

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 Rai Chattopadhyay**

CRA 356 of 2018

**Babu Rajak @ Bisu Rajak @ Biswanath Rajak & Anr.
Versus
The State of West Bengal**

For the Appellants : Mr. Soumyajit Das Mahapatra
Mr. Ali Ahsan Alamgir
Ms. Soma Mal
Ms. Rabia Khatoon
Ms. June Modak
Ms. Madhurai Sinha
Ms. Upasana Banerjee

For the State : Mr. Debajyoti Deb
Ms. Nayana Mukhopadhyay

Heard on : 25th June, 2026

Judgment on : 25th June, 2026

Rajasekhar Mantha, J.:

1. Mr. Debajyoti Deb and Ms. Nayana Mukhopadhyay are requested to appear as learned advocates for the State. Let their appointment be regularized by the office of the Public Prosecutor.

2. The subject appeal is against judgment and/or order of conviction dated 25.04.2017 and 26.04.2027 passed by the learned Additional District & Sessions Judge, Fast Track, 1st Court, Lalbagh in Sessions Trial No.1/February/2016 arising out of Sessions Sl. No.77/15. The appellants were convicted for life under Section 302 of the Indian Penal Code and a fine of Rs.5,000/- each and further sentenced for simple imprisonment of three years each for committing offence punishable under Sections 25(1)(a) and 27(1) of the Arms Act.

THE PROSECUTION CASE:

3. The prosecution case is that on being intimated by the Lalbagh Hospital on 17th July, 2015 UD Case was registered in respect of the death of one Joy Dayal Pandey (Joy). Inquest was conducted on the body of the victim. Investigation was started upon a formal FIR being drawn up on the complaint of P.W.-1, Nandarani Pandey, the mother of the victim, which was filed on 17th July, 2015 in the Murshidabad Police Station.

4. The version of the complainant and the evidence on record unearthed by the prosecution indicates that the victim Joy Dayal Pandey left his house at about 7 in the morning telling his wife P.W.-8, Mamoni Pandey, that he would return in couple of hours.

5. The victim is thereafter stated to have arrived into the house of one Kalu Roy, P.W.-3 and Chumki Roy, P.W.-2. Only Chumki Roy, P.W.-2

was present at the house at that point of time. The deceased is stated to have asked for water and was also possibly eating guava thereafter or prior thereof. After taking water and/or at the time when he was leaving the house of P.W.-2, Chumki Roy, the appellants namely Babu Rajak and his father Manik Rajak are stated to have arrived at the place of occurrence on bicycles. Babu Rajak is stated to have fired from an improvised country made 7.65 bore pistol more than once on the victim. The victim is stated to have received as many as three gunshot injuries, two on the chest and one in the hand. There was an exit wound in respect of one of injuries from the back of the victim.

6. The appellants immediately fled the scene after P.W.2 Chumki Roy raised hue and cry. Hearing the hue and cry, her husband P.W.-3, who was working in a nearby field rushed back to his house and several other local villagers assembled thereat. The victim's body, that was lying motionless, was taken from the place of occurrence to the Lalbagh Hospital where he was pronounced brought dead.

7. After inquest, post mortem was conducted, investigation into the formal FIR being No.383 of 2015 under Sections 302 and 34 of the IPC read with Sections 25 and 27 of the Arms Act was started. The investigation was conducted by P.W.-12 Shimul Kusum Dhar.

8. After conducting detailed investigation, collecting evidence including a bullet, which had embedded in a local fruit tree, and another

bullet and other metal pieces recovered by the post mortem doctor, recording statements under Section 161 of the Cr.P.C. as also the statement of P.W.-2 Chumki Roy under Section 164 of the Cr.P.C., charge sheet was filed.

THE TRIAL

9. Charges were framed against the appellants under Sections 302 read with 34 of the IPC and under Section 25(1)(a) of the Arms Act read with Section 34 of the IPC and under Section and 27(1) of the Arms Act read with Section 34 of the IPC on 4th February, 2016.

10. The trial commenced with the evidence of **P.W.-1, Nandarani Pandey**, the mother of the victim and the de facto complainant. She deposed that she had heard from **P.W.-3 Kalu Roy** that her son was shot at by unknown persons. She thereupon arrived at the house of P.W.-3 Kalu Roy and **P.W.-2 Chumki Roy** along with her daughter-in-law (wife of the deceased) **P.W.-8 Mamoni Pandey**. She found on arrival of the place of occurrence that many persons had gathered thereat. The victim was taken to the Lalbagh hospital by one Lobh Saha.

11. She further deposed that the victim and P.W.-8 Mamoni Pandey got married sometime in the year 2013. She also deposed that she lived in the land, which was enemy property; possession whereof she received from one Sadananda. Her house was admittedly 22 to 25 minutes from the place of occurrence.

12. The star witness of the prosecution was, however, **P.W.-2 Chumki Roy**, the eyewitness. She deposed entirely on the lines of the prosecution case as narrated hereinabove. She further deposed that the investigating officer P.W.-12 Shimul Kusum Dhar arrived at the place of occurrence and collected bloodstained and sample earth. The investigating officer also collected a bullet, embedded on a local fruit tree, which may have missed the victim. It is equally possible that the bullet exited the body of the victim and thereafter embedded on the tree in question.

13. The fact, however, remains that P.W.-2 Chumki Roy had identified the two appellants, who shot at the victim. She deposed that she did not know the victim at all. He was passing by the house and entered thereat asking for water. The incident according to P.W.-2 occurred sometime around 1 o'clock in the afternoon.

14. After being shot at, the victim fell down motionless on the ground and she raised a hue and cry. Several local persons assembled at the place of occurrence along with her husband, who came back from his jute field. She further deposed that after a few days, the police arrived at her house and dug up a pistol identified by the appellants based on leading statements.

15. She was a witness to the seizure of the pistol along with her husband P.W.-3 Kalu Roy. She was also a witness to the seizure of the bloodstained earth as also the bullet head recovered from the fruit tree.

She deposed that after firing at the victim, the two appellants escaped on bicycles.

16. This Court finds from the Trial Court had asked some questions that clarify the prosecution case against the appellants. Her evidence is of sterling quality. There is no preverification or contradiction in her evidence.

17. A minor contradiction pointed out by the learned counsel for the appellants Mr. Mahapatra that as regards the exact time of occurrence and arrival of her husband and other people at the place of occurrence and also that she stated 100 or more people gathered at the place of occurrence whereas her husband stated that 60 or 70 persons and that the post mortem doctor found three to four gunshot wounds on the body of the victim whereas P.W.-2 Chumki Roy stated that she heard only two gunshots sounds are not so serious as to effect her quality of her evidence as an eyewitness.

18. It is quite not possible that more than two bullets were fired at the victim and human nature and the nervous system is such that in a given point of time a lesser or more number of sounds register on the brain. The evidence of P.W.2 Chumki Roy is substantially corroborated by the medical evidence i.e. the post mortem report. This read together with recovery of the weapon on the leading statement of the appellants lends substantial credence to the evidence of P.W.-2 Chumki Roy.

19. The judgement in the case of ***Rai Sandeep alias Deepu Vs. State (NCT of Delhi)*** reported in ***(2012) 8 SCC 21*** particularly the observations in paragraph 22 thereof lend credence to the finding of this Court that the evidence of P.W.-2 Chumki Roy is of sterling quality. The evidence of P.W.-2 Chumki Roy meets all ingredients and requirements stipulated in paragraph 22 in the ***Rai Sandeep*** judgement (supra).

20. This court is, therefore, of the view the conviction of the appellants could have been based on the sole evidence of P.W.-2 Chumki Roy.

21. The prosecution, however, examined as many as 12 witnesses. P.W.-3 Kalu Roy was the husband of P.W.-2 Chumki Roy, who arrived at the place of occurrence after the incident and the appellants had fled. His evidence, lends continuity to the evidence of P.W.-2.

22. The evidence of P.W.-12 Shimul Kusum Dhar, the investigating officer has set out in seriatim, all steps taken in course of investigation. In course of trial, the pistol, the bullet head recovered from the body of the victim as also from the fruit tree and other seizure lists were duly proved beyond any reasonable doubt by the prosecution.

23. The argument of learned counsel for the appellant, Mr. Mahapatra, is that the leading statement of the appellants must indicate the exact place of recovery based on the decision of the Supreme Court are not acceptable to this Court. This Court finds support in the decision of ***Perumal Raja @ Perumal Vs. State, represented by Inspector of***

Police reported in **(2024) SCC OnLine SC 12** that absence of strict compliance of Section 27 of the Evidence Act in each and every case by itself would not be fatal to the prosecution case. The infraction of Section 27 must be demonstrated and aided by other evidence to discredit the recovery of the offending weapons or articles at the instance of the accused persons. Paragraph 24 and 30 of the **Perumal Raja** decision (supra) are set out hereinbelow:

“24. Section 27 of the Evidence Act is frequently used by the police, and the courts must be vigilant about its application to ensure credibility of evidence, as the provision is vulnerable to abuse. However, this does not mean that in every case invocation of Section 27 of the Evidence Act must be seen with suspicion and is to be discarded as perfunctory and unworthy of credence.

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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."

24. In the backdrop of the above, the decision of the Supreme Court in the case of **Pulukuri Kotayya v. Emperor** reported in **AIR 1947 PC 67** would have no manner of application in the facts.

25. This Court is of the view that the non-mention of the place of recovery in the statement under Section 27 of the Arms Act by the appellants as recorded by the investigating officer is not fatal to the prosecution case. The hiding of the weapon behind the house of P.W.-3

Kalu Roy and P.W.2 Chumki Roy in a lemon garden of Salam Sk. cannot be deemed as unusual or out of the ordinary by any stretch of imagination.

CONCLUSION :

26. Having regard to the aforesaid discussions, this Court is of the view that the impugned judgment convicting the appellants and sentencing them is duly supported by the evidence on record. The prosecution has been able to establish the charges against the appellants beyond any reasonable doubt.

27. Hence, the impugned judgement of conviction and sentence calls for absolutely no interference whatsoever.

28. CRA 356 of 2018 fails and hereby dismissed. Consequently, connected application, if any, is also dismissed.

29. Let the Trial Court Records and a copy of the judgement be sent back to the court below.

30. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)

I agree.

(Rai Chattopadhyay, J.)