

CRA 230 of 2000

In the matter of : **Tripal Chandra Das @ Khitish Das**

....Appellant

Mr. Subir Ganguly,
Mr. Durga Prasad Dutta

....for the Appellant

Mr. Ranadeb Sengupta,
Mr. Shantanu Talukdar

....for the State

Heard On 14.01.2026

(Dictated in Court)

1. The impugned judgment and order dated 21.06.2000 passed by the learned Trial Court is assailed in this appeal.
2. By passing the impugned judgment this appellant was found guilty for commission of offence punishable under Section 304 Part-II of IPC and was sentenced to suffer rigorous imprisonment for two years subject to set off under Section 428 of Cr.P.C..
3. Being aggrieved by and dissatisfied with the said impugned judgment and order, the present

appeal is preferred at the instance of the appellant.

4. The case of the prosecution, in a nutshell, is as follows:-

“A written complaint was lodged by the de-facto complainant before the concerned police station, interalia, stating that his father, Bibekanand Sarkar, had met with an unnatural death in circumstances alleged to have occurred on 22.08.1994. According to the complaint, on the said date, the victim was engaged in grazing his cattle near the bank of the river Kulick, when an altercation ensued between him and the accused, Tripal Das. The dispute is said to have arisen over the alleged damage caused by one of the victim’s cattle to a banana plant, which had been found tied to a tree by the accused. The complainant further alleged that during the course of this altercation, the accused inflicted a blow on the chest of the victim, which caused him to lose consciousness and

ultimately resulted in his death. Acting upon this complaint, the police registered a case at Raiganj Police Station, Uttar Dinajpur, being Case No. 269 of 1994, dated 22.08.1994, under Section 304 of the Indian Penal Code, thereby setting the machinery of criminal law in motion against the accused. The police conducted a detailed investigation into the matter and, upon completion, submitted a charge-sheet against the accused under Section 304 of the I.P.C. implicating him in the alleged offence.”

5. The charge was framed by the Trial Court against the accused under Section 304 Part-II of I.P.C. which was read over explained to the accused which he pleaded not guilty and claimed to be tried.
6. In the present case, a total of nine witnesses were examined on behalf of the prosecution, and several documents were exhibited in support of the prosecution's case. The oral testimony of these witnesses, coupled with the documentary

evidence, was relied upon by the prosecution to establish the allegations against the accused. On the other hand, the defence did not adduce any evidence, either oral or documentary, in support of its case. No witness was examined on behalf of the defence, and no material was placed before the Court to challenge the veracity or credibility of the prosecution's claims. The defence, therefore, chose to rely entirely on the cross-examination of the prosecution witnesses and the submissions advanced through learned counsel, without introducing any independent evidence to substantiate its contentions.

7. As a result, the entirety of the evidence on record is that presented by the prosecution, with the defence case being predicated solely upon highlighting contradictions, omissions, and weaknesses in the prosecution's evidence. This procedural posture underscores that the determination of the case rests entirely on the credibility, reliability, and sufficiency of the evidence led by the prosecution, as no countervailing material or testimony has been

adduced by the accused to refute or challenge the allegations.

8. Mr. Subir Ganguly, learned Advocate for the appellant, has submitted that the impugned judgment and order of conviction passed by the learned Trial Court is legally unsustainable and, in its present form, cannot be upheld under the eye of law. It has been contended that the judgment suffers from serious infirmities, particularly in the appreciation of evidence, and therefore warrants interference.

9. It is submitted on behalf of the appellant that there exist material contradictions, omissions, and discrepancies in the statements of the prosecution witnesses, which go to the root of the case. Such inconsistencies, if carefully examined, demonstrate that the findings recorded by the learned Trial Court are based on evidence that is neither reliable nor trustworthy. In this context, it is specifically pointed out that PW-1, who is the defacto complainant in the present case, has deposed in a manner contrary to the statements made in his written complaint.

According to Mr. Ganguly, this divergence significantly undermines the credibility of the prosecution story and casts serious doubt on the veracity of the allegations made against the accused.

10. It is further contended that most of the witnesses examined by the prosecution did not depose to any fact of material significance that could directly implicate the accused in the commission of the alleged offence. The evidence of PW-8, who is claimed to be an eyewitness to the incident, is particularly unreliable, as it suffers from material contradictions, vagueness, and improbabilities, making it unsuitable to form the basis of a conviction.
11. Moreover, reliance on the medical evidence is also fraught with difficulty. PW-5, the autopsy surgeon, has deposed that his post-mortem report does not enable him to conclusively determine whether the death of the victim was accidental or homicidal. This inherent uncertainty in the medical evidence further weakens the prosecution case, as the cause of

death, which is a central element of the offence under Section 304 IPC, remains unestablished.

12. In light of the above submissions, it is argued that the cumulative effect of unreliable ocular testimony, contradictions among witnesses, and inconclusive medical evidence renders the impugned judgment unsafe. Therefore, Mr. Ganguly has urged that the appeal be allowed and the impugned judgment and order of conviction passed by the learned Trial Court be set aside in the interest of justice.

13. Mr. Ranadeb Sengupta, learned Advocate for the State, submitted that there is nothing on record which would warrant interference with the findings recorded by the learned Trial Court in the impugned judgment. According to the learned Advocate, the evidence adduced by the prosecution witnesses, particularly PW-1, PW-2, and PW-8, consistently supports the allegations made in the written complaint. It was further contended that there is no material on record that could justify disbelieving the testimonies of

these witnesses or doubting the correctness of the Trial Court's conclusions.

14. The learned Advocate emphasized that the learned Trial Court, after a careful and considered evaluation of the oral and documentary evidence, has rightly concluded that the essential ingredients of the offence under Section 304 Part-II of the Indian Penal Code were established by the prosecution beyond reasonable doubt. In view of this, it was urged that the appeal lacks merit and, therefore, ought to be dismissed outright.

15. Having anxiously considered the rival submissions advanced by learned counsel for both parties, and after perusing the evidences and materials on record, it becomes necessary to examine whether the findings of the Trial Court are indeed sustainable in the light of the contradictions, omissions, and infirmities pointed out by the appellant. This exercise requires a careful analysis of the credibility of the witnesses, the reliability of the ocular and

medical evidence, and the coherence of the prosecution's case as a whole.

16. P.W.1 Padma Lochan Sarkar who lodged the written complaint stating, inter alia, that on the relevant date and time an altercation took place between his father (victim) and the accused and the accused assaulted the victim and for which the victim died. It is further contended in the written complaint that hearing the news about altercation he rushed to the spot and found his father lying dead therein. As per the complaint itself, PW1, the defacto complainant, is not an eyewitness to the occurrence. In the complaint, he has categorically stated that after hearing about the incident he rushed to the place of occurrence and found his father lying dead there. Thus, the foundational version of the prosecution case clearly establishes that PW1 arrived at the spot after the incident had already taken place and, therefore, could not have witnessed any assault. However, while deposing before the Court, PW1 made a material and substantial departure from the version disclosed in the

complaint. In his oral evidence, he stated that he saw the accused giving a blow on the chest of his father with his hand. This assertion is wholly inconsistent with his earlier version and directly contradicts the prosecution's initial narrative. In cross examination this witness deposed that on his arrival to the place of occurrence he saw his father /victim was lying unconscious on the ground. Such a contradiction is not a minor discrepancy but goes to the root of the matter, as it transforms PW1 from a post-occurrence witness into an alleged eyewitness. It is well settled that when a witness improves his version in such a vital aspect, the same amounts to a material improvement, rendering his testimony unsafe and unreliable. Further, PW1 deposed that a minor boy, namely Dipak Das, had come to his house and informed him that a quarrel was going on between the victim and the accused. This statement assumes significance, as it forms the alleged basis of PW1's knowledge about the incident prior to reaching the spot. However, the said Dipak Das was neither cited as

a prosecution witness nor examined during trial. No explanation whatsoever has been offered by the prosecution for his non-examination. The withholding of this crucial witness, who could have shed light on the circumstances preceding the incident, gives rise to an adverse inference against the prosecution case.

17. In view of the above, it is evident that PW1's evidence suffers from serious contradictions, material improvements, and inherent inconsistencies, which go to the root of the matter. His testimony lacks the degree of certainty and reliability required in a criminal trial and cannot be safely relied upon to establish the guilt of the accused.

18. It is further stated by PW-1 that PW-2, namely Ghunu Das, was present near the place of occurrence and poured water on the head and face of the victim. This assertion, on a careful scrutiny, appears to have been introduced with the obvious intent of lending corroboration to the improved version of PW-1 regarding the alleged assault. However, such an attempt stands

completely belied by the testimony of PW-2 himself. PW-2, in his deposition, has categorically stated that he did not see the accused give any blow to the person of the victim. According to him, upon hearing a commotion, he rushed to the place of occurrence and found the accused and the victim engaged in a physical scuffle. He further deposed that he intervened and separated the accused from the clutch of the victim. PW-2 has nowhere stated that the accused had actually assaulted the victim or succeeded in delivering any blow. On the contrary, PW-2 has stated that after being separated, the victim told the accused that he would inform his sons and initiate litigation against him. It is further stated by this witness that the accused thereafter rushed once again towards the victim and showed his right hand as if to give a punch, but before any blow could be delivered, they were again separated. PW-2 has specifically deposed that the accused then left the place taking one spade with him to cultivate his land. According to PW-2, it was only

thereafter that the victim suddenly fell on the ground and became unconscious.

19. Thus, the deposition of PW-2 clearly indicates that he did not witness any assault being committed by the accused. As per his version, there was at best a verbal altercation and a physical scuffle, followed by an attempt to strike which was effectively prevented by his intervention. There is no assertion by PW-2 that the accused succeeded in delivering any blow whatsoever, far less a blow on the chest of the victim as alleged by PW-1.

20. In view of the above, the evidence of PW-2 completely rules out the prosecution allegation of any actual assault by the accused. The version sought to be projected by PW-1 finds no support from PW-2, who was sought to be relied upon as a corroborative eyewitness. The prosecution's attempt to present PW-2 as a witness corroborating the story of assault, therefore, entirely fails.

21. It is also significant that PW-2 was declared hostile by the prosecution and was subjected to

cross-examination by the prosecution itself. However, nothing has been elicited from such cross-examination which could advance or support the prosecution case. Even after being confronted by the prosecution, PW-2 steadfastly adhered to his version that he did not see the accused delivering any blow to the victim. Consequently, the testimony of PW-2 not only fails to corroborate PW-1 but, in fact, materially undermines the prosecution's case regarding the alleged act of assault by the accused.

22. The contradiction between the versions of PW1 and PW2 is glaring and irreconcilable. While PW1 claims to have seen a blow being delivered, PW2, who admittedly arrived earlier and intervened in the scuffle, emphatically denies having seen any such assault. In fact, PW2's version is consistent with the original complaint, which also does not attribute any specific act of assault witnessed by PW1.

23. In criminal trials, where the prosecution relies upon ocular evidence, such evidence must be consistent, cogent, and free from material

contradictions. In the present case, PW1's testimony suffers from inherent infirmities due to his contradictory stands and material improvements, while PW2's evidence does not support the prosecution case of assault at all. When the star witness contradicts his own earlier version and is not corroborated by the other alleged eyewitness, the prosecution story becomes highly doubtful.

24. In view of these serious inconsistencies and contradictions, the testimonies of PW1 and PW2 do not inspire confidence and cannot be relied upon to establish that the accused assaulted the victim. The prosecution has thus failed to prove the alleged act of assault beyond reasonable doubt, and the benefit of such doubt must necessarily go in favour of the accused.

25. PW1, in his deposition, stated that after the occurrence the victim was brought to their house by PW2 and PW8 Alope Sarkar with the help of a push cart. However, this version is not consistent with the evidence of the other witnesses. As per PW1's own earlier statement, PW2 was only

present near the place of occurrence and there is no clear or consistent explanation as to how PW8 came to be involved in shifting the victim. This discrepancy assumes importance as it reflects uncertainty regarding the presence and role of PW8 at the place of occurrence and immediately thereafter.

26. PW8, in his evidence, claimed that at the time of altercation he rushed to the spot and saw the victim give a slap to the accused, in response to which the accused allegedly inflicted “3/4 fists” upon the victim. This statement, on the face of it, is vague and imprecise. The witness has not specified the number, nature, or force of the alleged blows, nor has he clarified on which part of the body such blows were inflicted. Such an indefinite assertion lacks the certainty required in criminal trials, particularly when it seeks to attribute a specific overt act to the accused.

27. PW8 further stated that thereafter the parties separated but continued altercating for almost 15 minutes, during which period the victim suddenly fell on the ground and was found dead.

This part of the evidence is inherently improbable. If, according to PW8, the parties had already separated and were only engaged in verbal altercation, the causal link between the alleged fist blows and the sudden death of the victim becomes highly doubtful. The prolonged interval of about 15 minutes, coupled with the absence of any continuous assault, seriously weakens the prosecution version that the death was the direct result of any act committed by the accused.

28. PW8 also claimed that when the victim questioned the accused, the accused disclosed that he was the person behind taking away the cattle. This alleged disclosure is sought to be projected as a motive and an admission on the part of the accused. However, this part of PW8's evidence stands contradicted by PW9 (I.O. of the case). In his cross-examination, PW9 categorically stated that PW8 had not stated this fact before him during investigation. This contradiction amounts to a clear omission on a material point, which in law is treated as a

contradiction affecting the credibility of the witness.

29. PW5, the autopsy surgeon, in his deposition stated only in general terms that there may be heart failure if a blow is given on the chest of a man with much force. Such a statement is clearly hypothetical in nature and merely indicates a possibility, not a medical certainty. The witness has not opined that the victim in the present case actually suffered heart failure due to any specific injury, nor has he correlated any external or internal injury found during post-mortem examination with the alleged act attributed to the accused. Medical evidence, to be of probative value, must establish a clear and proximate nexus between the injury and the cause of death; a vague suggestion of what may happen under certain circumstances does not satisfy this requirement.

30. Significantly, PW5 has not given any definite opinion as to the cause of death of the victim. The post-mortem report does not disclose whether the death was due to cardiac arrest

induced by trauma, a natural pathological condition, or any other independent cause. In the absence of a clear and categorical medical opinion, the Court is left to speculate as to the real cause of death, which is impermissible in criminal jurisprudence where the prosecution must prove its case beyond reasonable doubt.

31. Furthermore, PW5 has also failed to state in his post-mortem report or in his oral evidence whether the death was accidental, suicidal, or homicidal. Such an opinion, though not conclusive, is of considerable assistance to the Court in determining the nature of the offence. The omission to classify the nature of death seriously weakens the evidentiary value of the post-mortem report, particularly when the prosecution case hinges upon an allegation of homicidal violence.

32. It is well settled that when medical evidence is ambiguous, inconclusive, or merely suggests a possibility, it cannot form the sole basis for sustaining a conviction. The medical opinion must support and corroborate the prosecution

version in a clear and definite manner. In the present case, the evidence of PW5 neither conclusively establishes the cause of death nor rules out other possibilities, including natural death.

33. In view of the aforesaid deficiencies, the post-mortem report and the testimony of PW5 do not inspire confidence and cannot be safely relied upon to conclude that the death of the victim was homicidal or that it was caused by any act attributable to the accused. Consequently, reliance on such uncertain and non-specific medical evidence would be wholly unsafe, and the benefit of doubt must necessarily enure in favour of the accused.

34. The cumulative effect of the aforesaid inconsistencies and infirmities strikes at the very root of the prosecution case and renders it wholly unreliable. The version of PW-1, particularly with regard to the shifting of the victim, is not in harmony with the other evidence available on record. The manner in which the victim was allegedly removed from the place of occurrence,

the persons involved therein and the surrounding circumstances have been stated differently by different witnesses, thereby creating serious doubt about the prosecution narrative itself.

35. The testimony of PW-8, who has been projected as a crucial witness, suffers from vagueness, inherent improbability, and material contradictions. His version relating to the alleged assault, the purported prolonged altercation even after the parties was separated, and the supposed disclosure made by the accused is neither consistent nor convincing. Such assertions are not only contradicted by other prosecution witnesses but also appear unnatural and improbable in the facts and circumstances of the case. When material improvements and contradictions of this nature surface in the testimony of a witness, such evidence cannot be accepted as reliable or trustworthy.

36. It is a settled principle of criminal jurisprudence that the prosecution is required to establish its case beyond all reasonable doubt by producing

consistent, cogent, and credible evidence. In the present case, the conflicting versions of PW-1, PW-2, PW-8, and PW-9 create serious and irreconcilable doubts with regard to the manner of occurrence, the specific role attributed to the accused, and even the cause of death of the victim. These contradictions are not minor or trivial; rather, they go to the core of the prosecution case and materially affect its credibility.

37. As already discussed in the foregoing paragraphs, there are also serious deficiencies in the post-mortem examination conducted by PW-5, the autopsy surgeon. The post-mortem report, read together with the oral testimony of PW-5, does not inspire confidence and cannot be safely relied upon to conclusively hold that the death of the victim was caused due to the alleged assault by the accused. The medical evidence is uncertain, inconclusive, and lacking in specificity, and therefore does not lend assurance to the prosecution version.

38. Consequently, reliance on such doubtful and non-specific medical evidence would be wholly unsafe. In criminal law, where two views are possible, the one favourable to the accused must necessarily be adopted. The benefit of doubt, therefore, must enure to the accused.
39. The evidence of PW-3, PW-4, and PW-6 further weakens the prosecution case, as these witnesses have clearly stated that they did not know the reason for the death of the victim. Their testimony neither supports the prosecution version nor establishes any nexus between the accused and the alleged cause of death.
40. In view of the cumulative effect of the inconsistencies, contradictions, unreliable ocular testimony, and inconclusive medical evidence, the prosecution has failed to discharge its burden of proving the guilt of the accused beyond reasonable doubt. The prosecution case, therefore, cannot be sustained, and the accused is entitled to the benefit of doubt.
41. In the absence of reliable and trustworthy ocular evidence, and in view of the material

contradictions and inconsistencies elaborately discussed in the foregoing paragraphs, it would be wholly unsafe and impermissible in law to base any finding of guilt upon such shaky and unreliable testimony. The evidence adduced by the prosecution witnesses lacks coherence, consistency, and credibility, and fails to inspire the confidence of the Court. Where the ocular version itself is doubtful and suffers from material infirmities, it cannot form the foundation of a conviction.

42. It is a settled principle of criminal jurisprudence that suspicion, however strong, cannot take the place of proof. The prosecution is under a strict obligation to establish the guilt of the accused beyond all reasonable doubt through clear, cogent, and unimpeachable evidence. When the evidence on record gives rise to serious doubts regarding the manner of occurrence, the role attributed to the accused, and the cause of death of the victim, such doubts must necessarily be resolved in favour of the accused. Consequently, the benefit of doubt must enure to the accused

as a matter of right and not as a matter of concession.

43. In view of the facts and circumstances of the case and the discussion made hereinabove, I am of the considered opinion that the impugned judgment passed by the learned Trial Court suffers from illegality and material irregularity. The learned Trial Court failed to properly appreciate the oral and documentary evidence on record and overlooked the material contradictions and infirmities which go to the root of the prosecution case. As such, the impugned judgment cannot be sustained in law and is liable to be set aside.

44. Accordingly, the instant appeal be and the same is hereby allowed.

45. The impugned judgment and order of conviction passed by the learned Trial Court dated 21.06.2000 passed in connection with the Sessions Case No. 12 of 1998 (Sessions Trial No. 13 of 1998) is hereby set aside.

46. The appellant is on bail. He is to be discharged from his respective bail bonds and be set at liberty if, he is not wanted in any other cases.
47. In accordance with the mandate of Section 437A of the Code of Criminal Procedure (Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023), it is incumbent upon the appellant to furnish bail bonds, accompanied by suitable sureties. Such bonds, once executed, shall remain in full force and effect for a period of six months, ensuring the presence of the appellant as required by law and securing the due administration of justice.
48. Any pending applications, if existing, are hereby disposed of.
49. Let a copy of this order along with T.C.R. be sent down to the Trial Court immediately.
50. Urgent Photostat Certified Copy of this order, if applied for, be given to the parties on payment of requisite fees.

(Prasenjit Biswas, J.)