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 Anuj Singh

C.R.A. 233 of 2012
Md. Nausad
Versus
The State of West Bengal.
With
C.R.A. 245 of 2012
Samser Ali @ Shamser Ali
Versus
The State of West Bengal.
With
C.R.A. 238 of 2013
Sk. Abdul Hamid
Versus
The State of West Bengal.

For the Appellants	:	Mr. Bratin Kumer Dey, Mr. Joydeep Dey
For the State	:	Dr. Pradip th, Banerjee, Ms. Roshni Sinha Roy, Mr. Sankalpa Bhattacharya
Hearing concluded on	:	November 19th, 2026
Judgment on	:	November 25th, 2026

Rajasekhar Mantha, J.:

1. The subject appeals are directed against judgment of conviction and order of sentence dated 27th February, 2012 passed by the learned Additional Sessions Judge, Fast Track, 1st Court, Alipore, South 24-Parganas in Sessions Trial No. 6(2)

of 2005 arising out of Sessions Case No. 83(9) of 2004. The appellants were convicted and sentenced to life imprisonment and fine of Rs. 2,000/- for the offence punishable under Section 302 of the IPC and R.I. for 7 years and fine of Rs. 1,000/- for the offence punishable under Section 397 of the IPC and R.I. for 5 years and fine of Rs. 1,000/- for the offence punishable under Section 2525(I-A) of the Arms Act. All the sentences were to run concurrently.

2. Another co-accused, Akbar Ali, who was arrested subsequently also underwent trial after recall of 19 prosecution witnesses. He was acquitted by the Trial Court.

THE PROSECUTION CASE:

3. The prosecution case in brief is that the deceased and one Sashi Choudhury (PW-11) were the brothers and sons of one Jagdish Choudhury. They carried on trading in spices, milk food and iron and other allied business. Their residence was at AA/2AA/2/2, Rajarhat Road, Kolkata – 700059. Their office was at 159, Rabindra Sarani. They had a godown at 67/10, Maharshi Debendra Road, Kolkata- 700006. The deceased was single. His older brother (PW-11) was married. There was a dispute between the landlord of the office of the victim as regards the payment of rent.

4. On 5th of February, 2004 around 11.00 p.m., the deceased Sambhu Chowdhury and his brother Sashi Chowdhury were at their office at 159, Rabindra Sarani and went to 125, Mahatma Gandhi Road towards office of a transport company. They returned to 159, Rabindra Sarani their office and the deceased along with Sunil were about to leave their office after closing the gate. PW-3, Ujjal Halder, was the driver of the victim. The deceased along with two employees Sanjoy (PW-5) and

Sunil (PW-4), came down in a lift from 4th Floor office. The deceased asked PW-5 to go home and asked PW-4 to by 'Pan Parag' from a local shop.

5. The Santro car of the deceased was parked by PW-3, in front of Chitpur Petrol Pump. By this time, PW-11, Sasti Chowdhury, brother of the deceased, who received Rs. 1.2 lakhs from a client asked PW-5 to give the same to PW-3 to be handed over to the deceased. Certain other files and papers were also kept in the dikky of the car. After PW-4 brought the 'Pan Parag' and kept in the dikky of the car, the deceased boarded the passenger's seat on the rear side of the Santro car when PW-3 boarded the car in the driver's seat to take the victim to his house. Suddenly the three appellants Md. Nausad, Samser Ali @ Shamser Ali and Sk. Abdul Hamid emerged and forcibly boarded the vehicle. Sk. Abdul Hamid sat in the car next to the driver's seat. They Hijacked the vehicle. Appellant Md. Nausad sat on the right side of the victim in the rear seat and the appellant Samser Ali sat on the left side of the victim in the car. the deceased was forced to sit between them.

6. The appellants put a knife on the throat of PW-3 and asked him to drive the vehicle. The two of the appellants was sitting on either side of the deceased, abused the victim in foul Hindi and Bhojpuri and demanded to know where the money was from the deceased. They also started to assault the deceased. PW-3 was asked by the appellants to drive the vehicle towards the crossing of Rabindra Sarani to Ganesh Talkies and thereafter to Sonagachi and B.K. Paul Avenue. The vehicle crossed Sova Bazar Tram Line and drove into Bag Bazar Road and crossed Galibh Street Tram Line and R.G. Kar Road. The appellants asked PW-3 to stop the vehicle at a lonely place at R.G. Kar Road. They obtained the key of the car from PW-3 and the victim and opened the dikky of the car. They took out several

plastic packets containing office files and money and returned the key of the car to PW-3. Throughout the aforesaid journey, the appellants were assaulting the victim.

7. PW-3 started the vehicle once again and was asked to stop the vehicle near a cold storage on Canal West Road. Appellant Md. Nausad thereupon shot the victim. Appellant Samser Ali also slit the throat of the victim with a knife. PW-3 was thereafter asked by the appellants to stop the car and the appellant escaped taking away the key of the car in a yellow taxi. The appellants in the taxi went towards Arabindra Setu. Before boarding the taxi, the appellants the keys of the car and asked to PW-3 (Ujjal Halder) to run away or he would be killed.
8. After the appellants left, the PW-3 (Ujjal Halder) knocked on the door of the cold storage. The 'Darwan' of the cold storage was Jadav Laha (PW-35). He let in PW-3 into the cold storage. PW-3 (Ujjal Halder) then called PW-11, brother of the deceased, over the telephone and told him that the victim was shot and asked him to come into the cold storage. PW-3 was informed by Jadav Laha (PW-35) and another guard Aurin Das (PW-16) at the cold storage, that Maniktala Police Station was nearby.
9. PW 3 rushed to Maniktala P.S. and informed the duty officer. After lodging G.D. Entry, the said police officials from Maniktala Police Station arrived at the cold storage and place of occurrence (P.O.) in a police vehicle along with PW-3. When the police opened the backdoor of the Santro car, the body of the victim fell out. He was bleeding profusely. The victim was shifted to the police vehicle and was take to N.R.S. Medical College & Hospital into emergency ward. PW-11 (Sashi Choudhury), brother of the deceased, reached the hospital in the meantime. The victim had died

in the hospital. A formal statement of the PW-3 was recorded by Maniktala Police Station that was exhibited as No. 6/1 in the trial.

10. Inquest was conducted on the body of the victim and post-mortem thereafter. The police seized the Santro car along with the mobile phone of the PW-3 and the victim and recovered the finger ring of the victim as shown by the appellants on a leading statement. The pistol used by the appellant as also the knife was seized. Investigation was completed and charge sheet was filed. Charges were framed against the 3 appellants and Bhagwan Prasad Tiwari, Mantosh Shaw, Md. Mustafa @ Baltu and Supriya Dutta @ Rana under Sections302 and 120B of the IPC, Sections 302 and 34 of the IPC and under Sections 25(1a) and 27(2) and 27(3) and Section 7 of the Arms Act.

THE TRIAL AND EVIDENCE ON RECORD:

11. **PW-1** was **Sandip Kumar,** a constable and photographer who proved the photographs taken at the place of occurrence duly exhibited. **PW-2** was **Partha Roy**, who prepared a sketch map of the place of occurrence.

12. **PW-3** was the star eye-witness of the entire incident. He narrated the entire prosecution case in substantial detail. He identified his mobile seized by the police and also that of the victim. He identified the finger ring of the victim with the inscription 'S' the victim's gold neck chain, the key to the car, the pistol, the knife and the wearing apparels of the victim and the Santro car. He confirmed that he saw the appellants and the victim because of the halogen light at the Chitpur Petrol Pump where the three appellants boarded the vehicle. He also confirmed that he had identified the appellants in the T.I. Parade at the Presidency Jail. He deposed that he worked with the victim for 5 years. He detailed out his duties and

its span on any day as well as the fateful day. He deposed that he heard a gunshot from the back of the car. He turned his head and saw the appellant Naushad holding a gun and appellant Samser Ali a knife.

13. He deposed about the address of the workplace, godown and the residence of the deceased. He narrated where all he had taken the victim and PW 11 on the day of occurrence. He then narrated the entire prosecution case and the events that occurred in the car after the appellants took it over on the fateful day, in substantial detail as described hereinabove. He held on to his evidence in cross examination.

14. **P.W.- 4 Sunil Roy** was a peon in the office of the deceased and P.W.-11. He named all the employees namely P.W.-5, P.W.-6, P.W.-7, P.W.-8 and one Monoj Pandey and Himansu Ghosh as employees of the victim. He identified the accused as he was standing near the Santro car in which the three appellants forcibly boarded. P.W.-3 and deceased were already inside the car. He was also a seizure witness to the lock of the office of the deceased at 159, Rabindra Sarani, Kolkata. He confirmed having identified the three appellants before a Judicial Magistrates PW 21 & 37. Two of them were identified on 11th May, 2004 and the third on 12th May, 2004. He narrated all the events as narrated by P.W.-3 before the Santro car drove away with the appellants, the victim and P.W.-3 from Chitpur Petrol Pump opposite the office of the deceased. He withstood complete and full cross-examination.

15. **P.W.-5 was Sanjay Kumar Goyal**, an employee of the deceased. He named all the employees, named by P.W.-4 and P.W.-3, as the driver of the Santro car of the deceased. He identified the jewellery of the deceased seized by the police and produced in Court.

16. **P.W.-6, Amit Gupta** was an employee of the deceased and brother-in-law of P.W.-11. **P.W.-11 Sashi Chakraborty** was married to the sister of P.W.-6. He deposed that he found the accused loitering the office of the deceased on the evening of the incident and few days prior thereto. He confirmed having identified the appellants in a T.I. Parade in jail premises on 5th February, 2004 in the presence of PW 21 and 37.

17. **P.W.-7 Randeep Singh** was an employee of the deceased. He named other employees in the office of the deceased as narrated by P.W.-4. He also named the P.W.-3 as the driver working for the P.W.-11 and the deceased. He also noticed that the accused were loitering outside the office premises of the deceased on the day of the incident. He could identify the appellants including their wearing apparels on the day they were loitering.

18. **P.W.-8 Manish Kumar Gupta** was a jewellery shop owner, called "Gahana Ghar". He identified the jewellery of the victim and the monogram of such shop on jewellery. He confirmed that the victim purchased the said jewellery from him.

19. P.W.-10 was a seizure witness of the key to the Santro Car taken away from P.W.-3 after the incident. He confirmed that the appellants were present with the police to show the location where the key of the Santro car was thrown away by them.

20. **P.W.-11** was **Sashi Chakraborty**, brother of the deceased. He narrated the events before and after the incident. He confirmed having handed over 1.2 lacks in cash to P.W.-5 to pass it on to P.W.-3 to be given to the deceased. He was waiting for the deceased to come to the office later in the evening so that they could go home together. He deposed that the victim used to return home by 11 to 11:30. p.m. On the fateful night, he did not reach home, prompting him to call the victim and PW 3, his driver. The victim's phone was switched off so also PW 4's.

21. He identified the wearing apparel of the victim and the ornaments owned by him in car. He also deposed that the victim, his father, and one Sujit Agarwal were carrying on businesses of spices, milk food and iron in co-partenership as J.S. Vyapar Private Limited. He confirmed that the deceased looked after the money, finance and banking of the business. He was a witness to the seizure of the Santro car and the key to the lock of his office on 159, Rabindra Sarani, Kolkata. He also deposed that the deceased was unmarried.

22. **P.W.-12** was a seizure witness to the ring, mobile phone and cash seized from the place indicated by one of the appellants and based on their leading statement.

23. **P.W.-13** although declared hostile, confirmed he was a seizure witness to the recovery of the pistol, seized on the leading statements of the appellants. He identified the pistol, parts and cartridges, polythene cover and the label on the pistol.

24. **P.W.-14** was a seizure witness to the knife and cash recovered, which was shown by the appellants.

25. **P.W.-16** was the guard of the cold storage and the seizure witness to the Santro car, cartridges, cash, driving licence and papers in the Santro car immediately after the incident. He proved the signature of another witness Bapi Nandi on such seizure list.

26. **P.W.-18** was **Kashi Nath Shukla** another employee and a witness to delivery of cash of 1.2 lacks to P.W.-5 to be delivered to the deceased through P.W.-3. He deposed that PW 11 first called Sanjay to hand over Rs 1.20 lacs. PW 11 then called the victim at around 11:15 and 11:30. The victim did not pick up the call.

27. **P.W.-19** was **Dr. R.N. Karmakar**, who conducted post mortem on the deceased. He found the following injuries on the deceased:

"1. One gun shot wound of entry .3"x.3" oval in shape placed obliquely over left temporal region scalp, 5" to the left of oblique line and 21/2" below vault of scalp with abraded and grease colour with irregular inverted margins with evidence of burning and singing of the adjoining scalp hairs and an area of tattooping. On desection and tracing the tract, it is seen to have pierced the skin, fascia, muscle, vessels, nurve at the corresponding level with extravasation of blood 4" x 3". Area over left front of tempero paratial region of scalp to enter into the cranial cavity by causing a hole .2" over left temporal bone with punched out appearance on the inner table of the bone to pierce the menisgies to enter into the left temporal lobe of brain to cross the mid line front left to right to come out of brain through paraital lobe of brain and menisgies at the corresponding level to come out of the scalp through right side of paraital bone causing the hole .3" x 3" with punched out appearance on the outer table surrounded by an area of depressed committed fracture 2" x ½ " with one fissure fracture involving both the tables 3" long over paraital bone extending from the hole and ultimately terminated by causing a wound of exit 2/1/2" x 1" over right paraital region of scalp 1" below vault of scalp and 6/1/2" to the right of midline with evidence of potrution of the soft tissues. The crack of the wound is directed upwards and from left to right and divergent in nature.

2. One incised cut throat injury 1" x 4" muscle placed obliquely over front of neck being placed 1.3" to the right of midline and .2" to the left of midline 2.2" above supraternal notch of midline with a tailing .2" x .1" into skin at its left end. On desection and tracing the track it is seen to have cut skin fascia platisma muscle, vessels and nurve to terminate in the layers of the muscle and directed downwards backwards and from right to left.

3. One incised cut throat injury 3.6" x 05" into muscle, placed obliquely over front of neck .6" of which being placed to the right of midline and 3" of which being placed through the left of midline and being placed .3" below injury No. 2 more or less parallel. On desection and tracing the track it is seen to have cut skin fascia, platisma, muscle, vessels, and nurves, to terminate in the layers of the muscle and directed downwards, backwards, from right to left.

4. One incised wound .6" x .2" into muscle placed obliquely over palmar aspect medial side of crystal phalanx of right index finger directed downwards downwards and backwards.

5. One incised .5" x .1" into muscle placed obliquely over palmar aspect of medial side of middle phalanx on right middle finger directed upwards, backwards and medial.

6. One incised wound .2" x .1" into muscle placed obliquely over palmar aspect medial side of middle phalanx of right ring finger directed downwards, backwards and medial.

7. One incises wound .3" x .1" into skin placed obliquely over palmar aspect of lateral side of distal phalanx left little finger.

8. One incised wound .8" x .2" into muscle placed obliquely over palmar aspect on lateral of middle phalanx, left ring finger.

9. One incised wound 1.2" x .3" into muscle and bone placed obliquely over palmar aspect of lateral aspect inter phalangial joint and distal phalanx of left middle finger.

10. One incised wound 4" x .1" into muscle placed obliquely over palmar aspect lateral margins distal phalanx, left index finger.

On desection one cut fracture over distal phalanx and distal inter phalangial joint of left middle finger with extravasation blood. All the injuries showing evidences of vital reactions. The margins of the incised wound are regular and even with least of extravasation of blood in and around. Injury No. 7.8, 8 and 9 are directed downwards, backwards and lateral. No other injuries except those are noted above could have been detected even after careful desection and examination with the help of magnifying lense. No foreign body was detected. Mucus membrane of the stomach was congested stomach was 145 gms. under wait and contents of yellowish pestri materials 100 gms. no peculiarity in smell.

According to my opinion death was due to the effect of gun shot injury associated with other injuries noted above anti mortem homicidal in nature. Injuries no. 4 to 10 are on the palmar aspect of either of hands. This type of injuries may be caused due to resistence or holding of sharp weapons. Injury No. 1 may be caused due to pistol revolver. All the incised injuries as noted above may be caused by sharp cutting weapons.

In all probabilities injury No. 1 might have been caused by close range fire. In all probabilities injury No. 1 might have been caused from left side. Injury No. 1 might have been caused even when the assailants is on the right side of the victim. If the assailant holds the gun on the right side of the victim and the victim roated its head to the back and to the left and to the right injury No. 1 might have been caused.

Taking into consideration the climatic condition as well as the other finding as noted in the P.M. report death of the subject may have been caused 8 to 10 hours to 18 to 20 hours prior to date and time of P.M. The main signs and symptoms of ante mortem vital reaction of bleeding retraction of the skin around the wound and collection of blood cells around the meningies of the wounds. In oral course of nature injury No. 1 is sufficient enough to cause death. The cumulative effect on all the injuries including injury No. 1 are sufficient enough to cause death."

28. **P.W.-20** was **Dr. Jharna Mondal**, the treating doctor in the emergency section of N.R.S. Hospital. She deposed that she found the bullet injury on the right side of the victim and cut injury on his neck.

29. **P.W.-21** was **Biswajyoti Chatterjee**, Judicial Magistrate, confirmed having supervised the T.I. Parade along with another Judicial Magistrate **Durga Khaitan Das (P.W.-37)**. In the T.I. Parade P.W.-21 and P.W.-37 deposed all the steps taken to strictly comply with the rules for a T.I. Parade. In such parade the appellants were identified by Ujjal Halder (P.W.-3), Sunil Roy (P.W.-4), Ranjan Pandey, Amit Gupta (P.W.-6) and Ranjit Kumar Singh.

30. **P.W.-22** was **Bijoy Chakraborty**, was a local land broker, who was witness to the seizure of the knife and cash by the police upon being laid by the appellants. He identified all the articles in Court.

31. **P.W.-23 Ardhendu Sengupta** was a ballistic officer of the FSL, Kolkata. He confirmed and proved the ballistic report. He confirmed the hole on the side glass of the Santro car was caused by the bullets and co-related with the same with the cartridge seized by the police. He confirmed the bullets and their cartridges were a perfect match to the pistol seized by the police.

32. **P.W.-27** was **Subhas Karmakar**, a seizure witness to the pistol. He confirmed the presence of the appellants at the time of seizure of the pistol.

33. **P.W.29** was the seizure witness to the Santro car and the exhibits seized from inside the car. He confirmed his signature and that of P.W.-16.

34. **P.W.-33** was another seizure witness to the gold chain of the deceased.

35. **P.W.-40** was **Atanu Banerjee,** SI of Police, who arrested the three appellants.

36. **P.W.-42** was the inquest officer, who conducted the inquest on the deceased.

37. **P.W.-48** was the investigating officer, who narrated all the steps taken in the investigation including the seizure of all exhibits produced in the trial, sending of the weapons and cartridges to the ballistic examination, collection of the ballistic report, collection of the post mortem report and arrest of the three appellants. He

discovered the knife, pistol, key of the Santro car, the jewellery of the victim and some cash based on the leading statements given by the appellants and as shown by them. He confirmed having filed charge sheet after completion of the investigation.

38. Based on the evidence indicated hereinabove, the Trial Court convicted three of the appellants and acquitted accused Bhagwan Prasad Tewari, Mantosh Shaw, Md. Mustafa and Supriya Dutta for want of sufficient proof. A subsequent trial was conducted after the arrest of accused Akbar Ali, which resulted in his acquittal for absence of sufficient evidence.

ARGUMENTS OF COUNSEL FOR THE APPELLANTS AND THE COURT'S ANALYSIS

39. Learned counsel for the appellants has argued that the Trial Court committed error in failing to notice that the appellants could not be identified beyond reasonable doubt. He argued that the only eyewitness to the incident namely P.W.-3 has not deposed clearly which of the appellants inflicted what injuries on the victim. He argued that the prosecution did not establish that P.W.-3 had sufficient opportunity and visibility to observe the physical features of the appellants and identified them in the T.I. Parade.

40. This Court, however, notices that the appellants were identified by P.W.-3, P.W.-4, P.W.-6 and P.W.-7 both in the T.I. Parade as well as in the Court. P.W.-3 was present at the time when the appellants forcibly boarded the car of the deceased on the date, place and time of occurrence. On the instructions of the appellants P.W.-3 drove through most parts of the central Kolkata. He confirmed and identified that appellant Sk. Abdul Hamid sat in the passenger side next to him. P.W.-3 was in the driver side. He clearly identified the appellant Md. Nausad sat on the right side of

the victim and Samser Ali on his left side. There was sufficient halogen light emerging from the petrol pump even at 11 pm in the night. He confirmed having heard the appellants particularly Samser Ali and Md. Nausad abusing the victim in filthy languages in Hindi and Bhojpuri. He observed that the victim was shot with a pistol used by appellant Md. Nausad on the right side of his head. He also confirmed having seen in the rear mirror the Samser Ali having sliced the throat of the victim after he was shot. In **Rajesh Kumar v. State Of H.P. being case no. Criminal Appeal No. 639 Of 2001 by judgment dated October 3, 2008,** it was held as follows:-

> 9.....As a result of the application of principles enunciated in Section 34, when an accused is convicted under Section 302 read with Section 34, in law it means that the accused is liable for the act which caused death of the deceased in the same manner as if it was done by him alone. **The provision is intended to meet a case in which it may be difficult to distinguish between acts of individual members of a party who act in furtherance of the common intention of all *or to prove exactly what part was taken by each of them*.** As was observed in Ch. Pulla Reddy and Ors. v. State of Andhra Pradesh (AIR 1993 SC 1899), ***Section 34 is applicable even if no injury has been caused by the particular accused himself. For applying Section 34 it is not necessary to show some overt act on the part of the accused.***
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> Emphasis Applied

41. P.W.-3, the appellants and the victim in the Santro car for more than 15 to 20 minutes. Most of the streets mentioned by P.W.-3 through which he drove the appellants and the victim are well lighted even late in the night. They are major streets in central Kolkata. P.W.-3 must, therefore, be deemed as having seen the appellants most clearly and without any doubt. P.W.-4 confirmed having seen the appellants boarding the car. He has identified the three appellants from the light

emitting from the halogen lamp from Chitpur Petrol Pump. In **Nathuni Yadav v. State of Bihar, reported in (1998) 9 SCC 238,** it was held as follows:-

> "9. ... Even assuming that there was no moonlight then, we have to gauge the situation carefully***. The proximity at which the assailants would have confronted with the injured, the possibility of some light reaching there from the glow of stars,*** and the fact that the murder was committed on a roofless terrace are germane factors to be borne in mind while judging whether the victims could have had enough visibility to correctly identify the assailants. Over and above those factors, we must bear in mind the further fact that the assailants were no strangers to the inmates of the tragedy-bound house, the eyewitnesses being well acquainted with the physiognomy of each one of the killers. We are, therefore, not persuaded to assume that it would not have been possible for the victims to see the assailants or that there was possibility for making a wrong identification of them***. We are keeping in mind the fact that even the assailants had enough light to identify the victims whom they targeted without any mistake from among those who were sleeping on the terrace. If the light then available, though meagre, was enough for the assailants why should we think that the same light was not enough for the injured who would certainly have pointedly focussed their eyes on the faces of the intruders standing in front of them."***
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> Emphasis Applied

42. P.W.-6 and P.W.-7 confirmed having seen the appellants loitering outside their office at 159, Rabindra Sarani, Kolkata on the day of the incident and prior thereto. P.W.-7 has clearly deposed that he could also identify, recollect the wearing apparels of the appellants. P.W.-3, P.W.-4, P.W.-5, P.W.-6 and P.W.-7 therefore were rightly taken for the T.I. Parade to identify the appellants. The arguments advanced by the learned counsel for the appellants that the P.W.-3 and P.W.-4 could not have clearly seen the appellants at the place of occurrence, therefore, cannot be accepted.

43. Learned counsel for the appellants next relied upon the decisions of the Supreme Court in the case of ***Budhsen & Anr. Vs. State of Uttar Pradesh*** reported in ***(1970) 2 SCC 128*** and in the case of ***Kanan & Ors. Vs. State of Kerala*** reported in ***(1979) 3 SCC 319*** to argue that the importance and ingredients of a lawful T.I. Parade and that it should be conducted fairly.

44. This Court notes the evidence of P.W.-21 and P.W.-37, two Judicial Magistrates, who supervised the T.I. Parade, in which the appellants were identified by P.W.-3, P.W.-4, P.W.-5, P.W.-6 and P.W.-7. They withstood all cross-examination. They detailed all the steps taken in course of such T.I. Parade. It, therefore, cannot be said that the T.I. Parade was not conducted properly. This Court is satisfied that the Trial Court has rightly found the T.I. Parade was conducted in accordance with law and the minor omissions therein cannot be a ground for rejecting the T.I. Parade report issued by P.W.-21 and P.W.-37.

45. Learned counsel for the appellants next argued that the Trial Court failed to ascertain as to whether P.W.-3 had clear, uninterrupted opportunity to observe the individual acts of the appellants. He also argued that the prosecution has failed to establish the role played by each of the appellants in the assault on the victim. He also attacked the evidence of PW 4.

46. This Court notes that PW 3 had clearly stated which of the appellants sat next to him and which of them sat in the back seat of the Santro Car in which side and on which side of the deceased. The P. M. Doctor as well as PW 20 treating the doctor at NRS Hospital, have deposed that the victim sustained the bullet injury on the right side of his head.

47. Appellant Nausad was sitting on the right side of the victim behind the driver seat. The victim having sustained the gunshot injury on his right temple has to have been shot by Nawsad since Samsher sitting on the left side of the victim could not have inflicted a bullet injury on the right side of the head of the victim.

48. Samsher sitting on the left side could only carry a knife since Nawsad already had a pistol with him. Having found that the appellant was shot on the right side of the

head and the bullet thereafter hit the glass of the Santro Car, it could only have been fired by somebody sitting on the right rear side of the Car.

49. PW 3 admittedly saw Samsher slitting the throat of the victim with a knife through his rear view mirror of the car. It is natural that a driver who heard a gunshot in the rear side of his car would constantly look into the rear view mirror to ascertain what is going on. He may also turn back for a split up of a second.

50. In fact, PW-3 has deposed that he turned his head back from the driver's seat upon hearing the sound of firing of a bullet at the rear seat of the car. He found the appellant Naushad holding a gun and appellant Samser a knife. PW-3 saw the appellants under extraordinary circumstances. Such circumstances ordinarily get engrained in mind of a human being. The appellants' murderous assault on the victim in the moving car, therefore, became a memory though scary for PW-3. The evidence of PW-3, therefore, on the identification of the appellants cannot be at all brushed aside on the stray ground of inadequate light more so when the evidence on record establishes presence of adequate light entering into the car, as discussed above. In **Ravinder Kumar v. State of Punjab, reported in (2001) 7 SCC 690,** it was held as follows :-

> 17.....The contention is that it is not possible for any person, much less a rickshaw-puller like PW 5, to remember who exactly employed him to carry a particular load on a particular day, after the lapse of several days thereafter. **This contention is raised overlooking the psychological phenomenon that human memory is very often a conditioned characteristic. Anything which has *any special or peculiar lineament can create an impact on the human mind lasting for long*. While it is true that routine events in a man's day-to-day life may not remain in his mind for being remembered later**, **any odd or bizarre happenings *involving him* or in front of him have the tendency to stick *in his mind indelibly. If there is any cause for him to recollect such events again they get refreshed again.*** That is why he is able to narrate such events with all details when asked to do so. ***This applies to all witnesses in criminal cases involving serious offences.*** Normally no porter or rickshaw-puller could speak from memory as to whom or whose load he carried many days ago. ***But if the carrying of a load on a particular day was soon followed by***

> ***the flash of sensational news in the locality — that the load contained the corpse of a murdered person, the instinctive reaction of the carrier is to become inquisitive to know whether it was in respect of the load which he himself carried. If that inquisitiveness had turned positive it is extremely probable that all the vivid details relating to that event would stick in his memory*. For him such event would not have been a usual occurrence *but extraordinarily odd and queer.*** Hence it is not likely to fade out of the canvas of his mind. It will be unrealistic to jettison the testimony of such a witness on the mere ground that he could not have remembered after the lapse of a long period the identity of the persons who engaged him and also of the load which he carried. We, therefore, repel such contention.
>
> Emphasis applied

51. After slitting the throat of the victim, appellate Samsher continued to sit on the left side of the rear seat of the Santro Car. It is an admitted position that the victim was sitting in the middle between Samsher on the left side and Nawsad on the right side.

52. PW 3 saw three persons entering his vehicle, shouting at and assaulting, the victim for at least 10-15 minutes while he drove around the city. Abdul Hamid was admittedly sitting on the left side of PW 3 in the front seat.

53. PW 3's clear and explicit description of the appellants, the gun shot and knife attack on the victim and other oral and material evidence on record, leave no room for doubt in the mind of this Court of the individual role played by each of the appellants in committing the offence-in-question. The argument of the learned counsel for the appellants in this regard therefore cannot be accepted. The testimony of PW 3 and 4 pass all levels of scrutiny and has been rightly accepted by the trial court.

54. PW-11, the victim's elder brother, deposed that the victim used to reach home by 11 to 11:30 p.m. every day after completing his work at the office. On the night of the incident, he did not. PW-11 thus first called the victim and then PW-3, the victim's driver. Both of their mobile phones were switched off. The said phones

having being found switched off is consistent with the evidence on record that mobile phone of the victim and PW -3 were taken away by the appellants. PW 3 intimated the PW 11 about the murder of the victim over telephone at the said cold storage. PW-11 having called PW-3 after the victim failed to answer clearly establishes that PW-3 was expected to be with the victim at that hour. The presence of the PW-3 with the victim in the car at the time of the crime is therefore clearly established.

55. Learned counsel for the appellants next argued that the recovery of the pistol does not *ipso facto* establish that the same was used in the commission of the murder. This Court, however, notes from the evidence of PW 23, Ardhendu Sengupta, that the ballistic report has been duly proved and exhibited in court. PW 23 ballistic expert, has confirmed that the empty cartridges found inside the car perfectly matched the pistol in question. He confirmed that the cartridge of the bullet was undoubtedly fired from the pistol seized by the police. He examined the cartridges and the pistol and the bullet hole on the window shield of the car. The evidence of PW 3 is clear and explicit. He is an expert witness. This Court has no reason to ignore the evidence of PW 23.This Court is of the view that a use of the pistol in the commission of the offence is undoubtedly and clearly established in the light of the evidence of PW 23, PW 3 and the evidence of PW 19 the P. M. Doctor. This read with the evidence of PW 4, 5, 6 and 7 clearly establish that participation of the appellants in the commission of the crime in question.

56. The seizure witnesses to the keys of the Car, the pistol, the knife, jewelry and cash and the mobile phones of the victim clearly established that they could not have been otherwise found by the police without being shown where they were stored or kept. The key of the car was recovered on the side of the road. Unless the

appellants had indicated the place where they threw away the key the same could not have been recovered by the police. Similar is the case of recovered pistol and the jewelry and the cash.

57. It is now well settled that minor discrepancies in recovery of weapons and stolen goods cannot be a ground for doubting the discovery and seizure of weapons by the police. This is further confirmed by the ballistic report that the cartridges invariably matches with the pistol and bullet and cartridges must have been fired from the particular pistol exhibited in Court and as recovered upon being shown by the appellants. This Court is therefore unable to accept the arguments of the appellants in this regard.

58. The decision of **Kulukuri Kottayya Vs. King Emperor reported in 1947 P.C. 67** has since been water down. Strict compliance of the procedure under Section 27 of the Evidence Act may not always be required and deviations there from would not invalidate the recovery of weapons and articles seized by the police. In **Perumal Raja @ Perumal v. State, Rep. By Inspector Of Police, reported in 2024 INSC 13,** it was held as follows:-

> 30. However, evidentiary value to be attached on evidence produced before the court in terms of Section 27 of the Evidence Act cannot be codified or put in a straightjacket formula. It depends upon the facts and circumstances of the case. A holistic and inferential appreciation of evidence is required to be adopted in a case of circumstantial evidence.

59. Learned counsel for the appellants has lastly argued that the examination under Section 313 of the appellants has been in adequate and all the circumstances in the evidence against the appellants have not been confronted to them. This Court, however, notes that all relevant and material evidence against the three appellants herein have duly confronted to them. This is apparent from a careful examination of

the questions put to the three appellants in the examination under Section 313 of the Cr. P. C or prejudice caused to them.

60. This Court does not find any infraction of the judicial dicta in the cases cited by the appellants. The appellants have not been able to demonstrate any infraction of Section 313 of the Cr. P. C.

CONCLUSIONS

61. In the light of the discussions made herein above, this Court is of the view that the impugned judgment and order of conviction calls for no interference. Accordingly, CRA 233 of 2012, CRA 238 of 2013 and CRA 245 of 2012 are dismissed. Consequently connected pending applications are also dismissed.

62. Let a copy of this judgment along with the Trial Court's Record be forthwith sent down to the trial Court for necessary compliance.

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

(Rajasekhar Mantha, J.)

I agree.

(*Anuj Singh, J.*)