

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:-

THE HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS)

CRA NO.111 of 1989

**BIKHU MONDAL & ORS.
VS.
THE STATE**

**For the Petitioners : Mr. Sobhendu Sekhar,
Mr. Amarendra Chakraborty.**

**For the State : Mr. Binay Panda,
Ms. Puspita Saha.**

Last heard on : 19-02-2026

Judgement on : 19-02-2026

Uploaded on : 20-02-2026

CHAITALI CHATTERJEE (DAS), J. :-

1. This criminal appeal was filed under Section 374 (2) of the Code of Criminal Procedure against the impugned Judgment and Order of conviction and sentence dated April 5, 1989 passed by the learned Sessions Judge, Malda in Sessions Trial No.5 of 1989 convicting the surviving accused/appellant Khetu

Mondal under Section 304 read with Section 34 of the Indian Penal Code sentencing him to suffer rigorous imprisonment for 7 years.

2. This appeal was filed by three appellants being Bikhu Mondal, Ratan Mondal and Khetu Mondal who were convicted under Section 304 (Part-1) read with Section 34 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for seven years and further convicted the accused/appellant Bikhu Mondal under Section 326 of the Indian Penal Code and sentenced him to suffer rigorous imprisonment for six years.
3. During the pendency of this appeal as appears from the report filed on behalf of the prosecution dated 7th April, 2025 Bikhu Mondal expired on 19th September, 2024 and Ratan Mondal expired on 12th September, 2025. Therefore, this appeal stands abated so far Bikhu Mondal and Ratan Mondal are concerned.

Brief fact of the case

4. A complaint was lodged by PW 1 alleging that on 10.01.1984 at about 7 to 7.30 a.m. Naren Rajbangshi being the owner of a Tarigadi of Fulbari village was in his gadi and 10/15 customers were consuming tari and at the time the accused person tried to take away the tari pots (batis) and PW 1 raised protest and then accused Bikhu Mondal (since deceased) threatened with a Chaku and Chandu, who is the elder brother of PW 1 snatched away Chaku from Bikhu and asked them to go away. After sometime, the accused persons along with others being armed with offending weapons attacked PW 1, PW 2 Karen Chhami and Upen (PW 4) who were consuming tari at that point of time in the gadi. It was alleged that the accused persons assaulted Karen with lathi and Bikhu stabbed Karen on his left chest above abdomen and on left elbow by a Chaku and they also assaulted Upen.

5. It was further alleged that Bikhu gave a blow of Chaku on left chest of Upen. Thereafter they searched for Naren PW 1 and they fled away being unable find him. Later on PW 1 and others rushed to spot and found bleeding injuries of Karen and Upen. The injured were removed to nearby house of PW 1 where Karen succumbed to his injuries at that night while Upen was removed to Pandua Hospital on the following morning wherefrom he was referred to Malda Sadar Hospital wherein he was admitted and PW 1 lodged the complaint on 11th January, 1984. On completion of investigation the I.O submitted the charge-sheet against the said accused persons.
6. The accused persons pleaded not guilty to the charges framed by the court where the trial was conducted after commitment and the charges were read over and explained to them and claimed to be tried. On completion of the trial, the learned Trial Court passed an order of conviction against all of them against which this instant appeal has been filed.

Submission

7. The learned Advocate appearing on behalf of the appellant submits that at present out of all the accused persons only the present appellant Khetu is alive.
8. It is submitted by the Learned advocate that from the evidence it is clear that PW 1 and PW 2 fled away from the alleged place of occurrence, so, it was not possible for them to identify any of the accused person at that point of time more so it was dark and P.W. 4 was also drunk at that time who could not identify any of the miscreants.
9. P.W. 1 and P.W. 2 claimed to be eyewitnesses, but they lost their credibility because they failed to establish their presence at the spot. The other customers assembled at the gadi did not turn up which was in open place for

consumption of tari and the place was fully dark at the point of time when the learned Trial Court mis-interpreted the evidences and was the view that it was the place of consumption of tari so it would remain illuminated. It is further contended that the ocular evidence and medico legal evidence are at variance with each other especially on the point of injuries allegedly suffered by the victim Karen.

10. It was further argued that the tari pots and a chaku allegedly snatched away by PW 1 and his elder brother, Chandu was not examined as a witness and the seized articles were not exhibited in the Court during trial. The entire gamut of the prosecution case, the delayed appearance of the accused persons at the scene of occurrence at a later stage ought not to have been considered by the learned Trial Court as a mere abscondence leading to presumption of guilt of the accused persons. Apart from that evidence adduced by PW 8, the doctor does not at all inspire any confidence relying on which an order of conviction can be passed.
11. The learned Advocate further relied upon the decision of ***State of Haryana Vs. Gurdial Singh & Anr.*¹ (1974) 4SCC 494** where it was held that in consistent versions of the occurrence by prosecution witnesses and one version contained in evidence of witnesses in Court while the order contained in their statement made before the police cannot be the foundation for passing any order of a conviction.
12. The learned prosecution on the hand candidly submits that on perusal of the entire evidence this is very apparent that the entire allegation was attributed against one Bikhu Mondal who is no more in the world of living. There is no

¹ (1974) 4SCC 494

specific accusation against the present appellant for committing any offence excepting that he along with other accused were present. The order of conviction was passed considering the evidence of PW 1 and PW 2 against all when it was Bhiku against whom entire allegations were attributed. The said order judgment and order of conviction cannot be sustained.

Analysis

13. Heard the submission of both the learned Advocates .At the outset it can be found that the appeal is pending since 1989 and the incident took place in the year 1984 that is more than 40 years have passed. During this long period out of four, three accused persons passed away and only Khetu Mondal is still alive aged about 69 years .
14. The incident occurred in the year 1984 at about 7 to 7.30 p.m. and the complaint was lodged at 11th January, 1984 at about 9.30 a.m. The charge-sheet was submitted in the year 1984 and the charge was framed under Section 302/34 IPC for murder of Karen Hansda and also under Section 326/34 IPC for causing grievous hurt to Upen Rajbangshi.
15. The learned trial court considered the evidence adduced as well as the argument advanced passed the order of conviction against four accused persons under Section 304 (Part -1)/34, IPC, relying upon the evidences of injured PW 1 and PW 4 and eye witness. On perusal of the evidence of PW 1 it is seen that he specifically deposed that Karen and Upen told them that they were stabbed by Bikhu by Chaku. He also admitted that Karen was stabbed on the left chest on the belly and Bikhu also assaulted Karen in the left belly with a lathi. He admitted that he and Karen's wife left the place and returned after the incident and the accused searched for him. His evidence discloses that on the relevant

day and time 7 to 8 persons went to drink tari in his gadi including the accused persons.

- 16.** It is clear from the evidence adduced by the PW 1 that he did not witness the incident as he and Karen's wife was not present. PW 2 who specifically stated that she saw the occurrence and rushed to the spot and searched of the body of her husband, specifically mentioned that she told Naren that her husband was stabbed by Chaku. She also said that she stated Daroga Babu that Naren's elder brother Chandu snatched away chaku from Bikhu.
- 17.** She further stated that she and her husband went to get tari from the tari gadi and when besides gadi 10 to 12 persons consuming tari on the relevant time including Bikhu, Ratan, Kshetu and Debu. Suddenly they took away the pot of tari when Karen raised objection then Bikhu and other brought out chaku. She only stated the presence of Bikhu, Ratan, Kshetu and Debu at the spot and she was not examined by Daroga Babu and whatever evidence she placed for the first time before the learned Trial Court at the time of adducing evidence. This one statement dilutes of credibility of the entire evidence placed before the learned Court. More so, she never stated specifically that it was the present appellant who committed any offence or used any weapon or because any assault made by this appellant as a result the victim suffered any fatal injury which he succumbed. Excepting this witness there remains nothing in favour of prosecution to the extent of beyond the shadow of reasonable doubt.
- 18.** P.W 3 the elder brother of the deceased came to know from Chammi about the assault on Bhiku by the accused persons and he saw the dead body of Karen .So again the entire case rests upon the evidence of P.W 2 who at the

material point of time admittedly went away with Naren at a distance wherefrom she saw the incident but she was not interrogated by I.O.

- 19.** So, after scanning the facts and circumstances of the case and evidences adduced before the learned Court there remains no room left to conclude that the prosecution miserably failed to establish the case against the appellant and no role ascribed to the appellant however even if the version of the PW 1 and 2 are accepted it is apparent that the entire allegations were leveled against accused Bikhu for such assault made on the deceased after which he succumbed to such injuries but in absence of any specific clinching evidence against the appellant this Court is unable to concur with the observation made by the learned Trial Court and hence this Court is of the view that the judgment and order of conviction passed by the learned Trial Court is liable to be set aside.

Conclusion

- 20.** Hence the Judgment and order passed by the learned Trial Court is hereby set aside and appellant is released from bail bond.
- 21.** In view of the above, CRA 111 of 1989 stands allowed so far the Khetu mondal is corned and abated against rest .
- 22.** Accordingly the judgement and order of conviction against the appellant is hereby set aside. The Appellant be released from the bail bond.
- 23.** No order as to costs.
- 24.** The department is directed to forward the T.C.R along with this order to the concerned Court for information and taking necessary action.

- 25.** Urgent certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

[CHAITALI CHATTERJEE (DAS), J.]

