.H.C. hospital and thereafter he was referred to Bishnupur hospital where he remained admitted. In his deposition, he stated that he did not know Golam Kudus. He heard that Golam Kudus died, but could not say as to how did he die. He was not interrogated by the police in connection with this case.

29. P.W. 8 is another hearsay witness. He heard that Golam Kudus expired, but he could not say as to how he died. He also did not identify the appellants or the accused persons involved in this case.
30. P.W. 9 is a hearsay witness. He stated that he heard Golam Kudus died in one trouble at Harinasuli village. He claimed to know one or two of these accused persons.
31. P.W. 10 is also hearsay witness. He stated that he heard that one trouble took place where Golam Kudus died. He, however, stated that he was not examined by the police. This witness was also declared hostile by the prosecution and in his cross-examination by the defence he denied having made any statement before the police.
32. The medical officer deposed as P.W. 11. He stated that on January 2, 2012, he conducted post mortem examination on the dead body of the

victim Golam Kudus. On examination, he found the injuries on the dead body which are as follows:-

- “1. Bruise of diameter one inch around both eyes,
2. Lacerated injury one and half inch x half inch muscle deep over left side of face two inch away from mid line, on inch below from left eyebrow,
3. One stitch up injury (number of stitches four) three inch long over right side of forehead just right side from mid line, four inch above from breach of the nose. On removal stitches found lacerated injury three inch x half inch bone deep,
4. Abrasion 1.8 inch x .8 inch over left side of anterior chest wall 2 inch and half away from mid line, 2.8 inch below from mid clavicular point,
5. Abrasion one and half inch x .2 inch over postorateral aspect of left arm 3 inch below from elbow joint.

On dissection I found:

1. Sclap haemotoma 8 inch x 6 inch over right frontal parietal and temporal region, 2. Fissure fracture three and half inch long over right side of frontal bone, 3. Depressed communicated fracture 1.5. inch x 1.2 inch over right temporal bone, 4. Ext Daral haemorrhage 8 inch x 6 inch over right parietal and temporal region, 5. Subdural haemorrhage all over brain substance, 6. Lacerated injury 1 inch x 1 inch tissue depth over right temporal lobe of brain, 7. Bruise two and half inch x one inch over medial aspect of right forearm in muscular liver.”

33. In his deposition, P.W. 11 opined that the cause of death was due to effect of head injuries which were ante mortem and homicidal in nature. He proved in the post mortem report which was marked as Exbt. 3.

34. A police officer deposed as P.W. 12. He stated that on January 2, 2012, he seized wearing apparels of the victim under seizure list. He proved such seizure list. He started an unnatural death case. He

conducted inquest over the dead body of the victim and prepared a report which he proved. He also sent the dead body for post mortem examination. He proved the dead body challan.

35. The Officer-in-Charge of DIB, Bankura was examined as P.W. 13. He stated that on January 2, 2012, he received a written complaint from Usuf Ali Sk. And on the basis of such written complaint he started Joypur Police Station Case No. 2 of 2012 dated January 2, 2012. He filled up a formal FIR. He proved the endorsement of the receipt on the written complaint as well as the formal FIR which were marked as Exbt. 1/1 and 8.
36. The brother of the victim as well as the defacto complainant deposed as P.W. 14. He stated that the victim Golam Kudus was his brother. He further stated that on January 1, 2012 at about 4-00 p.m. in front of the house of one Ansur Mondal at village Harinasuli, the appellants and many others assaulted his brother in his presence. The aforesaid assailants were armed with lathi, tangi, kural and other weapons. As a result of such assault, the brother of P.W. 14 fell down on the ground whereupon accused Lal Mohammad Bhuiyya and Sukur Ali Bhuiyya threw stones on his head. P.W. 14 further stated that with the help of some persons, he brought his injured brother to Bishnupur hospital and ultimately after admission his brother died at about 12/1.00 p.m.

37. P.W. 14 lodged a written complaint over the incident which was scribed by P.W. 1. He proved the written complaint. He identified the appellants in Court. He further stated that some other appellants who were not present in Court could be identified by him had they been present. In his examination-in-chief itself, P.W. 14 stated that he received summons to depose in the case earlier, but he could not attend the Court due to fear of the appellants. In his cross-examination, P.W. 14 identified the appellants belonging to his village as well as the adjoining villages. He also named Jamsur Ali Mondal, Bag family who resided near the place of occurrence. He also stated that he raised an alarm by the incident underway and on his alarm, some 10 to 20 persons assembled there. He categorically stated that his brother sustained head injury by an axe and injuries on his eyes resulted by a ballam. The victim also sustained injuries on different parts of his bodies by the blow of back side of tangi. He further stated that the victim sustained bleeding injuries. In his cross-examination, P.W. 14, however, could not remember the persons who assisted him in removing his injured brother to the hospital. He stated that the victim was taken to hospital by a motorcycle. P.W. 14 was riding on the pillion whereas one Lalan Mondal, Harinasuli village was driving the motorcycle. Thereafter, the wife and other relatives of the victim also visited the hospital where he was undergoing treatment. He

further stated in his cross-examination that his brother was senseless all along since the incident until his death.

38. P.W. 14 admitted in his cross-examination that he initially lodged complaint against 41 named accused persons. He identified the seven appellants. He claimed in his cross-examination that he saw the appellants at the spot, but he did not notice them assaulting his brother.
39. The second investigator of the case deposed as P.W. 15. He narrated the steps taken by him in course of investigation on and from March 8, 2021 when he received the investigation of the case. He ultimately submitted charge sheet against 13 accused persons including the appellants. Thirty-four persons named in the First Information Report were discharged at the time of submission of charge sheet.
40. Upon conclusion of the evidence for the prosecution, the appellants were examined under Section 313 of the Code of Criminal Procedure Code. In such examination, the appellants pleaded innocence having been falsely implicated.
41. According to the case made out by the prosecution, the victim was assaulted by the appellants and many others. He sustained injuries on his head. He was taken to hospital where he ultimately died. The matter was reported to the police whereupon police conducted inquest over the dead body of the victim. Later, the dead body was sent for

postmortem examination. The doctor conducting the postmortem examination was examined as P.W.11. He has described the injuries sustained by the victim. According to the opinion of the postmortem doctor, the victim sustained as many as five injuries, besides some other injuries and haematoma. In his opinion, the victim died due to the effect of head injury as noted by him which was stated to be ante-mortem and homicidal in nature. From the evidence of P.W. 11 together with the testimony of Exhibit-3, it is evident that the victim, Gulam Kuddus, died due to injuries sustained by him more specifically due to the head injuries. P.W.11 has categorically stated in his deposition that the injury so found on the person of the victim was ante-mortem and homicidal in nature.

42. In such view of the fact it can be said that the victim died an unnatural death. So far as the persons involved in the death of the victim are concerned, it is the case of the prosecution that the appellants and many others assaulted the victim over the issue of alleged defalcation of public money. According to the case of the prosecution, the victim was assaulted by an assembled crowd in Harinasuli village. In support of such case made out by the prosecution, there appears to be no eye-witness save and except P.W. 14. P.W. 14 has claimed himself to be present at the time of the incident, though his presence has been challenged by the appellants.

Besides P.W. 14, no other witness has supported the case of the prosecution or corroborated the evidence adduced by P.W.14. P.W.14 in his examination has stated that he was present during the incident and he rescued the victim brother with the help of some other persons. However, in his cross-examination, he failed to identify the persons who helped them in rescuing the victim. The aforesaid persons were never examined nor any of the persons examined on behalf of the prosecution has claimed to be one of such person assisting P.W.14. Furthermore, P.W. 14 in his cross-examination has stated that he brought his victim brother to hospital by a motor cycle which was being driven by one Lalan Mondal. Thus, said Lalan Mondal has not been examined on behalf of the prosecution. He has also stated that the wife of the victim and many other relatives visited the victim while he was undergoing treatment in the hospital. But none of such persons including wife of the victim has been examined on behalf of the prosecution to support its case.

43. In **Ravasaheb (supra)** Hon'ble Supreme Court did not find any reason to disbelieve the prosecution witness who testified as against the convicts, although such prosecution witness was the only witness who implicated all the convicts.
44. In the facts of the present case, we are not in a position to rely upon P.W. 14 due to the reasons noted above.

45. In **Camilo Vaz (supra)** the Hon'ble Supreme Court has laid down the scope of Section 304 and Section 149 of the Indian Penal Code. In the facts of the present case, the ratio laid down in such case is not at all applicable.
46. In **Velthepu Srinivas (supra)** it was noted by the Hon'ble Supreme Court that lack of cogent evidence or eye-witness to the effect that the accused shared a common intention to commit murder were some of the factors to commute sentence from Section 302 of the IPC to Section 304 thereof.
47. In **Gadadhar Chandra (supra)**, the Hon'ble Supreme Court laid down that in withholding the evidence of a material witness, an adverse inference can be drawn against the prosecution.
48. In **Narendrasinh Keshubhai Zala (supra)** Hon'ble Supreme Court observed that in order to rely upon the testimony of sole eye witness, the witness has to be reliable, trustworthy, his testimony has to be worth of credence and the case must be proven beyond reasonable doubt.
49. In the facts at hand, as we have said that only witness which has supported the case of the prosecution, i.e., P.W. 14 has been unable to establish that he actually removed the victim from the place of occurrence to the hospital. No reliance can be placed upon such

witness. He has also not been able to attract corroboration from other evidences which were available according to his own version.

50. The prosecution has not been able to establish the appellants formed or were part of an unlawful assembly. At the same time it has not been established that any such unlawful assembly was acting in furtherance of a common object or even that the appellants had any speculation that an offence is likely to be committed by any member of such assembly in prosecution of common object.
51. In light of the above discussion, we are of the view that the prosecution was not able to substantiate the charges levelled against the appellants beyond all reasonable doubts. They are entitled to be acquitted from this case.
52. Accordingly, the appellants are acquitted from all the charges they had been charged with. They are directed to be set at liberty forthwith, if not wanted in connection with any other case. They shall, however, furnish a bond to the satisfaction of the trial Court in terms of Section 437A of the Code of Criminal Procedure Code which shall remain valid for 6 months from date.
53. All pending applications, if any, including application for bail, shall stand disposed of in the above terms.
54. Let a copy of the judgment along with the Trial Court records be sent down to the Court below at once.

55. Urgent photostat certified copy of this order, if applied for, be supplied expeditiously after complying with all necessary legal formalities.
56. CRA (DB)/224/2024, CRA (DB)/243/2024, CRA (DB)/294/2024 and CRA (DB)/336/2024 are **disposed of** accordingly.

(Md. Shabbar Rashidi, J.)

57. I Agree.

(Debangsu Basak, J.)