

Form No. J(1)

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

Present :

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

CRA 42 of 2018

**Anarul Sk & Ors.
Versus
The State of West Bengal**

For the Appellants : Mr. Sekhar Kumar Basu, Senior Advocate
Mr. Avishek Sinha
Ms. Eshita Dutta
Ms. Madhusree Banerjee

For the State : Mr. Rudradipta Nandy
Ms. Rajashree Tah

Hearing concluded on : 10th February, 2026

Judgment on : 10th February, 2026

Rajasekhar Mantha, J.:

1. The subject appeal is directed against judgement of conviction dated 16.11.2017 and order of sentence 18.11.2017 passed by the Additional Sessions Judge, Fast Track Court, Berhampore, Murshidabad in Sessions Trial No.2(7)/2016 arising out of the Sessions Serial No.287 of 2001 (483 of 2014).

2. The appellants were convicted under Sections 302 read with Sec. 34, Sec. 326 read with Sec. 34, and Sec. 449 read with Sec. 34 of the Indian Penal Code.

3. Under sections 302/34 of the IPC, the appellants were sentenced to suffer rigorous imprisonment for life and to pay a fine of Rs.25,000/- each. In default thereof, the appellants were directed to suffer simple imprisonment for another two years. Under sections 326/34 of the IPC, the appellants were sentenced to suffer rigorous imprisonment for 10(ten) years and to pay a fine of Rs.10,000/- each. In default thereof, to suffer simple imprisonment for another two years each.

4. Under Sections 449/34 of the IPC, the appellants were sentenced to rigorous imprisonment for ten years and a fine of Rs.10,000/- each. In default thereof, to suffer simple imprisonment for another two years each for the offence punishable. All the sentences were run concurrently.

THE PROSECUTION CASE, THE EVIDENCE ON RECORD, AND THE ANALYSIS OF THIS COURT:-

5. On 13th March, 1996, the victims, Sujauddin and Salam went to the house of Jamal Sk to eat papaya. Jamal Sk's wife is stated to have offered and cut a papaya to them. At that relevant point of time, the appellants are stated to have entered into the house of Jamal Sk and assaulted the deceased victim/Sujauddin and injured victim PW-7/Salam Sk, with sticks and sharp cutting agricultural implements.

6. The wife of Sujauddin (PW-6) and his mother-in-law are stated to have intervened to stop the appellants from assaulting the said victim. The appellants are stated to have assaulted the said mother in law on the forehead with a sharp cutting weapon.

7. On a hue and cry being raised by **PW-6/Nilufa Bewa, wife of the deceased/Sujauddin**, the local villagers assembled thereat. They took the Sujauddin and Salam first to Islampur Hospital and then to Berhampore Hospital. Sujauddin was later shifted to PG hospital at Kolkata, where he died 28 days after the incident. The other injured victim, **PW-7/Salam Sk.** recovered after 18 days.

8. This Court finds several loopholes in the prosecution case. The FIR was registered by Doulatabad Police Station being No.20/96 on the date of occurrence i.e. 13th March, 1996. The said FIR was however sent to the Magistrate for information on 25th March, 1996. The **second investigating officer/PW-9** or the prosecution has not been able to explain the delay. This is the first major lapse in the prosecution case.

9. The delay in forwarding the information about the registration of an FIR to the Magistrate creates doubt against the prosecution case. The consequences of the said delay has to be considered in light of the eye witness account of the prosecution witnesses. The said delay creates a doubt that the complaint and the FIR may have been filed and registered

belatedly and predated. In ***Ombir Singh v. State of U.P., reported in (2020) 6 SCC 378***, it was held as follows:-

4. There was undoubtedly a delay in compliance with Section 157 of the Code, as the FIR was received in the office of the Chief Judicial Magistrate with a delay of 11 days. Effect of delay in compliance with Section 157 of the Code and its legal impact on the trial has been examined by this Court in *Jafel Biswas v. State of W.B.* [*Jafel Biswas v. State of W.B.*, (2019) 12 SCC 560 : (2019) 4 SCC (Cri) 455] after referring to the earlier case laws, to elucidate as follows : (SCC pp. 565-67, paras 18-21)

“28. It is no doubt true that one of the external checks against ante-dating or ante-timing an FIR is the time of its dispatch to the Magistrate or its receipt by the Magistrate. The dispatch of a copy of the FIR “forthwith” ensures that there is no manipulation or interpolation in the FIR. [*Sudarshan v. State of Maharashtra*, (2014) 12 SCC 312 : (2014) 5 SCC (Cri) 94] If the prosecution is asked to give an explanation for the delay in the dispatch of a copy of the FIR, it ought to do so. [*Meharaj Singh v. State of U.P.*, (1994) 5 SCC 188 : 1994 SCC (Cri) 1391]...

5. Therefore, delay in compliance with Section 157 of the Code cannot, in itself, be a good ground to acquit the appellant. **Albeit, this fact has to be considered when we examine the credibility of the version of the eyewitnesses;** in this case, the testimonies of Dinesh Singh (PW 1) and Mukesh Singh (PW 2). We must also keep in mind that there were questions raised by the complainant and the family members of the deceased as to the manner in which the investigation was carried by the first investigating officer and his team, and therefore the investigation was subsequently transferred to the Crime Branch—Crime Investigation Department (“CB-CID”, for short) on 1-8-1999.

10. The next lapse noticed by this Court is the curious and unexplained delay of nearly six months in examining any of the witnesses by the investigating officer. Therefore, there is a nexus between the delay in forwarding the information about the registration of the FIR to the magistrate and the belated examination of the prosecution witnesses by the police.

11. Thus, it cannot be ruled out that the FIR was *not* lodged on the date appearing from the copy of the FIR. The said delay therefore is fatal to the prosecution case in view of the decision in ***Shahid Khan v. State of Rajasthan, reported in (2016) 4 SCC 96***, which held as follows

20. The statements of PW 25 Mirza Majid Beg and PW 24 Mohamed Shakir ***were recorded after 3 days of the occurrence. No explanation is forthcoming as to why they were not examined for 3 days.*** It is also not known as to how the police came to know that these witnesses saw the occurrence. ***The delay in recording the statements casts a serious doubt about their being eyewitnesses to the occurrence. It may suggest that the investigating officer was deliberately marking time with a view to decide about the shape to be given to the case and the eyewitnesses to be introduced.***

Emphasis Applied

12. The first investigating officer died in course of investigation. The initial charge was framed on 12th July, 2004 under Sections 304, 325, 326 of the IPC. However, about 13 years after the initial charge was framed, Section 302 and 449 of the IPC were added in the amended charge, by the Trial judge.

13. This Court is surprised as to why section 302 of the IPC was not added at the very inception and the Trial Judge chose to frame additional charges under Sections 302 and 449 about 13 years after initial framing of charge.

14. The framing of a charge against the accused by the Court below has a substantial impact on the liberty of the accused. In this regard, Section 221 of the CrPC prescribes that when there is a doubt as to which specific charge should be framed against the accused out of the many charges arising from the record, the trial Court should frame all the charges against the accused. The same puts the accused on notice as to what he is facing and what defense to advance. In ***State of Karnataka - Vs- L. Muniswamy, reported in (1977) 2 SCC 699***, it was held as follows:

"The order framing a charge affects a person's liberty substantially and therefore it is the duty of the court to consider judicially whether the material warrants the framing of the charge." It cannot blindly accept the decision of the prosecution that the accused be asked to face a trial. It was held by this Court, while considering the true scope of Section 203 of the old Code that the Magistrate was not bound to accept the result of an enquiry or investigation and that he must apply his judicial mind to the material on which he had to form his judgment...

Emphasis applied

15. In the present case, the trial Court ought to have included Section 302 at the first instance if it had any doubt as regards the charges to be framed. Omitting to do so has violated Section 221 of the CRPC.
16. An omission by the Court below to charge an accused for a specific offence can be later argued to have itself caused prejudice to the accused. Whereas, when a charge is framed though not called for, the accused cannot later argue that he was not informed about the charge. This indicates the necessity for the charging Court to include charges at a one go.

17. In the present case, when the charges were framed for the first time in the year 2004, by the trial Court the victim had already died 8 years earlier. The Trial Court had no option but to frame the charge of Section 302 of the IPC against the appellants. The framing of the said charge under Sec. 302 after 13 years has clearly prejudiced the appellants. The appellants were clearly taken by surprise. This also throws up serious questions on the investigation and the materials placed before the Trial Court in the charge-sheet by the prosecution and the police.
18. Initially, when the charge was framed in 2004 the place of the occurrence of the crime was not mentioned. Therefore, from the very inception, it was not clear to the Court as to where the crime had taken place. This Court notes from the case put forth by the prosecution during the cross examination of PW-5/Latifa Bibi, (declared hostile by the prosecution) that the place of occurrence may be the house of PW-1/Rejaul Haque. Interestingly she was the wife of the deceased victim Sujauddin. She turned hostile despite being a star witness for the prosecution.
19. However, all other the prosecution witnesses have stated that the place of occurrence of the crime was the house of Jamal Sk. The prosecution therefore has been unable to prove the very foundation of the crime alleged against the appellants. This is another serious loophole in the prosecution case.

20. This Court further finds that the deceased/victim was semi-conscious or possibly conscious from the date of the incident until his actual demise i.e. 28 days thereafter. It is surprising as to why the IO did not record any statement of victim Sujauddin, nor did the deceased or injured victim did not make any statement to the police as regards who had assaulted them. Even the version of the the injured witness PW-7 was recorded 7 months after the incident. No statement of the victim was recorded before the Magistrate under Section 164 of the CrPC.\

21. The deceased victim was thus a material witness and not recording his statement will lead to drawing an adverse inference against the prosecution case. In ***Takhaji Hiraji v. Thakore Kubersing Chamansing, reported in (2001) 6 SCC 145***, it was held as follows:-

“19.....It is true that if a material witness, who would unfold the genesis of the incident or an essential part of the prosecution case, not convincingly brought to fore otherwise, or where there is a gap or infirmity in the prosecution case which could have been supplied or made good by examining a witness who though available is not examined, the prosecution case can be termed as suffering from a deficiency **and withholding of such a material witness would oblige the court to draw an adverse inference against the prosecution by holding that if the witness would have been examined it would not have supported the prosecution case.**

Emphasis applied

22. Exhibit 2 and 3 are the bed head ticket and the injury report respectively, of the deceased/victim at Berhampore hospital. While the bed head tick indicates the name of deceased Sujauddin, the injury report does not indicate any name.

23. The injury report also indicates that the patient was semiconscious. The history of how the patient sustained injuries in question is not even mentioned in the exhibit 2 or 3. This is extremely unusual as in every case of unnatural injury suffered by a victim, the hospital invariably is required to record the history of the injuries and the circumstances under which they were sustained by the victim. The Trial Judge appears to have failed to note the same.
24. The injury report was prepared by **PW 10, the treating doctor**. He has deposed before the Court the name of the deceased victim. Thus, at time of preparing the said injury report of the deceased victim, PW 10 would have naturally mentioned the name of deceased. Thus, it further highly unusual that the name of the victim was not mentioned in his injury report by PW 10.
25. PW 10 has further deposed that he was unable to ascertain the nature of the weapons used to inflict the said injuries on the victims. Thus, the medical evidence as regards the nature of weapons used to inflict the said injuries has been inconclusive. As a result, the non-recovery of the offending weapons assumes great significance. Thus, in the present case, the appellants have not been linked with the injuries inflicted on the victims.

26. The eye-witness account of the PWs therefore cannot be relied on in view of that there is not evidence to suggest that the victims were at all injured by the appellants. There has been an inexplicable inconsistency between the medical evidence and the eye witness account of the injuries alleged to have been inflicted on the victim.

27. The star witness on the part of the prosecution was PW-7/Salam Sk., who was injured along with the deceased victim in the alleged assault by the appellants. The version of PW-7/Salam Sk. is not clearly supported by PW-3/Jyotsna Khatoon, (sister of the deceased) or PW-6/Nilufa Bewa,(wife of the deceased), who are stated to have been present when the incident is alleged to have occurred. ***In Khema v. State of U.P., (2023) 10 SCC 451,*** it was held as follows:-

31.... Though, Inder (PW 2) is an injured eyewitness, there are serious discrepancies and inconsistencies with regard to time of the injuries sustained and time at which he was medically examined. Dr Anoop Kumar (PW 6), in his evidence, has changed his stance on several occasions. His testimony is totally contrary to that of Omveer (PW 1) and Inder (PW 2). **As held by us, it will not be safe to base the conviction on the sole testimony of Inder (PW 2) though he is an injured witness. The corroboration sought by the prosecution with regard to alleged recoveries of the weapons used in the crime is also not free from doubt.**

Emphasis Applied

28. There are several contradictions in the evidence of PW-3/Jyotsna Khatoon (Bibi). As an injured witness the prosecution ought to have recorded the statement of PW-7/Salam Sk. under Section 164 of the Cr.P.C., which has not been done.
29. PW-9, the second investigating officer, who ought to have referred to the case diary where the statements under Section 161 of the Cr.P.C. of the either witnesses must have been recorded by the first investigating officer (who died before trial). The prosecution has not been able to bring out clearly as to why the vital evidence of PW-7/Salam Sk. was recorded nearly seven months after the incident.
30. While PW-3/Jyotshna Khatoon (Bibi), sister of the victim/ Sujauddin has deposed that her mother was also present at the place and time of occurrence and was allegedly injured. Such mother was never brought as a witness by the prosecution. The evidence of the said mother could have lent more credence to the evidence of PW-7/Salam Sk. Thus, a material witness has been withheld by the prosecution.
31. What is equally curious is that several villagers including a local doctor called Samser had arrived at the place of occurrence immediately after the incident and had taken PW-7/Salam Sk and the deceased victim to Islampur Hospital and later to Berhampore hospital. None of them were examined by the prosecution as witnesses.

32. Having regard to the aforesaid serious discrepancies in the evidence on record, this Court is of the view that the evidence of PW-7/Salam Sk. could not be taken as sacrosanct by the Trial Judge.
33. Learned counsel for the State would argue that the Court must look into the statements recorded of the witnesses under Section 161 of the Cr.P.C. in the local vernacular since there are discrepancies between the translated versions of the documents of the paper book and the originals.
34. It is now well-settled that statements under Section 161 of the Cr.P.C. cannot be considered even by the Trial Court much less an Appellate Court since a statement under Section 161, CrPC, is for contradiction not corroboration.
35. Learned counsel for the State has not pointed out that the statements under Section 161 CrPC contain explanations as regards the delay in the examination of the said witnesses. In fact, the said explanation ought to have flown from the side of the Investigating Officer. He has however been silent in that regard.
36. As already discussed above the initial charges were framed on 12th July, 2004 and the amended charges were framed about 13 years thereafter on 15th December, 2017 and the Trial commenced after 8 years of the incident and continued till 22 years thereafter. The appellants were in fact convicted under the amended charges.

37. A trial continuing for a prolonged period of over 22 years after the incident and a conviction resulting thereunder can by itself be characterized a miscarriage of justice. In **SOVARAN SINGH PRAJAPATI v. THE STATE OF UTTAR PRADESH reported in 2025 INSC 225**, it was held as follows:-

10.6 From a studied analysis of the above decisions, the following principles as to the meaning and import of fair trial, can be illustratively deduced :

(1) Fair and Just investigation is the starting point of the fair trial process.

(3) Process of investigation and trial must be completed with promptitude.

(8) Unfair prolongation of trial is an affront to the ideal of fair trial.

38. Having regard to the above and having very carefully considered the objections raised by the State through Ms. Z.N. Khan, learned advocate for the State, this Court is of the view that the impugned judgement and/or order of conviction cannot be sustained. The same is set aside.

39. It is been submitted that the appellant No.2/Ershad Sk has died on 30th April, 2004. Appellant No.5/Babar Ali @ Mofikul Sk @ Babu has been found to be a juvenile in course of and inquiry conducted by the Trial Court, as ordered by a co-ordinate bench during the pendency of the appeal and he is on bail. His bail bond shall stand discharged.

40. The appellant No.1/Anarul Sk, appellant No.3/Isahaque Sk. and the appellant No.4/Mahidul Sk are set at liberty forthwith from the custody, if not wanted in any other case, upon execution of a bond to the satisfaction

of the Learned Trial Court, which shall remain in force for a period of six months under Section 437A of the Code of Criminal Procedure corresponding to Section 481 of the BNSS, 2023.

41. Let a copy of this judgment be sent down to the Court below for information.

42. Let the T.C.R. be returned to the Court below at once.

43. Urgent photostat certified copy of this order, if applied for, be supplied to the parties as early as possible.

(Rajasekhar Mantha, J.)

I agree.

(Ajay Kumar Gupta, J.)