

Form No. J(1)

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Rajasekhar Mantha
And
The Hon'ble Justice Ajay Kumar Gupta

CRA No. 519 of 2016

With

CRAN 2 of 2025

Surajit Das @ Narkel @ Surojit Das &Anr.

Versus

The State of West Bengal

With

CRA No. 608 of 2016

With

CRAN 1 of 2025

Tinku Naskar @ Poka

Versus

The State of West Bengal

For the Appellants	: Mr. Sudipta Moitra, Sr. Adv. Mr. Angshuman Chakraborty, Adv. Mr. S. S. Sahu, Adv. Mr. Saikat Ghosh, Adv.
For the State	: Mr. Rana Mukherjee, Ld. A.P.P. Mr. Sharequl Haque, Adv.
Hearing concluded on	: 12 th August, 2025
Judgment on	: 18 th August, 2025

Rajasekhar Mantha, J.

THE APPEAL

1. The instant appeal is directed against judgment and order of conviction dated 25th July, 2016 and 26th July, 2016 respectively, passed by the Additional Sessions Judge, Fast Track, 2nd Court, Barrackpore, North 24 Parganas, in Sessions Trial No. 1(5) of 2013 arising out of Sessions Case No. 472 of 2012. The accused/appellants were convicted under Sections 302 and 34 of the IPC, as also under Sections 25 (1A) & 27 (2) of the Arms Act, 1959.

THE PROSECUTION CASE

2. The prosecution case is that on 16th July, 2012, the victim, Prosenjit Roy @ Rintu, while travelling on a motorcycle alone at about 06:15 am, was chased by Tinku Naskar @ Poka, Surajit Das @ Narkel and Subrata Roy on another motorcycle in a place called Kalitala, under Airport Police Station in Lake Town Area.
3. The riders of the two motorcycles hit a bump and fell down. The victim, Prosenjit Roy, started running towards the northern side of the road leading to a vacant land. The aforesaid three accused persons were carrying 9mm regular and improvised pistols, and shot the victim repeatedly on the back of his head and the back of his abdomen. More shots were fired at the chest and stomach of the victim after the accused collapsed on the road. The victim died on spot. The aforesaid three accused persons thereafter climbed onto the motorcycle and fled towards the southern side of the road towards Bablatala. The incident occurred in front of Kali Park United Club, opposite

the house of Ambar Nath Dutta, PW 6 and beside the house of Satrajit Sen, PW 7.

4. The eyewitnesses to the incident were PW 10 Ahmed Ali @ Teni, an auto-rickshaw driver and PW 11 Md. Iqbal, a mason. The police arrived upon being informed, immediately after the incident. A formal complaint was lodged by the wife of the deceased, Rakhi Roy (PW1), with the Airport Police Station.
5. Inquest was conducted by PW 22 Subhasish Ghosh. The victim was identified by PW1. PW 22 found the deceased had sustained bullet injuries on the right side of his stomach, on the left side of his head, on the back side of the left ear and on his back. The wearing apparel of the victim, cartridges, a bullet head, a money bag and 2 mobile phones were seized in the presence of 4 witnesses, including the wife and sister of the deceased. The body was sent for post-mortem to R.G. Kar Hospital. The inquest officer was also the investigating officer.
6. From the place of occurrence, three empty cartridges were seized along with one bullet. The post-mortem report found 4 bullet injuries on the body of the victim. The PM doctor found that the death was due to the effect of gunshot injuries, ante mortem and homicidal in nature.
7. The seized bullets, cartridges, and weapons were sent for ballistics. After completion of the investigation charge sheet was submitted against Tinku Naskar @ Poka, Surajit Das @ Narkel, Debajoti Ghosh @ Babai, Surajit Das @ Gourango, Sanjay Kumar Singh @ Pandit and Subrata Roy.

THE TRIAL AND THE EVIDENCE THAT HAS COME ON RECORD

8. Charges were framed by the Sessions Court both under Sections 302 & 34, Section 120 B of the IPC against all accused and under Section 25 (1A) and 27(3) of the Arms Act against the three accused Poka, Narkel and Subrata.
9. **PW 1 was Rakhi Roy.** She was the complainant who wrote the complaint in her handwriting, and she identified the same. She deposed that her husband left home for work, to a water pump in Teghoria, at around 6 am. She received a phone call about the incident from the locals of Kali Park at about 7:15 am. She identified her husband's motorcycle and registration number. She confirmed the inquest was done in her presence and put her signature on the said report.
10. **PW 2 was Ajit Sinha;** he knew the deceased. He was not at the place of the occurrence. He was informed over the telephone by accused Debojyoti Ghosh @ Babai that the victim had been shot. PW 2 was at his house in New Alipore at that time. He reached Babai at Baguihati at 8:30 am and went to the hospital along with him, where the post-mortem was going on. He returned to his flat after cremation.
11. He deposed that he was informed by Babai that on the latter's instructions Narkel, Poka, and Subrata had gone to Kali Park bylane in front of United Club and shot the victim. He stated that Babai was present at Chinara Park along with Sanjay Singh and Surajit Das where the conspiracy was hatched. He further deposed that there was a dispute between the victim on the one side and Babai, Sanjay and Surajit on the other in connection with land. Babai also told PW 2 that had the first attempt by the appellants to eliminate the victim, failed, one Sk. Anarul Islam @Khoka and one Mithun

were waiting for Prosenjit at the victim's place of work at the Pump House in Baguihati, to kill him.

12. PW 2 identified all the accused persons in the Trial Court. He went to the Airport Police Station on 7th August, 2012 and provided a statement under Section 164 of the CrPC on 14th August, 2012. In cross-examination he was confronted with having deposed in two trials, one in the Fast-track Court no. 1 at Barasat, and in Bongaon in another case. He was also confronted that he deposed in Sessions Trial before Fast-track Court No. 1 at Howrah as also in connection with the English Bazar PS Case No. 526 dated 26.06.2010.
13. **PW 3 was Balaka Das**, sister of the deceased, who signed the inquest report.
14. **PW 4 was Debasish Rakshit**, who also signed the inquest report.
15. **PW 5 was Indrani Paul**, who was sweeping the floor in her uncle's house near Kali Park United Club at the place and time of occurrence. She saw one person being chased by three other persons and saw someone firing. The three persons sped away after shooting the victim hastily on a motorcycle.
16. **PW 6 was Ambarnath Dutta**, who saw the deceased lying on the ground beside a lamp post in front of his house. He saw the three persons fleeing away with a revolver in one of their hands on a motorcycle. He informed the police over the telephone. He could not identify the accused.
17. **PW 7 was Satrajit Sen**. He lived opposite the United Club at Kalipark. He was sleeping when the incident occurred and woke up on hearing the commotion. He was declared hostile by the prosecution. He came to know the identity of the deceased later. He deposed that the house of Ambar Dutta (PW 5) was opposite his house and separated by a lane in the middle.

18. **PW 8 was Kamalika Paul**, who is the granddaughter of PW 6. She was plucking flowers in the garden of PW 6 at the time of the incident, and she heard two to three sounds of a firecracker and heard the cry of 'Bachao bachao' (save me, save me). She came out of her house and found many others already gathered. She deposed that her house was opposite that of PW 7, Satrajit Sen. She saw Prosenjit lying dead in front of her house.
19. **PW 9 was Subrata Chowdhury**. He was coming from Bablatala Bus Stop after dropping his son in a bus. He heard sounds of firecrackers. He saw 3 persons speed away on a motorcycle.
20. **PW 10, Ahmed Ali @ Teni, was an eyewitness to the incident**. He deposed that he was an auto-rickshaw driver on the route between Narayanpur to Airport Gate No. 1. He resides at Kashipur. The owner of his auto-rickshaw lived at Narayanpur and on the previous night, asked him to bring a mason to work in his house. He had called PW 11 Iqbal, an acquaintance of his, who was a mason. PW 11 lived in Park Circus and came along with PW 10 on the date and time of occurrence. On the way to Narayanpur, he got off the Bus near Kalitala, at Bablatala bus-stand, and was going to Dhobiatala to collect money from a debtor. The I.O. (PW 22) corroborated that PW 10 told him, in course of the investigation, that he was walking through the said lane through Bablatala since it was also a shortcut to go to Narayanpur.
21. PW10 further deposed that he got off at Kalitala Bus Stand and could see United Club from a distance. He found two motorcycles thereat. The three accused persons, namely Poka, Narkel and Subrata, were on one motorcycle chasing the victim, who was on another motorcycle. The three persons had

pistols in their hands. Both bikes fell down, hitting a bump. The victim was running thereafter and dashed into a bi-cycle. The person on the bicycle fled, and the aforesaid three accused shot the victim. The three accused persons thereafter came back, picked up their motorcycle and fled away, passing by PW 10.

22. PW 10 further deposed that he saw the faces of the accused and could recognise them, and identified them in the Trial. He deposed that the incident took place opposite the United Club, in between a cement light post and an iron light post on 16th July, 2012, between 6 am and 6.15 am. He thereafter went to the house of the owner of the auto-rickshaw at Naryanpur to fetch his auto-rickshaw along with PW-11 and left the latter there. He took the owner to the police station, where he narrated the entire incident. He also deposed that he identified the three accused in a TI parade within the Barrackpore Jail Premises.
23. In cross-examination, he reiterated the TI Parade. He stated that after the incident and visit to the police station, he went about his usual work in the day. He had breakfast at Narayanpur on that day and had dinner at his own house. The entire incident that he saw happened in 5-7 minutes. His evidence could not be shaken in cross-examination.
24. **PW 11, Md. Iqbal, was the second eyewitness.** He was a mason. He was accompanying PW 10, his 'Teni Chacha', on the aforesaid date and time to go to Narayanpur. He saw at the place and time of occurrence three persons chasing another person in the direction in which they were walking. The three fired gunshots at the victim, who had caught hold of the bicycle of a vendor coming from the opposite direction. The vendor fled seeing the

incident. The two motorcycles were lying near the Club. The three assailants, namely Subrata Roy, Tinku Naskar and Surojit Das, were identified by PW 11 in the Trial Court. The assailants then shot the victim. They then picked up their motorcycle and sped away in the direction opposite to him.

25. He further deposed that he had gone to the police station in the evening at 7:30 on the same day, where his version was recorded by the IO.
26. PW 11 further deposed that after the incident, he went to the house of the auto-rickshaw owner in Narayanpur and worked as a mason thereat for most of the day. He returned home at about 11 pm. He stated that after the incident, and before leaving him at Narayanpur, PW 10 told him that he would come to Narayanpur to meet with him at 6 PM in the evening. He deposed that he identified the accused in the TI Parade after the incident. His evidence could not be shaken in cross-examination.
27. **PW 12 was Dr. Somnath Das**, who performed the post-mortem on the victim. He reiterated his findings in the PM report and confirmed the same. He also confirmed that the injuries sustained by the victim were 4 gunshot wounds ante mortem and homicidal in nature. He confirmed that he had preserved the blood, scalp hair, nail, skin around the injury and a bullet head found inside the body of the victim for forensics. The injuries on the victim found in the post-mortem were as follows:-

“Injuries: 1) one gunshot wound of entry 0.4” by 0.3”, oval in shape, irregular with inverted margins, with evidence of tattooing of gun powder of a radius of 0.5”, placed obliquely over the right side of the abdomen 7.5” below the right nipple and 3” lateral to the midline o/d and tracing the tract, it is seen to have pierced the skin, fascia muscles, vessels nerves at the corresponding level then entered the abdominal cavity traveling downward and backward it then pierced throughout

the small intestinal loops, went out of the abdominal creating a wound of exit 0.6" by 0.4" oval in shape irregular with everted margins 7" vertically above the left anterior superior iliac spine

2) one gunshot wound of entry 0.4" by 0.3", oval in shape, irregular with inverted margins, with evidence of tattooing of gun powder of a radius of 0.5", placed obliquely over the left side of the back of the abdomen, 2" above the left anterior superior iliac spine and 5" lateral to midline. o/d and tracing the tract, it is seen to have pierced the skin, fascia muscles, vessels nerves at the corresponding level then entered the abdominal cavity, it then pierced through the small intestine loops, and then created a partial hole in the subcutaneous, pad of fat, just beside the naval (inner aspect) from where a deformed bullet was recovered. Direction of the track was upward and anteriorly and divergent in nature.

3) one gunshot wound of entry 0.4" by 0.3", oval in shape, irregular with inverted margins, with evidence of tattooing of gun powder of a radius of 0.5", placed obliquely over the left side of the back of the abdomen, 6" above the left anterior superior iliac spine and 5" lateral to midline. o/d and tracing the tract, it is seen to have pierced the skin, fascia muscles, vessels nerves at the corresponding level then entered the abdominal cavity travelling almost horizontally and forward. It then caused rupture of the loops of intestine and a deformed bullet was recovered from inside of the body of the last lumbar vertebra.

4) one gunshot wound of entry 0.4" by 0.3", oval in shape, irregular with inverted margins, with evidence of tattooing of gunpowder of a radius of 0.5", placed obliquely over the left mastoid process. o/d and tracing the tract, it is seen to have pierced the skin, fascia muscles, vessels nerves at the corresponding level then entered the cranial cavity, caused lacerated injury of the inferior part of the brain and finally it caused the fracture of the inner table of the middle part of the right mastoid process, from where a deformed bullet was recovered. No external injuries could be seen even after careful examination under hard lens. All the injuries showed signs of vital reaction."

28. PWs 13 and 14 were Abul Kalam Molla and Saiful Laskar, respectively.

They were seizure witnesses of the 2 pistols, discovery whereof was made on the basis of the leading statement of the accused Poka and Narkel. They were randomly picked up by the police near their houses at Baguihati and Lake Town, respectively. Pws 13 and 14 identified both Poka and Narkel in Court. They also identified the pistols recovered from Poka and Narkel, as

shown by the latter in their respective houses. They signed the seizure list of the weapons recovered. They were nowhere connected with the police or the incident.

29. **PWs 15 and 16 were Subhankar Mahesh and Pradip Chakraborty**, respectively, who were witnesses to the seizure of the earth, three empty cartridges, one bullet head, one footwear, one necklace, one money bag, two mobile phones and a black colored motorcycle, seized by the police at the place of occurrence.
30. **PW 17 was Bishal Mangrati**, a Magistrate. He deposed that he conducted the TI Parade of Poka, Narkel and Subrata at the Barrackpore correctional home as per rules. They were identified by Md. Bahar Ali, PW 10, and PW 11, following due procedure. The TI report was exhibited in Court.
31. **PW 18 was Kanchan Kumar Ghosh**, who was the forensic expert who performed the ballistic test on the 9mm pistol fitted with a magazine 7.5 inches long and identified the seized pistol.
32. **PW 19 was Dr. Shampa Dhabal**. She was the assistant director of the FSL, Ballistic Division. She examined the bullets. Two of the fired cartridges seized were fired from improvised 9 mm pistols having a length of 7.65 mm, and the third cartridge was fired from a 9mm pistol. She confirmed in her report that the bullets and cartridges matched the weapons seized from the accused persons. She further deposed that the cartridges and bullets were fired from the three pistols recovered from the accused persons, Poka, Narkel and Subrata.

33. **PW 20 was Parag Neogi**, another Magistrate, who conducted the TI Parade of Subrata Roy. He confirmed that PW 10 and 11 identified Subrata Roy in course of the TI Parade.
34. **PW 21 was Biswajit Ghosh**, the SI of Police, who recovered the improvised 9mm pistol, one nylon bag and a black colour Pulsar motorcycle used in the incident from the house of the accused, Subrata. PW 21 accompanied the I.O., Subhasish Ghosh, to Subrata's house, where recovery was made upon disclosure/leading statement made by Subrata. He put his signature on the seizure list of the improvised 9 mm pistol and black Pulsar motorcycle, and nylon bag, along with PW 13 and 14.
35. **PW 22 was Subhasish Ghosh**, the I.O. He deposed about the incident as indicated above. He recorded the statement of two eye witnesses, PW10 and 11, on the evening of the date of the incident, i.e. on 16th July, 2012. He conducted the inquest at the PO and seized cartridges, bullets, a money bag, 2 mobile phones and wearing apparel of the victim. He arrested Poka and Narkel on 6th August, 2012. Subrata was arrested on 22nd September, 2012. Debajyoti Ghosh, Surajit Das and Sanjay Singh were arrested 22nd August, 2012 and made a request for the TI Parade for the three accused persons, Narkel, Poka and Subrata. He recorded the leading statement under Section 27 of the Evidence Act of the accused persons and recovered the weapons from under the quilt on the cot in the house of Tinku Naskar and behind an iron box in a polythene packet in the house of Narkel.
36. PW 22 further deposed that he recorded the statements of the accused Poka and Narkel, under Section 161 of the CrPC and came to know of the co-accused persons on the basis of such statements. He seized the weapons

based on the leading statements of Poka, Narkel and Subrata against the seizure list signed by PWs 13, 14, and 21.

37. After receipt of the post-mortem Report and Ballistic report, he filed a charge sheet against all the accused persons u/s 302 read with section 34 and section 120B of the IPC. His evidence could not be shaken in cross-examination.

38. The accused were examined under section 313 of the CrPC.

THE DECISION OF THE TRIAL COURT

39. Based on the evidence, the Trial Judge convicted three of the six accused, namely Poka, Narkel, and Subrata Roy u/s 302 read with Section 34 of the IPC. The other accused, Debajyoti Ghosh @ Babai, Surojit Das @ Gourango, and Sanjay Kr. Singh @ Pandit were acquitted. The Trial Judge did not find the evidence of PW 2, the sole witness who deposed about the alleged conspiracy under 120B of the acquitted persons, along with the convicted, to be corroborated by any other witness. He also did not find the evidence of PW 2 reliable. The Trial Judge, however, found favour with the evidence of PW 10 and 11, duly corroborated by the evidence of other witnesses and directed the conviction of the Poka, Narkel and Subrata.

ARGUMENTS OF COUNSEL FOR THE APPELLANTS AND THIS COURT'S

ANALYSIS.

40. Mr. Sudipta Moitra, learned Senior Advocate for the appellant, argued that the framing of charges, under sections 302, 34, and 120B by the Trial Judge, are inconsistent with each other since the same are not alternative. The framing of the charge itself, being defective, invalidates the conviction of the appellants. Reliance is placed on the case of ***Ramnath Madhoprasad v.***

State of M.P. reported in **(1953) 1 SCC 178**, particularly paragraph 28 thereof.

41. The object of framing and explaining the charges to the accused is to let him/her know why and for what purposes he/she has been brought before the Court. Along that line, the Hon'ble Supreme Court in **Willie (William) Slaney v. State of M.P.** reported in **(1955) 2 SCC 340** held that an irregularity simplicitor, without anything more in the framing of the charge, will not vitiate the trial. The said irregularity has to be demonstrated to be of the next level by proving that such an irregularity has misled the accused and his counsel to believe in something which has deprived him of a fair trial. When an accused is represented by counsel in the Trial, and no objection as regards the framing of the charge is raised at the stage of the trial, it shall be deemed that the accused understood the purport of the charges. In this regard, paragraphs 42, 44, and 53 of **Willie (William) Slaney (Supra)** are set out below:-

“42. In adjudging the question of prejudice the fact that the absence of a charge, or a substantial mistake in it, is a serious lacuna will naturally operate to the benefit of the accused and if there is any reasonable and substantial doubt about whether he was, or was reasonably likely to have been, misled in the circumstances of any particular case, he is as much entitled to the benefit of it here as elsewhere; **but if, on a careful consideration of all the facts, prejudice, or a reasonable and substantial likelihood of it, is not disclosed the conviction must stand; also it will always be material to consider whether objection to the nature of the charge, or a total want of one, was taken at an early stage. If it was not, and particularly where the accused is defended by counsel** [Atta Mohammad v. King Emperor [Atta Mohammad v. King Emperor, 1929 SCC OnLine PC 110 : (1929-30) 57 IA 71 at p. 76 : (1930) 31 LW 306] at p. 74] **it may in a given case be proper to conclude that the accused was satisfied and knew just what he was being tried for and knew what was being alleged against him and wanted no further particulars, provided it is always borne in mind that:** (Abdul Rahman case [Abdul Rahman v. King Emperor, 1926 SCC OnLine PC 65 : (1926-27) 54 IA 96 at p. 109] , SCC OnLine PC)

“... no serious defect in the mode of conducting a criminal trial can be justified or cured by the consent of the advocate of the accused.”

But these are matters of fact which will be special to each different case and no conclusion on these questions of fact in any one case can ever be regarded as a precedent or a guide for a conclusion of fact in another. because the facts can never be alike in any two cases “however” alike they may seem. There is no such thing as a judicial precedent on facts though counsel, and even Judges, are sometimes prone to argue and to act as if there were.

44. This is not a case under Section 149 of the Indian Penal Code so the question does not really arise but it is necessary to advert to the argument because, on the view we take of Sections 225, 535 and 537, **it is immaterial what the offence is and whether there is a charge at all. The only question is whether the irregularity occasioned prejudice.**

53. **We now turn to the question of fact: is there material in this case to justify a finding of prejudice?** that will turn largely on the differences between Section 302 of the Indian Penal Code and Section 302 read with Section 34 of the Indian Penal Code and on the measure of criminal liability to which the appellant would be exposed in those two cases; and **here again, the matter must be viewed broadly and not in any technical or pettifogging way.**”

(Emphasis applied)

42. Paragraphs 55 to 57 of ***William Slaney (supra)*** held that it is only required of the Court, framing the charge u/s 302 along with other sections relatable to section 34 and section 120B, to indicate to the accused that he is being tried for murder. The Court is not required to go a step further and inform the accused that he is being tried for murder because he assisted the main culprit. It is enough to inform the accused that he is on trial for murder. The circumstances that have roped him into the crime are to be ascertained by him. Paragraphs 55 to 57 are set out below:-

“55. It is clear from this that when the case is one of murder, **the accused is not entitled to be told in the charge how it was committed, whether with a pistol or a lathi or a sword. He is not entitled to know from the charge simpliciter any further circumstance. How then is he expected to defend himself? He has the police challan, he has the evidence recorded in the committal court, he hears the prosecution witnesses and he is examined under Section 342 of the Code. It is these proceedings that furnish him with all the necessary, and indeed vital information, and it is his duty to look into them and defend himself.** It will be seen that if the logic of the appellant’s contention is carried to its fullest extent, the accused could complain of prejudice because he was not

told in the charge whether a pistol was used for the crime or a sword and if a pistol, its calibre and bore and the type of cartridge.

56. Now when several persons join in the commission of a crime and share a common intention, it means that each has the requisite intention in himself; the fact that others share it does not absolve any one of them individually, and when the crime is actually committed in pursuance of the common intention and the accused is present at its commission, the crime becomes the offence actually committed because of Section 114 of the Penal Code. Section 114 does not create the offence nor does Section 34. These sections enunciate a principle of criminal liability. Therefore, in such cases all that the charge need set out is the offence of murder punishable under Section 302 of the Penal Code committed by the accused with another and the accused is left to gather the details of the occurrence as alleged by the prosecution from other sources. The fact that he is told that he is charged with murder committed by himself with another imports that every legal condition required by law to constitute the offence of murder committed in this way was fulfilled: Section 221(5) of the Criminal Procedure Code.

57. Now what are those legal conditions? What is the effect of charging two persons with a murder committed in pursuance of a common intention? It means that the accused is unmistakably told that he participated in the crime; exactly how, is no more a matter for the charge than it is to set out the circumstances in which the murder was committed. It also means that he is informed that it is immaterial who struck the fatal blow. The charges here against the appellant and his brother Ronnie are identical. As there was only one fatal blow and as only one person could have inflicted it and as both are charged in this way, it can only mean that each is put on his guard and made to realise that the prosecution allege that one of the two was responsible for that and which must be discovered from the evidence and not from the charge, just as surely as it must when the question turns on who possessed or used a pistol and who a sword.

(emphasis applied)

43. The Appellant has not argued or stated in course of the trial that he was misled by the procedure adopted for framing the charges. He has not pointed out any prejudice caused to him as a result of the procedure in question. The appellant has not challenged the framing of charges during the Trial. Thus, the argument against the framing of the charge has no substance.
44. This Court further notices that in the ***Ramnath decision (supra)***, the same evidence under section 120B was applied for establishing the charge under Section 34 of the IPC against the accused. The benefit of doubt in the said case was given to the accused for several other omissions on the part of the

prosecution, and particularly the evidence of Dr. Tekchand. Serious doubts were cast on the prosecution case since it was deposed by a witness that 4 persons fired from a single pistol. The said case is clearly distinguishable in the facts of the present case.

45. In the case at hand, the charge u/s 302 read with section 34 of the IPC was proved on the basis of the evidence of the eyewitness, i.e. the two chance witnesses, PW 10 and 11. Their evidence was duly corroborated by several other witnesses, namely, PW 3, 4, 5, 6, 7, 8, and 9. The charge u/s 302 and 34 has therefore been proved by independent and separate witnesses. PW 2 was the only witness whose evidence, if at all, could have been relied upon for a charge under Section 302 read with Section 34 of the IPC. The Trial Judge has rightly, in the opinion of this Court, disbelieved the evidence of PW 2 for various reasons apart from the absence of due corroboration. The evidence of PW 2 was not even considered for the purpose of proof of charge under Section 302 and 34 of the IPC. The argument of Mr. Moitra, therefore, cannot be accepted. The ***Ramnath (supra)*** decision is not applicable in the facts of the present case.
46. It is next argued by Mr. Moitra that the place of occurrence differs between the evidence of PWs 6 and 7. The sketch map prepared by the I.O. indicates a third place. Since the actual place of occurrence is not clear, the same constitutes a serious inconsistency in the prosecution case, and the accused, therefore, could not have been convicted by the Trial Court. Reliance in this regard is placed on a decision of a coordinate Bench of this Court in the case of ***Mamfru Chowdhury v. Emperor*** reported in ***AIR 1924 Cal 323*** at page 427.

47. In the ***Mamfru Chowdhury case (Supra)***, there was no evidence to show that the alleged incident happened at the time and in the place and under the precise circumstances narrated by the witnesses for the prosecution. There were several inconsistencies in the version of the witnesses. However, in the instant case, the evidence of PWs 10 and 11 is clear and explicit that the incident occurred in front of the Kalitala United Club. The said club is situated near the houses of PW 5, 6, and 7. The evidence, that the body of the deceased was found near a lamp post in front of the house of PW 6, is corroborated by the evidence of PWs 4, 5, 6, 7, 8, and 9. A minor discrepancy between the versions of PWs 5, 6, 7, 8, and 9 cannot be stated to be so serious, moreso, when the same is duly corroborated by the evidence of PWs 10 and 11. The ***Mamfru Chowdhury case (supra)***, therefore, cannot come to the aid of the appellant.
48. It is next argued by Mr. Moitra that PW 11 initially deposed that he was not interrogated by the police. He immediately thereafter corrected himself when he said that he had gone to the police station at 7:30 pm on the same day to lodge a diary. He must have given a statement to the Police u/s 161 of the Cr.P.C. on the same day in the evening. This is corroborated by the I.O. (PW 22). He also identified the accused in the TI parade. The decision of the Supreme Court in the case of ***Bimal Suresh Kamble v. Chaluverapinake*** reported in ***(2003) 3 SCC 175*** at paragraph 16, cited by Mr. Moitra, cannot come to the aid of the appellants.
49. Mr. Moitra next argued that there is no evidence to show how PW 11 came from Park Circus to meet PW 10 near Bablatala Bus Stand. The evidence of PWs 10 and 11, being chance witnesses, and their presence at the place of

occurrence, must be explained properly. Reference in this regard is made to the decision of ***Jarnail Singh v. State of Punjab*** reported in **(2009) 9 SCC 719** paragraphs 20 to 23 thereof.

50. PWs 10 and 11 indeed happened to be at the place of occurrence by chance. PW 10 has deposed clearly that he got off at Bablatala Bus Stand to take a shortcut to Narayanpur, where his auto-rickshaw owner lived. He also deposed that the owner of the auto-rickshaw wanted a mason to work in his house and therefore he asked PW 11 to come. PW 11 has referred to PW 10 as a chacha or uncle. The possibility of PW 10 coming over early in the morning in search of work and the two meeting up at a particular place, to go to the auto-rickshaw owner's house via a shortcut, cannot be stated as unusual or out of the ordinary. It is a common occurrence among daily wage workers on building sites, to look for work and arrive thereat or at a pickup point early in the day. The presence of PWs 10 and 11, i.e. the chance witnesses, at the place of occurrence is clearly established.
51. In the ***Jarnail Singh case (supra)***, Gurcharan Singh (PW 18 therein) could not explain under what circumstances he was present at the bus stand at the time of the occurrence. In the said decision, caution was placed while accepting the evidence of the chance witnesses.
52. As already seen above, the presence of PWs 10 and 11 has been sufficiently explained by the prosecution. They have also explained what they did after the incident. PWs 10 and 11 went to the house of the auto-rickshaw owner. PW 10 took out the auto-rickshaw and went about running the auto-rickshaw on the same route as he does every day, i.e., between Narayanpur and Airport Gate No. 1. PW 11 has clearly deposed that he worked for most

of the day doing masonry work and laying bricks at the house of the auto-rickshaw owner. Both PWs 10 and 11 deposed that they went to the police station in the evening. PW 22 deposed that he recorded the statement of two persons on the evening of the date of occurrence, 16th July, 2012.

53. The presence of PWs 10 and 11 at the place and time of occurrence and their conduct thereafter has been sufficiently and clearly explained by their evidence, duly corroborated by the evidence of PW 22. The events as narrated by PWs 10 and 11 are, in substance, corroborated by the evidence of PWs 4, 5, 6, 7, 8, and 9. The dicta in ***Jarnail Singh (supra)*** as regards the evidence of chance witnesses, if applied to PWs 10 and 11, would make their evidence wholly reliable.

54. The dicta in ***Rajesh Yadav and Another v. State of Uttar Pradesh*** reported in **(2022) 12 SCC 200** has dealt with and explained the conditions and realities of our country. A common person may end up on a road, in search of work, where he sees something that becomes relevant to a criminal trial. The luxurious concept, where home is considered a castle, may not apply in our country, where, to earn a livelihood and to sustain a home, one may need to roam from one place to another in search of work.

Para no. 29 of ***Rajesh Yadav (supra)*** is set out below:-

“29. A chance witness is the one who happens to be at the place of occurrence of an offence by chance, and therefore, not as a matter of course. In other words, he is not expected to be in the said place. A person walking on a street witnessing the commission of an offence can be a chance witness. **Merely because a witness happens to see an occurrence by chance, his testimony cannot be eschewed though a little more scrutiny may be required at times. This again is an aspect which is to be looked into in a given case by the court.** We do not wish to reiterate the aforesaid position of law which has been clearly laid down by this Court in *State of A.P. v. K. Srinivasulu Reddy* [*State of A.P. v. K. Srinivasulu Reddy*, (2003) 12 SCC 660 : 2005 SCC (Cri) 817] : (SCC pp. 665-66, paras 12-13) “

12. Criticism was levelled against the evidence of PWs 4 and 9 who are independent witnesses by labelling them as chance witnesses. The criticism about PWs 4 and 9 being chance witnesses is also without any foundation. **They have clearly explained as to how they happened to be at the spot of occurrence and the trial court and the High Court have accepted the same.**

13. Coming to the plea of the accused that PWs 4 and 9 were “chance witnesses” who have not explained how they happened to be at the alleged place of occurrence, it has to be noted that the said witnesses were independent witnesses. **There was not even a suggestion to the witnesses that they had any animosity towards any of the accused. In a murder trial by describing the independent witnesses as “chance witnesses” it cannot be implied thereby that their evidence is suspicious and their presence at the scene doubtful. Murders are not committed with previous notice to witnesses; soliciting their presence. If murder is committed in a dwelling house, the inmates of the house are natural witnesses. If murder is committed in a street, only passers-by will be witnesses.** Their evidence cannot be brushed aside or viewed with suspicion on the ground that they are mere “chance witnesses”. **The expression “chance witness” is borrowed from countries where every man's home is considered his castle and everyone must have an explanation for his presence elsewhere or in another man's castle. It is quite unsuitable an expression in a country where people are less formal and more casual, at any rate in the matter explaining their presence.**

(Emphasis Applied)

55. It is next argued by Mr. Moitra that there are inconsistencies between the post-mortem report and the inquest report. According to Mr. Moitra, the inquest report indicates that the victim sustained 7 injuries, whereas the PM report indicates 4 gunshot wounds (GSW).
56. This Court, after a careful examination of the inquest report, finds only 4 injuries mentioned therein. Even assuming for the sake of argument that there are some inconsistencies between the PM report and the inquest report, it is quite possible that while examining a victim of several gunshot wounds with clothes on, the inquest officer may not find all the wounds sustained by the victim. He is not a medical doctor or a qualified medical practitioner. The contention of Mr. Moitra is therefore not accepted by this Court.

57. The inquest report, as per the merit of section 174 of Cr.P.C., requires the inquest officer to ascertain whether the death is natural or unnatural, not the number of injuries caused with mathematical precision. The subjective opinion is based on a non-expert but objective assessment of the nature of injuries suffered by the deceased, and the attending circumstances of the PO, whereas the post-mortem report is a scientific assessment of the injuries suffered by the deceased. Reference in this regard is made to the decision of the Hon'ble Supreme Court in ***Amit Kumar v. Union of India*** reported in **2025 SCC OnLine SC 631**, which is set out hereinbelow:-

“20. The pivotal question that falls for our consideration is whether the Police was justified in closing the matter upon conclusion of the inquiry under Section 174 of the CrPC? In other words, whether recourse to inquest proceedings under Section 174 of the CrPC obviates the requirement of registration of F.I.R.? **To put it in a still lucid manner, whether an inquest report discovering the cause of death would be good enough to close the matter without registration of an F.I.R.?**

22. The proceedings under Section 174 of the CrPC should be kept more distinct from the proceedings taken on the complaint. **Investigation under Section 174 is limited in scope and is confined to the ascertainment of the apparent cause of death and should not be equated with investigation into cognizable offences under Sections 160 and 161 of the CrPC respectively.** The procedure under Section 174 of the CrPC is for the purpose of discovering the cause of death **and the evidence taken is very short.** Sub-section (4) of Section 174 empowers any District Magistrate, Sub-Divisional Magistrate or any other Executive Magistrate specially empowered in this behalf by the State Government or the District Magistrate to hold inquest. The inquest held by the magistrate under Section 174 is distinct from an inquiry under Section 202.

23. **The inquest proceedings are concerned with discovering whether in a given case the death was accidental, suicidal, homicidal, or caused by an animal and in what manner or by what weapon or instrument the injuries on the body appear to have been inflicted, therefore, the evidence taken is very short.** (See : Chaman Lal v. Emperor, AIR 1940 Lah 210, at 214)

26. In contrast, an investigation under Section 174 of the CrPC focuses on ascertaining the apparent cause of death in cases of unnatural or suspicious deaths. This position has been well explained by this Court in *Pedda Narayana v. State of Andhra Pradesh*, (1975) 4 SCC 153. The proceeding under Section 174 is limited in scope and fundamentally distinct from investigations aimed at prosecuting offences. Inquest proceedings are conducted by the police or a Magistrate and conclude with the filing of an inquest report before the Sub-Divisional Magistrate (SDM), District Judge, or Magistrate as the case may be. The relevant observations are reproduced herein below:

11. A perusal of this provision would clearly show that the object of the proceedings under Section 174 is merely to ascertain whether a person has died under suspicious circumstances or an unnatural death and if so what is the apparent cause of the death. **The question regarding the details as to how the deceased was assaulted or who assaulted him or under what circumstances he was assaulted appears to us to be foreign to the ambit and scope of the proceedings under Section 174. In these circumstances, therefore, neither in practice nor in law was it necessary for the police to have mentioned these details in the inquest report. [...]**

(Emphasis applied)

58. The next argument by Mr. Moitra is by reference to the case of ***Subhramaniam v. State of Karnataka*** reported in **(2023) 11 SCC 255** at paragraphs 69 and 78 and the case of ***Pulukuri Kottaya v. King Emperor*** reported in ***AIR 1947 Privy Council 67***, particularly paragraph 10 thereof. It is submitted that the requirements of section 27 of the Evidence Act mandate the recording of the leading statement of the accused in the presence of two witnesses in the custody of the police. The same two witnesses must accompany the accused to discover the weapon, apparel or other evidence used for committing, in course of and after, the offence.
59. This Court, however, refers to the decision of the Hon'ble Supreme Court in the case of ***State Govt. Of NCT of Delhi v. Sunil*** reported in **(2001) 1 SCC 652**, particularly paragraph 20, which is set out hereinbelow:-

“20. Hence it is a fallacious impression that when recovery is effected pursuant to any statement made by the accused the document prepared by the investigating officer contemporaneous with such recovery must necessarily be attested by the independent witnesses. Of course, if any such statement leads to recovery of any article it is open to the investigating officer to take the signature of any person present at that time, on the document prepared for such recovery. **But if no witness was present or if no person had agreed to affix his signature on the document, it is difficult to lay down, as a proposition of law, that the document so prepared by the police officer must be treated as tainted and the recovery evidence unreliable.** The court has to consider the evidence of the investigating officer who deposed to the fact of recovery based on the statement elicited from the accused on its own worth.”

(Emphasis applied)

60. Reference may also be made to the decision in ***Perumal Raja v. State***, reported in **2024 SCC OnLine SC 12**, wherein it was held as follows:-

“30. However, evidentiary value to be attached on evidence produced before the court in terms of Section 27 of the Evidence Act **cannot be codified or put in a straightjacket formula. It depends upon the facts and circumstances of the case. A holistic and inferential appreciation of evidence is required to be adopted in a case of circumstantial evidence.**”

(Emphasis applied)

61. It is therefore clear and explicit from the above dicta that the procedure followed in the instant case i.e. recording the statement of Poka, Narkel and Subrata in the Police Station, allowing them to lead the police to their houses where the three pistols were recovered and seized along with the black Pulsar motorcycles, duly witnessed by one independent person and one police personnel, are sufficient to prove due compliance of section 27 of the Evidence Act and the lawful discovery of the weapons and the motor cycles used by the accused persons in killing the victim.
62. The prosecution has not relied upon the three pistols discovered based on the leading evidence of Poka, Narkel and Subrata alone. They have supported the charge against the accused based on the account of the two eyewitnesses, PWs 10 and 11. The evidence of PWs 10 and 11 is duly corroborated by the evidence of PWs 4, 5, 6, 7, 8, and 9. The decision of ***Mustaqeem v. State of Rajasthan*** reported in **(2011) 11 SCC 724**, cited by Mr. Moitra, cannot be applied to the facts of this case.
63. In view of the above, this Court finds that the convictions of the appellant and two others, namely, Narkel and Subrata, call for no interference at all. CRA 519 and 608 of 2016 stand dismissed. There shall, however, be no order as to costs.

64. Urgent certified photocopy of this judgment, if applied for, be supplied to the parties upon completion of all requisite formalities.

(Rajasekhar Mantha, J.)

I Agree

(Ajay Kumar Gupta, J.)