

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

APPELLATE SIDE

CRA 659 of 2017

With

CRAN 3 of 2023

With

CRAN 4 of 2025

Krishna Gopal Das @ Kesto & Anr.

Vs.

The State of West Bengal

With

CRA 678 of 2017

Shambhu Das & Ors.

Vs.

The State of West Bengal

With

CRA 718 of 2017

Biswanath Das & Ors.

Vs.

The State of West Bengal & Anr.

Before: The Hon'ble Justice Rajarshi Bharadwaj

&

The Hon'ble Justice Apurba Sinha Ray

For the appellants in CRA : Mr. Uday Sankar Chattopadhyay, Adv.
659 of 2017 Ms. Rajarshree Tah, Adv.
Ms. Trisha Rakshit, Adv.
Ms. Aishwarya Datta, Adv.
Mr. Partha Pratim Das, Adv.
*Appointed by High Court Legal Services
Committee*

For the appellants in CRA 678 of 2017	: Mr. Y. J. Dastoor, Sr. Adv. Mr. Prabir Majumder, Adv. Mr. S. Majumder, Adv. Mr. D. Shil, Adv.
For the appellants in CRA 718 of 2017	Mr. Souvik Mitter, Adv. Mr. Sumanta Das, Adv.
For the State	: Mr. Madhusudan Sur, APP Mr. Manoranjan Mahata, Adv.
For the appellant no.2	: Mr. Arindam Jana, Adv. Mr. Avilash Tripathi, Adv. Mr. Saheb Naskar, Adv.
For the Amicus Curiae	Mr. Partha Pratim Das, Adv.
CAV On	: 25.04.2025
Judgment On	: 30.04.2025

Apurba Sinha Ray, J. :-

1. These instant appeals have arisen out of Krishnaganj Police Station Case no. 179 of 2008 dated 06.11.2008 on the complaint of Mithun Das against 19 accused persons and consequent judgment dated 30.08.2017 whereby the Learned Additional Sessions Judge, Fast Track, 3rd Court, Krishnanagar, Nadia was pleased to convict 14 accused persons under sections 302/ 149 of IPC in Sessions Case No. 31(9) of 2009/Sessions Trial No. I (March) 2011 State Vs. Shambu Das & Ors. The above appeals are to be disposed of by a common judgment for the sake of convenience.

CRA 659 OF 2017:

2. The instant appeal was filed by one Krishna Gopal Das and another namely Kanai Das. Mr. Chatterjee, learned counsel appearing for Krishna Gopal Das has submitted that no weapon was seized from the spot in respect of first incident (i.e. Laxmi Danga More).

3. According to him, PW 12 Mithun Das, son of the deceased in his examination-in-chief stated that iron rods and sabol were used during the assault of his father but there was no recovery of such weapons. PW 12 also narrated the name of Gopal Das in his examination-in-chief but no such Gopal Das is implicated as an accused in the instant case. But he narrated the name of Krishna Das (probably he indicated the name of appellant herein) and therefore, identification in court in respect of present appellant is doubtful. PW12 is a tainted, interested and unacceptable witness and his deposition was not corroborated by any independent witness. He did not say the role of the present appellant in the alleged offence.

4. The learned counsel has also contended that though the incident took place on 06.11.2008, still 8 chargesheeted accused persons are at large. Therefore, whether or not the absconding accused persons had committed the offence or the present appellant who faced the trial is doubtful. Learned counsel submitted that the most vital witness i.e., Renubala Das i.e., the mother of Ashok Das turned hostile, although the second P.O. was at the house of Ashok Das.

5. Mr. Jana, learned advocate appearing for the appellant, namely, Kanai Das has submitted that there is no evidence against the present appellant showing that he was involved in the commission of offence. Even during the examination of the present appellant under section 313 of the Cr.P.C, 1973, the Learned Trial Court did not put any question indicating his direct involvement in commission of the crime.

6. Mr. Jana further submitted that in these circumstances, since there is no single evidence connecting the present appellant (Kanai Das) in the commission of offence either under section 149 or under section 302 of IPC, he should be acquitted from the charges.

CRA 678 OF 2017:

7. This is the appeal filed by three convicts namely, Shambhu Das, Sufal Das and Lakshmi Das. Mr. Dastoor, Learned Counsel appearing for them, has submitted that the FIR is ante timed if not ante dated. It is claimed that telephonic conversation revealed the murder in the village. Though the Post mortem report on Arati Das indicates only one injury by bamboo stick, PW11 stated that the deceased Arati Das had been mercilessly kicked. No such injuries have been found by PW17 (autopsy surgeon). Further though PW12 was an injured eye witness, no doctor has been examined.

8. One independent witness namely, Chandana (elder sister of PW11) was examined u/s 164 of CrPC but was not examined in the court. One Gokul Ghosh had telephoned the PS for informing about the murder. Though he was examined u/s 161 Cr.P.C. but he was not examined in court. All the witnesses are not produced in the court to unfold the prosecution case. An adverse inference for not examination of vital witnesses should be drawn as observed in case of **Bir Singh V. State of U.P**, reported in **1977 (4) SCC 420**.

9. The blood stained earth was seized but the FSL report was not produced in court. In this regard Mr. Dastoor relied upon the case of **Babu & ors. V. State of U.P** reported in **(1983) 2 SCC 21** and **Lakshmi Singh & Ors. V. State of Bihar**, reported in **(1976) 4 SCC 394**.

10. It was found from materials on record that PW17 stated that he took both bodies to the morgue and both were received at 04.45 pm on 06.11.2008. But the post mortem report shows that bodies of Arati Das and Ashok Das were dispatched at 12.53pm and 13.45pm, respectively.

11. The purpose for examination of the accused 313 Cr.P.C. was completely overlooked. Section 313 Cr.P.C. was to permit an accused to explain matters in evidence against him but stereotyped questions were put to all irrespective of their relevance.

12. Mr. Dastoor relied upon the case of **Ram Narain Singh V. State of Punjab** reported in **(1975) 4 SCC 497** regarding demeanour of witness. The testimony of the witness was discredited while he started shaking on every material point.

13. Lakshmi Das has been named in the FIR as she was an accomplice in the murder of Arati Das by PW12. But, PW11 (Sikha Das, D/o Arati Das) has described 5 assailants of her mother, not Lakshmi Das. She was silent about the presence of PW12, her elder brother at alleged P.O. PW11 never stated the name of Subol Das which belied the statement of PW12. Thus, to rely upon the deposition of PW12 is extremely dangerous.

CRA 718 OF 2017:

14. This appeal was filed by nine (9) convicts, but during pendency of the appeal two of them have expired namely Ananda Das, Narayan Das. However, Mr. Soubhik Mitter, Learned Counsel appearing for Biswanath Das, Sukumar Das, Bablu Das, Nanda Das, Anil Das, Sundari Das and Fuki @ Kuklibala @ Fukibala Das has submitted that eye witnesses failed to name and identify the appellants as perpetrators in court. It is trite law that identification of an accused by a witness in court is substantive evidence as was held by the Hon'ble Supreme Court in case of **Dana Yadav @ Dahu & ors V. State of Bihar**, reported in **AIR 2002 SC 3325**. On this ground alone, appellants are entitled to be acquitted.

15. The learned counsel further submitted that evidence of child witness ought to be corroborated by other materials, particularly in this case, when the alleged incident occurred PW11 was a child, aged about 9 years only. The law recognizes a child as a competent witness but a child is not considered to be a witness whose sole testimony can be relied upon without other corroborative evidence. The position of law on this issue has been succinctly explained by the Hon'ble Supreme Court in case **Bhagwan Singh & ors. V. State of Madhya Pradesh**, reported in **AIR 2003 SC 1088** and **State of Madhya Pradesh V. Rajaram @ Raju**, reported in **2019 (2) AICrLR 145 (SC)**.

16. Mr. Mitter again contended that no injury report of PW12 (injured eye witness) was placed on record to substantiate the allegation that he had indeed been injured by the accused persons. Moreover, PW9, PW16, PW15 (family members of deceased) have been turned hostile.

17. Mr. Mitter also submitted that the offending weapons have not been shown to PW17 (autopsy surgeon). He has not opined that the injuries found to have been caused to deceased persons were sufficient to cause death. Therefore it is difficult to conclude as to whether the injuries allegedly caused to the deceased persons resulted in their death. Such lapses in the prosecution case entitled the appellant to avail the benefit of doubt.

18. He has also submitted that independent witnesses have not been corroborated in the prosecution case. As the incident took place in the

daylight, then it remains unexplained as to why no independent local witnesses have been examined during trial or why the independent witnesses such as PW1, PW5, PW10 turned hostile or why independent witnesses such as PW6, PW7 refrained from stating anything during their examination.

19. Mr. Sur, appearing for the State, has very fairly submitted that from the materials on record at least 4 accused namely Krishna Gopal Das (CRA 659 of 2017), Shambhu Das, Lakshmi Das (CRA 678 of 2017) and Fukibala (CRA 718 of 2017) are liable to be convicted and they have been rightly convicted. However, so far as the fate of other convicts is concerned, he has left the matter to the decision of this Bench.

20. According to Mr. Sur, there are sufficient incriminating materials against the said four convicts since they were named in the FIR and further identified by the witnesses during trial.

21. Law does not require evidence of a specified number of witnesses to convict an accused. On the other hand, if the evidence of a single witness inspires confidence, the same can be relied upon. The PW11 (Sikha Das) and PW12 (Mithun Das) have categorically deposed about the gruesome killing of their parents in the open daylight in front of them. There is nothing on record to disbelieve the deposition of such witnesses. Further, their

deposition cannot be brushed aside merely because they are relatives of the deceased.

Court's View:-

22. We have considered the rival contentions of the parties and the judicial decisions submitted by the learned counsel of the appellants. We have also taken into consideration the impugned judgment of conviction and order of sentence passed by the learned trial court.

23. Needless to mention, the conviction of an accused purely rests on the golden principle that the prosecution is to prove its case beyond all sorts of reasonable doubt, and in doing so the prosecution is under a duty to prove the relevant facts by producing best evidence required for the purpose. ***If the first principle is the goal/end of the prosecution, the principle of proving relevant facts by producing best evidence is the mode by which such an end can be achieved. In order to award conviction and sentence in a criminal trial, it is the duty of the trial court to see that these twin principles dwell together, and not in isolation.***

24. With utmost humility, we would like to say that the learned trial court's judgment is not very much indicative to the effect that the relevant facts were proved by producing best evidence before him.

25. Undoubtedly and undeniably, murders of Ashoke Das and his wife Arati Das took place on the same day at a short interval. There is absolutely

no denial of such a fact. Therefore, the prosecution is only to prove that the present appellants were the actual assailants who caused the death of the aforesaid couple on the day of occurrence.

26. During trial, the prosecution has produced 20 witnesses and out of such number of witnesses, i.e., PW 1 (Adhir Das), PW5 (Gokul Chandra Ghosh), PW9 (Renubala Das), PW10 (Tapas Rudra), PW15 (Sridam Das), PW16 (Kalyani Das) allegedly the eye witnesses, were declared hostile and PW13 (Asim Chakraborty), PW17 (Dr. Ajit Kumar Biswas), PW18 (ASI Sukdev Dey), PW19 (Ex SI Jaharlal Chatterjee) and PW20 (SI Rajesh Kumar Gupta) were official witnesses, and PW4 (Asish Majumdar) and PW14 (Sankar Bag) were seizure list witnesses who had no direct knowledge of the occurrence. The other witnesses did not state anything against the convicts. Only two witnesses namely Sikha Das (PW11) and Mithun Das (PW12) being one of the daughters and one of the sons of the deceased respectively had supported the case of the prosecution.

27. Admittedly PW11, Sikha Das was not present at the place of murder of her father, Ashoke Das and therefore, she was not an eyewitness to the incident of murder of her father. She was an eyewitness to the murder of her mother. We shall discuss her evidence later on.

28. The PW12, Mithun Das claimed, during his deposition that he was present at the place of occurrence where his father was brutally murdered, but unfortunately, the said fact was not specifically stated in the FIR.

However, in the FIR, it was stated that his father left for Duttaphulia at 7:30 a.m. Subsequently at 9:00 a.m. his father reached Laxmi Danga More, which is 3/4 minutes walking distance from his house, with his van rickshaw loaded with some wooden articles, where he was attacked by 12 person namely Shambhu Das, Narayan Das, Maharaj Das, Sona Das, Kesto Das, Kanai Das, Akale Das, Santosh Das (Matal), Bablu Das, Mahendra Das, Uttam Das, Ananda Das and others. His father was assaulted by sharp cutting weapons such as da, shikda, rod etc. which the assailants were carrying. He tried to save his father but he was also attacked by Shambhu Das, one of the convicts in CRA No. 678 of 2017 and being injured, he fled away from the spot.

29. During his evidence, the PW12 (Mithun Das) named Gopal Das (*who was not an accused either in the FIR or in the chargesheet also*), Nemai Khora, Mahendra Das, Soro Das (female) Shambhu Das, Krishna Das, Biplab Das as accused persons. He was unable to recollect the names of other accused persons. Further, at the time of such deposition, he was able to identify Lamxmi Das, Shambhu Das, Soro Das, Nemai Khora, Mahendra Das, Soro Das daughter of Manindra Das. The learned Trial Judge recorded the demeanour of PW12 signifying his nervousness, as he was trembling at the relevant time. Neither, he named other convicts nor identified them. He has further deposed that the accused persons who assaulted his father ransacked their house and looted the articles therefrom. When his mother tried to prevent them, Soro Das, Mahendra Das, Laxmi Das and others

assaulted his mother with bamboo. However, he has categorically denied that a good number of criminal cases were pending against his father or that Majdia people killed him as he was a dacoit/thief.

30. PW11, Sikha Das, aged about 13 years at the time of her deposition has stated, inter alia, that on the fateful day she and her elder sister were inside their house and their mother was cleaning fishes near a water tap (Kol-tala). At that time, they heard a hue and cry and after coming out, they saw that Nemai Khora, Kukdi, Mahendra, Chapala, Sarod rushed to the said water tap and started assaulting her mother with raw bamboo and sabol. At that time, her mother fell down and then those persons assaulted her with their kicks mercilessly. Ultimately her mother died. The accused persons ransacked their house and they put their house on fire. Her statements were recorded by a Magistrate under section 164 Cr.P.C. But in her cross-examination she has stated that she gave the statement before the learned Magistrate as police tutored her to say like that.

31. It is very much significant that PW11 has said that she saw that Nemai Khora, Kukdi, Mahendra, Chapala and Sarod rushed to the spot where her mother was. She never said that any other accused entered their house at that point of time. Therefore, there is a serious contradiction between her deposition and the deposition of her brother, Mithun Das regarding the actual number of the accused present there at that point of time.

32. In view of PW 11's admission that she was tutored by the police at the time of recording her statement under section 164 Cr.P.C., the judicial Magistrate who recorded such statement under section 164 Cr.P.C. should have been called for as a witness to understand whether before recording such statement, the witness who is PW11 herein, was duly apprised of that she was to state fearlessly and without being bogged down by any external pressure. But no attempt was made from the side of the prosecution to produce the concerned judicial Magistrate as a witness to dispel such inconsistency.

33. From the FIR, the deposition of PW11 and PW12 coupled with medical evidence, it was revealed that the death of Ashok Das and his wife were occurred due to assault with the help of sharp cutting weapons like, Da (Katari), Shikda, and also by rod, bamboo, sabol etc. It is also the specific allegation that the accused were carrying those instruments with themselves. If that be so, the investigating agency should have attempted to recover those instruments. But, unfortunately, it appears that no such instruments were seized by the I.O. from the possession of the accused persons. Astonishingly, no such attempt for recovering such deadly weapons was initiated at the instance of the concerned Investigating Officer. Most of the accused were arrested soon after the incident, and therefore, an attempt should have been made by the I.O. to recover such offending weapons which could have led more credence to the prosecution case, apart from relying upon only the oral evidence of the deceased's son and daughter. Further,

there was an allegation that the accused looted some articles from the house of the complainant. Any recovery of such articles from the accused could have created much force in favour of the prosecution case. But unfortunately no attempt for recovery of offending weapons nor looted articles was made on behalf of the investigating officer by taking the accused in police custody. In certain situations, the oral evidence of the eye witnesses coupled with recovery of the offending weapons, looted articles etc., from the possession of concerned accused would have been the best piece of evidence to show the connection between the accused and commission of the offence. Unfortunately, that is missing in this case, and the learned Trial Judge did not consider this vital aspect particularly when the evidence of PW11 and PW12 are not free from blemishes.

34. Hence, the investigation is appeared to be perfunctory. Without taking any steps to recover the offending articles, the I.O. had submitted chargesheet much after the statutory period was over, and thereby facilitating most of the accused to obtain statutory bail. Therefore, we have strong doubt about the competence, ability and good intention on the part of the concerned I.O., Mr. Jaharlal Chatterjee in carrying out the investigation needed for the purpose.

35. Now, if we turn to framing of charge, we shall find that there are some vital mistakes committed by the Learned Trial Court. If we peruse the original FIR which was written in Bengali, we shall find that the said written complaint/FIR speaks of two incidents, that is, murder of Ashok Das and

secondly the murder of Arati Das, the wife of Ashok Das. The original FIR shows that at the time of occurrence of second incident, that is, the murder of Arati Das the FIR maker PW12 has specifically stated that at that time the accused who assaulted his father along with accused Nemai Das (Khora), Sundari Das, Fuki Das, Laxmi Das, Swar Das, Sikha Das, Chapala Das and others started assaulting Arati Das, and the wife of Nemai Das, namely, Laxmi Das and Sundari Das assaulted her mother on her head heavily and as a result of which she died on the spot. If we peruse the formal charge, we shall find that charges have been framed against all the accused persons including the accused of the second incident jointly. Furthermore, in the FIR there was no whisper that at the time of first incident the above accused namely Nemai Das (Khora), Sundari Das, Fuki Das, Laxmi Das, Swar Das, Sikha Das, Chapala Das were present at Laxmi Danga more along with the alleged unlawful assembly. Therefore, we find that the framing of charge was also not done properly.

36. Hence, from the above materials on record it appears that the prosecution has relied upon only two witnesses namely PW11 and PW12 along with the medical evidence produced before the concerned trial court. But, it appears to us that the presence of PW12 at the place of occurrence at the relevant date and time has not been proved beyond doubt. It is alleged by the PW12 in his FIR that when he tried to save his father he was injured by one of the accused with the help of a *katari* (a sharp cutting instrument) and for which he was taken to hospital by a concerned police personnel by a

bike. But, unfortunately no medical evidence was produced from the side of the prosecution to lead credence to the allegation of PW 12 in that regard. The chargesheet has also discussed such a fact and for which the accused were also chargesheeted, inter alia, under section 324 of IPC but unfortunately no charge was framed on that issue. During his deposition the PW12 did not state anything about such alleged injury occurring on his right hand at the instance of one of the accused. No injury report was also collected by the concerned investigating officer. But in our view the said piece of evidence could have been the best evidence to show that the PW12 was present at the relevant place of occurrence on the date and time as mentioned above. Furthermore, the PW11 did not say that his brother Mithun Das was present in their house at the time of second incident.

37. However, the PW12 Mithun Das has alleged that such assaults upon his parents were done by the accused as there was a previous grudge over certain issues. The PW12 did not disclose the nature and extent of such grudge between the parties. Therefore, the learned court should have been very much circumspect to make it double sure that there was no intention on the part of the PW12 to implicate the accused persons falsely due to such admitted grudge between parties. The learned Trial Judge did not consider this issue also.

38. Undoubtedly, the number of witnesses required to prove a criminal case is not at all very much important. But if the evidence of a witness or a few witnesses inspire(s) confidence in the judicial mind of the court and

such evidence are free from blemishes, there is no predicament to convict the accused on the basis of such evidence. But in this case, we find there are so many lacuna in the evidence of PW11 and PW12. Firstly the PW11 admitted in her cross-examination that she was tutored at the time of recording her statement under section 164 Cr.P.C. at the instance of the police personnel and further, there was a contradiction between her statement and that of his brother regarding the actual number of assailants in committing the murder of her mother. Moreover, she didn't say like his brother that Laxmi Das assaulted her mother. Therefore, it is very much difficult to rely upon such testimonies of PW11 and PW12 without corroborative evidence. In fact, the evidence of PW11 and PW12 are inconsistent, incoherent and mutually destructive.

39. Therefore, in conspectus of all, we find that the prosecution was unable to prove the guilt of the convict persons beyond all sorts of reasonable doubts and further the Learned Trial Court has failed to appreciate the evidence in its proper perspective and hence, we are inclined to allow these appeals being no. CRA 659 OF 2017, CRA 678 OF 2017, CRA 718 OF 2017 on contest. The convicts Krishna Gopal Das, Kanai Das, Shambhu Das, Sufal Das, Lakshmi Das, Biswanath Das, Sukumar Das, Bablu Das, Nanda Das, Anil Das, Sundari Das and Fuki @ Kuklibala @ Fukibala being found not guilty are hereby acquitted from the charges levelled against them under section 386(b)(i) of Cr.P.C. corresponding to Section 427(b)(i) of BNSS. They be released and set at liberty at once, if not

wanted in any other case. The impugned judgment dated 30.08.2017 passed in Sessions Case No. 31(9) of 2009/Sessions Trial No. I (March) 2011, State Vs. Shambu Das & Ors. by the Learned Additional Sessions Judge, Fast Track, 3rd Court, Krishnanagar, Nadia is hereby set aside. The sureties are discharged from bail bonds, if any.

40. We appreciate the assistance provided to us by the Learned Advocate Mr. Partha Pratim Das, appointed by High Court Legal Services Committee.

41. Let a copy of this judgment along with the original record be returned to the concerned court immediately.

42. CRA 659 of 2017 With CRAN 3 of 2023 and CRAN 4 of 2025, CRA 678 of 2017 and CRA 718 of 2017 are accordingly disposed of.

43. Urgent photostat certified copies of this Judgment, if applied for, be supplied to the parties on compliance of all necessary formalities.

I Agree.

(RAJARSHI BHARADWAJ, J.)

(APURBA SINHA RAY, J.)