

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

APPELLATE SIDE

CRA (DB) 41 of 2026

IA NO. CRAN/2/2026

AKHIL CHINTA PATRA

VS.

THE STATE OF WEST BENGAL

**Before: The Hon'ble Justice Arijit Banerjee
&
The Hon'ble Justice Apurba Sinha Ray**

For the Appellant : Mr. Joydeep Biswas, Adv.
Mr. Sumanta Das, Adv.

For the State : Mr. Madhusudan Sur, APP
Mr. Dipankar Paramanick, Adv.

For Orders on : 23.04.2026

Apurba Sinha Ray, J.

1. The instant appeal was preferred by the sole convict against the judgment and order dated 15.05.2025 and 17.05.2025 passed by the Learned Additional District and Sessions Judge, Nadia, Ranaghat in Sessions Trial No. 10(9) of 2008 and Sessions Case No. 10(07) of 2008 on the ground inter alia that the learned Trial Judge did not consider the evidence on record in its proper perspective. Although the de-facto complainant and other vital witnesses were declared hostile, the learned

Trial Judge convicted the appellant on the basis of deposition of two witnesses who did not see the incident of murder at the hands of the present appellant. The learned Trial Judge had failed to appreciate the value of substantive evidence and passed the relevant judgment in violation of the law laid down by the Hon'ble Supreme Court and High Courts from time to time.

2. Learned Counsel for the State on the other hand has submitted that there are incriminating materials against the present petitioner however, the learned Counsel for the State has left the matter to the discretion of this Court in affirming the judgment of conviction. However, the learned State counsel has fairly admitted that the de-facto complainant and several other prosecution witnesses were declared hostile during trial.

3. The brief fact of this case may be narrated as hereunder.

4. On 25.03.2008 at about 7.55 hours the de-facto complainant, one of the sisters of the deceased and the appellant lodged a written complaint to the effect that after receiving an information of an untoward incident she came to her father's house and found her brother Nikhil Chinta Patra was lying murdered on the courtyard of his house. Her said brother has illicit relationship with the wife of present appellant namely Akhil Chinta Patra. Moreover, there was a land dispute between the appellant and the deceased and other brothers. After reaching her father's house, the de-facto complainant had found all other family members had fled away from the house. The complainant was of the firm belief that her said brother might have been murdered by the other family members on the previous night. After receiving the said written

complaint, Dhantala P.S. Case no. 89 of 2008 dated 25.03.2008 was started against the appellant and other family members namely Laxmi Chinta Patra, Sudhir Chinta Patra, Bulti Chinta Patra, and the sons and daughter of Akhil and Sudhir Chinta Patra. After completion of the investigation the other accused persons except Akhil Chinta Patra, the present appellant, were not sent up and chargesheet was submitted only against the present appellant.

5. It appears from the relevant judgment that the defacto complainant Smt. Urmila Biswas, (sister of the deceased) being PW 1, PW 2 Pabitra Roy (neighbour of the deceased and appellant), PW 3 Rabindra Nath Mollick (villager of Haripur under P.S. Dhantala), PW 4 Satya Ranjan Roy (a resident of Haripur Dompura), PW 6 Nikhil Mondal (a resident of Haripur, P.S Dhantala), PW 8 Parimal Roy (a neighbour of the deceased and the appellant), PW 12 Satish Roy (a resident under the P.S. Dhantala), PW 17 Chapola Biswas (a resident of Haripur under P.S Dhantala), PW 18 Laxmi Chinta Patra, (sister-in-law of the deceased) were declared hostile by the prosecution. The deposition of PW 1 being the de-facto complainant did not state anything about the complicity of the present appellant and other family members in committing the alleged crime and accordingly, she was declared hostile. The other witnesses have stated nothing against the present appellant and any other family members. The PW 15 namely Bina Chinta Patra being the wife of the deceased has stated that her husband Nikhil Chinta Patra died on 10th Chaitra last year. The appellant murdered her husband by inflicting the 'Dao' blows. His son and wife were with him. At the time of

the incident she was at her father's house. After receiving the news of death of her husband she came to Dhantala P.S. She saw the deadbody at Ranaghat S.D. Hospital. It appears that she was not present, and therefore she was not an eyewitness to the incident. There was, in fact, no eye witness to the incident. However, the learned Trial Judge has relied upon circumstantial evidence. It appears that he has heavily relied upon the deposition of PW 9, Smt. Mira Rani Mollick and also PW 10 Amal Sadhukhan.

6. According to PW 9 on 24.03.2008 at about 11 pm. Laxmi, the wife of the appellant came to her house and told her that Akhil Chinta Patra finished Nikhil. After hearing the said news she went to the house of Laxmi and found Nikhil was lying on the ground with bleeding injuries. Akhil was also present at that place. Akhil disclosed before her and others who were present there that "I had a grudge for 10 years, today I have avenged it". She has also deposed that Police recovered the 'Dao' from the house of the accused and seized the same under a seizure list to which she was a signatory. In her cross-examination she stated that she belongs to TMC party. At that time 30 persons were present at her house on the date of incident as there was function. She admitted that due to political reasons and also being a member of Panchayat she used to visit several places including office, Police Station etc. She did not inform the matter to the Police Station about the incident over telephone. She informed the Pradhan of the Panchayat as she did not have the telephone number of the police Station. She did not make any statement before the police although she met with the Police on 29.03.2008 at

about 11 P.M. at the house of the accused persons. She did not make any statement to the Police thereafter. It was for first time she deposed before the Court what she stated in her examination-in-chief. She did not state to the police that Akhil disclosed before her and others that he had a grudge of 10 years which he mitigated. She also did not state to the police that Laxmi told her that Akhil finished Nikhil. On the following day the appellant himself went to the police station to surrender. She did not know whether the appellant belongs to CPIM party. She did not ask the other villagers and also the family members of Akhil as to how the incident occurred.

7. PW 10 Amal Sadhukhan has stated that in the night of the incident they were organising Hari sabha in the house of Mira Rani Mollik (PW 9). While *kirtan* was being performed at the Harisava, the wife of the appellant namely Laxmi Chinta Patra came to that place and told that Akhil was chopping Nikhil and requested them to follow her. After hearing the same they immediately rushed to the place accompanied by Laxmi Chinta Patra and after reaching there, they found Nikhil was lying with the bleeding injuries. They saw Nikhil died and while coming out from that place they found Akhil and when they asked him as to why he did it, he stated that *“it has been troubling for last 10 years and today he is free”*. In his cross-examination he has admitted that he belonged to the camp of PW 9. He does not know whether the appellant belonged to CPIM party or not. He also does not know whether many criminal cases were pending against the deceased.

Court's view:-

8. It appears from the impugned judgment that the learned Trial Judge has heavily relied upon the alleged extra judicial confession of the appellant before the PW 9 and PW 10. He has further failed to appreciate that it is the duty of the prosecution to prove the foundational facts by way of substantive piece of evidence. If the de-facto complainant did not depose in support of her allegations contained in the FIR, then such allegations in the FIR cannot be said to have been proved as substantive evidence. It is also found that the de-facto complainant was also not an eye-witness. In this case, it appears that the contents of the FIR were not proved by PW 1 and accordingly she was declared hostile.

9. There is not a single eye-witness to the incident. But it is also true that even if there is no eye-witness, the prosecution can prove the case, provided the chain of events is complete. In this case it appears that most of the neighbours did not say anything against the present appellant. The learned Trial Judge has given undue weightage to his personal perception in analysing the evidence. The duty of a learned Judge in conducting a criminal trial is to consider the golden principle, that is whether the prosecution is able to prove the guilt of the accused beyond all sorts of reasonable doubt or not. In this case, it is found that although there was no disclosure statement or leading statement under Section 27 of the Evidence Act, the 'Dao' was alleged to have been recovered from the possession of the appellant. The learned Trial Judge has committed a serious mistake in concluding that the specimen of

blood found in the wearing apparels of the accused matched with the blood found in the seized offending 'Dao'. On the other hand the report prepared by Assistant Serologist and Chemical Examiner to the Government of India which has been marked as Exhibit 15 shows that blood on the wearing apparels and seized 'Dao' were disintegrated. The extra judicial confession of the accused before PW 9 and PW 10 cannot be relied upon on several grounds. First, the PW 9 did not make any previous statement under Section 161 Cr.P.C. before the concerned Investigating Officer regarding the alleged extra judicial confession of the appellant before her. PW 10 did not disclose such confession before him to the concerned IO. Although there were several persons present, no other witness came forward and supported PW 9 and PW 10 in this regard. Admittedly, PW 9 and PW 10 are political persons, and the record shows that they improved the prosecution case during trial. Hence they are not at all credible witnesses, and should not have been relied upon by the learned Trial Judge.

10. The learned Trial Judge has also held that the appellant was duty bound to explain the situation under Section 106 of the Evidence Act as the incident took place in his house.

11. Needless to mention, in the said house the appellant was not alone. There were other family members present at the time of incident. If that be so, the prosecution cannot say that the appellant alone is responsible for an explanation under Section 106 of the Evidence Act. Therefore, to succeed in this plea, it is the duty of the prosecution to show that the appellant was alone in the house at the relevant point of time when the

deceased was murdered; but that was not the case here, since there are materials on record to show that the appellant along with other members of family were present. It is unfortunate that although there was no disclosure statement recorded under Section 27 of the Evidence Act, the 'Dao' was shown to have been recovered from the possession of the appellant. Without such disclosure statement being proved, the recovery of such alleged weapon from the possession of the accused of the appellant cannot be relied upon.

12. The most interesting thing is that the learned Trial Judge's attention missed one vital fact which we have found in the exhibited documents. In this regard, we would like to refer to Exhibit 6/1, which was the OPD ticket in connection with Laxmi Chinta Patra, aged about 35 years, who is the wife of the present appellant. It is trite to say that at the initial stage not only the present appellant but several other persons were arrested and they were medically examined one by one. The said Laxmi Chinta Patra, one of the accused in pre-trial stage was medically examined and the Exhibit 6/1 was an OPD ticket of Aranghata B.P. H.C., Nadia dated 05.06.2008 wherein it has been noted that Laxmi Chinta Patra had old scar mark and it is stated by Laxmi Chinta Patra that the injury in the left forearm lower part lateral side 2.5 inch prominent to wrist, was due to the incident which occurred on 24.03.2008. Therefore, it goes to show that at the time of incident the said Laxmi Chinta Patra had sustained one injury on 24.03.2008 and such injury was so serious that it keeps an old scar mark on her wrist even on 05.06.2008. The said

Laxmi Chinta Patra had stated before the doctor that she suffered such scar due to the incident which occurred on 24.03.2008.

13. In continuation of such Exhibit 6/1 we have to look into another document i.e. one seizure list dated 25.03.2008 which has been marked as Exhibit 3/1. From the said seizure list it appears that some articles were seized from the veranda of the house of the deceased Nikhil. By the said seizure list 5 articles were seized and most interestingly in the 5th item it is found that the IO seized three broken pieces of 'sankha' which were found in the veranda of the deceased. Therefore, it cannot be ruled out that Laxmi Chinta Patra was present at the time of incident or she took part in the commission of the offence or she tried to resist the offence against the deceased. Anything is possible. In view of such facts which are distinct from the facts of the cases reported in **Anees vs. State Government of NCT** reported in **(2024) 15 SCC 48**, **Trimukh Maroti Kirkan vs. State of Maharashtra** reported in **(2006)10 SCC 681**, **Tulshiram Sahadu Suryawanshi and Anr. vs. State of Maharashtra** reported in **(2012) 10 SCC 370**, we have no hesitation to say that they are not applicable in the present case. Therefore, it appears that the prosecution evidence was not properly appreciated by the learned Trial Judge, and in view of the same we are unable to affirm the judgment of conviction.

14. Accordingly, we are constrained to give benefit of doubt in favour of the present appellant and accordingly, the judgment and order dated 15.05.2025 and 17.05.2025 passed by the Learned Additional District and Sessions Judge, Nadia, Ranaghat in Sessions Trial No. 10(9) of 2008

and Sessions Case No. 10(07) of 2008 is hereby set aside. The appellant namely Akhil Chinta Patra being found not guilty under Section 302 IPC is acquitted from the charge. The appellant be set at liberty at once. The appellant be released from the custody if he is not wanted in any other case.

15. The appeal being **CRA (DB) 41 of 2026** is **allowed**. **IA No. CRAN 2 of 2026** is also disposed of.

16. Let the Trial Court Record and a copy of the order be sent down to the learned Trial Court at once.

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

I agree.

(APURBA SINHA RAY, J.)

(ARIJIT BANERJEE, J.)