

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**

**C.R.A. 388 of 2017
Sanjib Chowdhury & Anr.
Versus
The State of West Bengal & Anr.**

For the Appellant	:	Mr. Arindam Jana, Mr. SumantaGanguly, Mr. Yuvraj Chatterjee, Mr. Rahul Surtani, Mr. Saikat Guin.
For the State	:	Mr. SaibalBapuli, ld. A.P.P., Mr. Bibaswan Bhattacharya.
Hearing concluded on	:	09 th April, 2026
Judgment on	:	9 th April, 2026.

RajasekharMantha, J.:

1. The subject appeal is directed against judgment of conviction dated 15th May, 2017 and order of sentence dated 16th May, 2017 passed by the learned Additional Sessions Judge, 11th Court, Alipore, 24-Parganas (South) in Sessions Trial No. 01(02) of 2015 arising out of Sessions Case No. 15(12) of 2014.

2. The appellants were convicted under Section 302 read with Section 34 of the IPC. The appellant was sentenced to life imprisonment and to pay a fine of Rs.5,000/- each. The fine amount if realized was directed to be paid to the family members of the victim. The detention of the appellants during investigation and trial was directed to be set off.

THE PROSECUTION CASE AND THE EVIDENCE ON RECORD

3. On 18th May, 2014, at about 3.30 p.m., **PW-3, Raj Narayan Shaw, the complainant**, was opening his tea shop for the afternoon session. Prior thereto, there was an altercation between the victim Manoj Shaw and the two appellants for drawing water from a municipal supply line at a distance about 20 minutes from the P.O.
4. The altercation continued in front of the P.O., i.e., the tea stall of PW 3. The scuffling between the appellants and the victim ended with the intervention of PW 3 and few other persons. While the appellants left the P.O., the victim remained at the tea stall.
5. The appellants thereafter came back to the place of occurrence duly armed. The appellant no. 1, Sanjib Chowdhury was armed with a double barrel shotgun and appellant no. 2, Dipak Chowdhury was armed with an iron rod.
6. Upon being exhorted by the appellant no. 2, Dipak Chowdhury, appellant no. 1, Sanjib Chowdhury, shot at the victim from a distance of less than a foot. The victim collapsed backward and fell down on the street. The PWs have further deposed that after shooting the victim, the appellants fired a

round in the air threatening the local people not to follow them and escaped thereafter.

7. Upon being informed the Garden Reach Police reached the place of occurrence. By this time, the victim was taken by local people to the PG Hospital at Calcutta, where he was initially treated by **PW-20, Dr. HarshitBaskit**. Before P.W.-20, the appellants were named as the assailants of the victim. A formal complaint was lodged by P.W.-3 which resulted in FIR No.110 dated 18th May, 2014 under Section 302 read with Section 34 of the IPC and Sections 22 and 25 of the Arms Act.
8. From the place of the occurrence the footwear of the victim were seized. No blood was found on the road where the victim fell down. Even the persons who took the victim to the hospital did not find any blood. There was no bloodstain on cloths of such persons.
9. After the victim was declared dead at the hospital, inquest was conducted by the police. Post mortem was thereafter conducted by the **P.W.-18, Dr. Biswanath Kahali**. The police thereafter made several efforts and raids to apprehend the appellants.
10. In course of such raids and on the basis of anonymous information the house of the appellants was raided and the lock was broken open in the presence of the landlord of the house and the sister of the appellants and an independent witness. The police seized two empty cartridges, a wad of a cartridge and two live cartridges. The evidence on record has correlated the same with the double barrel shotgun, used by the appellant. The said

gun belonged to the appellants. Another revolveralbeit country made,was seized along with a closed dragger. Two gun licenses stand in the name of the two appellants were also seized.

11. The appellant no. 1, Sanjib Chowdhury was arrested from Sultanpurin U.P. on 17th July, 2014. The appellant no.2, Dikpak Chowdhury surrendered before the court. Both were remanded in judicial custody.After collecting the P.M report, the investigation was completed and the charge sheet was filed. The trial commenced.
12. **PW 1 was a photographer attached to the detective department of the police,** who photographed the place of occurrence, and the body of the victim at the hospital. **PW-2 was Ganesh Chandra Garai, S. I. attached with the plan making section of the detective department.** He drew a sketch map of the place of occurrence. The sketch map, however, did not indicate existence of a tea stall or flower shop or other shops at the vicinity of the place of occurrence.
13. The date of occurrence was a Sunday.A murder and firing incident took place on that day. Thus, it cannot be ruled out that the shops were shut down or were kept shut out of fear arising from the said incident.
14. PW-3 has deposed that he did not have a nameon his tea stall. PW-1, who photographed the place of occurrence,did so at about 7.30 p.m. in the night. He, therefore, may not have been able to identify any shops at the place of occurrence. Consequently, the said sketch map does not indicate the existence of the shops.

15. PW 3 was the star witness of the prosecution. He witnessed the entire incident and narrated the same completely and fully on the lines of the prosecution case. He was an eye witness to the whole incident. He was the owner of the tea stall. He identified the complaint signed by him. His evidence could not be seriously shaken in cross examination. He knew the victim and the appellants since they frequently visited his tea shops.
16. PW 4 was another local resident, who lived near of the place of occurrence. He was a tutor by profession. He too has deposed on the line of the prosecution case as narrated herein above. He claimed to have been sitting on a chouki near his brother's flower shop. He claimed to have known the victim who was the resident of the locality. He witnessed the entire incident and also stated that the flower shop of his brother located near a local temple. His evidence could not be shaken in cross examination.
17. **PW 5 was an aunt of the victim, an eye witness as was PW-6 was Bittu Shaw, nephew of PW-4. PW 8 was another eye witness, Sanjit Kumar Chowdhury.** He along with others had taken the victim to the hospital. PW 10 was the other eye witness, cousin brother of the victim. He was a seizure witness of and identified the iron rod in course of trial. He has clearly deposed that none of the relatives and family members of the victim arrived at the place of occurrence since they lived far away at a place called "Jagaddal".

18. PW-11 to 17 were seizure witness of weapons, the gun license empty and life cartridges and tenancy agreement that the victim had with his landlord, namely, PW-16.

19. **PW-18 was the P. M. Doctor, Biswanath Kahali.** PM report was exhibited. The opinion of the PM Doctor was that the victim died due to effect of shotgun pellet injuries. Injuries were such that fractured 7 to 10 ribs on the left side of the anterior end of the body and there were no other injuries detected on the external part of the body. The dispersion of the pellets within the body of the victim caused internal bleeding which eventually led to the death of the victim.

20. Based on the above evidence, the Trial Judge convicted the appellants under the provisions of Sections 302/34 of the Indian Penal Code and sentenced them as stated above.

ANALYSIS OF THIS COURT

21. Mr. Jana, learned Counsel appearing on behalf of the appellants has argued this appeal over a period of two days. He has placed the evidence of each of the witnesses in substantial detail.

22. The first argument advanced was with regard to the sketch map and the absence of mention of the Tea Stall and other shops therein. As already discussed hereinabove, the incident having being taken place in the late evening on a Sunday, it is most likely that all shops including the Tea Stall in front of which the incident occurred, must have been shut. It is unlikely that the photographer, who took the pictures late in the evening and the

sketch map artist of the police would have found any shop open on that date. Further, the sketch map is not a substantive piece of evidence. The PWs have clearly deposed there was the tea stall of PW 3 at the PO.

23. The next argument of Mr. Jana is that there is a serious anomaly with regard to the recovery of the fire arms. No leading statement of the appellant under Section 27 of the Evidence Act, 1872 has been disclosed or relied upon by the prosecution. He, therefore, submits that the use of the firm arms and the rod in the offences in question has not been established by the prosecution.

24. The weapons used in commission of a crime can also be secured by the prosecution on tip off or independent raids conducted by them. The investigating agency takes recourse to Section 27 of the Evidence Act, 1872, to establish the mental awareness of the accused regarding the offending weapon and the place where it was kept, provided that the accused has revealed any such piece of information leading to the discovery of the said weapon.

25. Thus, in absence of any such disclosure by the accused, the investigation agency indeed relies on tip off(s), followed by raids. In such cases, the accused persons are linked with the crime when the recovered weapons correlate with the crime and accused.

26. In the instant case, as pointed out by Mr. Jana, the ballistic report only indicates that the double barrel gun was used in the past. The use of gun therefore cannot be ruled out. The wad of the cartridges recovered was in

factco-related with the double barrel gun seized. Apart from this, the ballistic report does not mention that the empty cartridges fired arms from the same weapons.

27. Be it noted that an empty cartridge of a shot gun does not fall out of the weapons after it is fired. It remains in the barrel and is required to be manually removed and replaced by another live cartridge. However, unless the empty cartridges are shown to the ballistic expert, an opinion as to whether the pellet shots flew from the one of the cartridges at the victim, from the same weapon seized by the police cannot be given.

28. This Court is of the view that one does not have to go as far as the report of the ballistic experts since the ballistic report is not a substantive piece of evidence. It is a corroborative piece of evidence. There are as many as five eyewitnesses to the incident whose ocular evidence cannot be brushed aside.

29. The evidence of six eyewitnesses, namely, PW-3, PW-4, PW-5, PW-6, PW-8 and PW-10 with minor variation and some casual inconsistencies would make the eyewitness account all the more acceptable and reliable. The evidence of six eyewitnesses is not parrot like. The eyewitnesses account alone is sufficient to lead to a conviction of the appellants.

30. In ***Ram Singh V. The State Of U.P. reported in 2024 INSC 128***, it was held that when the eye witness account is unimpeachable, the ballistic report takes a back seat. Para no. 29 of ***Ram Singh decision (supra) is set out below:-***

29. ...Obtaining of ballistic report and examination of the ballistic expert is again not an inflexible rule. It is not that in each and every case where the death of the victim is due to gunshot injury that opinion of the ballistic expert should be obtained and the expert be examined. **When there is direct eye witness account which is found to be credible, omission to obtain ballistic report and nonexamination of ballistic expert may not be fatal to the prosecution case...**

Emphasis applied

31. The two appellants were admittedly working as Security Guards and are deployed with weapons in course of performance of their duties. The existence of the gun license standing in the name of the two appellants, therefore, would not have rendered the arms in their possession illegal and hence the Trial Judge did not convict the appellants under Sections 25 and 27 of the Arms Act. The possession of the guns by the appellants is thus established.

32. The next argument of Mr. Jana is that no blood at all was found either at the place of occurrence or the clothes of the victim. The persons, who carried the victim to the hospital, have deposed that they did not find any blood on the victim. Consequently, the clothes of those persons did not have any blood strains.

33. A shotgun cartridge normally contains rounded lead coated pellets. The pellets shot out of the cartridge are given direction by the barrel of the gun fired from a very close range. The pellets enter into the body of the victim leaving only a small puncture wound/ blister because of force of entry.

34. The tissue of human body normally surrounds the pellet and enclosing it leaving a blister of entry at best. The blister and the circling tissues around the pellet often results in very limited blood loss and much less any flow of blood from the body. This is, as opposed to a normal bullet with a slug fired from any common weapon. Such a slug creates a large open wound upon entering into the body. There may be an exit wound if the bullet is powerful enough depending upon its caliber. It is in such instance that there is serious blood loss visible from the body of the victim both from the entry and exist wound.

35. Having regard to the above, this Court is of the view that it is unlikely that there was any possibility of any serious blood flow from the victim's body after being fired upon with a shotgun that is equated with the effect of double barrel gun. The clothes of the victim were perforated and may have covered the minuscule blood flow.

36. The PM Doctor, PW 18, has found that the gun shot injuries caused internal bleeding in the person of the victim. He did not find any external injuries. The absence of blood, flowing from the body of the victim after being shot at, thus is consistent with the nature of injuries caused by the lead coated pellets. The absence of blood in the body of the victim therefore links the gun with the injuries of the victim given that the shotgun has been recovered the house of the appellants.

37. The next argument of Mr. Jana is that Serology Report is inconclusive. Indeed, this Court finds that the report of the Serology to whom viscera of the victim were sent for examination is inconclusive since controlled blood of the victim was not sent along with the samples of little blood found on the victim's immediate clothes i.e. his shirt and vest.

38. As already discussed hereinabove, there is very little blood that comes out of the body of a victim when fired upon with a shotgun. This, however, did not absolve the police of sending the blood from other parts of the body of the victim to this FSL for a proper Serology report.

39. The next argument of Mr. Jana was based on the evidence of PW-24, the Investigating Officer of the case. The Investigating Officer in his evidence has clearly deposed that except for PW-3, no statement of any of the other witnesses was formally recorded under Section 161 of the Code of Criminal Procedure.

40. This Court definitely notes an omission on the part of the Investigating Officer of the case in this regard. The other witnesses may not have been present immediately when the Officers of the Garden Reach Police Station reached the place of occurrence. The statements of these witnesses cited in the charge-sheet, must be based on the investigation and their examination.

41. It is most likely that the statements may have been recorded at a much later date in course of investigation and other witnesses. The Investigating Officer of the case (PW-24) has only stated that the other witnesses of the prosecution did not give any statement to the Investigating Officer of the case

when he visited the place of occurrence or immediately thereafter. However, the statement of PW 3 was recorded on the date of the incident.

42. The non-recording of a statement under section 161, CRPC, pales into insignificance when the said prosecution witnesses have deposed in the trial and withstood cross-examination. The non-recording of a statement of a witness under Sec. 161, CRPC is not equivalent to non-examination or non-interrogation of the said witness by the police during investigation. The appellants, therefore, could not and have not run the case that the prosecution witnesses have deposed for the first time in the trial.

43. The last of the two arguments advanced by Mr. Jana are with regard to the evidence of PW-12, PW-13, PW-16 and PW-17. The said persons were witnesses to the seizure of the gun licenses, the bullets, the double barrel gun and the iron rod. While the iron rod was recovered upon a leading statement under Section 27, no formal statement was recorded to that effect at the police station. No such statement was, in fact, produced in course of trial.

44. Strict compliance of Section 27 may not be warranted in each and every case. The same may, in fact, impede the investigation. The procedural non-compliance thereof would not ipso facto, negate the recovery of a weapon used in course of a crime, when the same is supported It is in the surrounding facts and circumstances that the rigor and application of Section 27 must be essentially looked at. In ***Perumal Raja @ Perumal v.***

State, Rep. By Inspector Of Police, reported in 2024 INSC 13, it was held as follows:-

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**

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.

Emphasis applied

45. Indeed it is true that it is only the investigating officer in course of evidence who was confronted with the double barrel gun and the cartridges. The seizure witnesses were not so confronted. It was therefore incumbent upon the defense to cross-examine the IO in this regard and rip apart the said recovery. It is now well-settled that minor omissions and irregularities in an investigation will not by themselves lead to upsetting a conviction that is otherwise based on substantive evidence.

46. In the instant case, there are as many as six eyewitnesses who had seen the appellant No.1 fire a weapon upon being exhausted by the appellant No.2. The iron rod was more a backup weapon if for some reason the shotgun did not meet its target.

47. The appellants after the initial brawl with the victim over collection of municipal drinking water had sufficient cooling off time to go back and fetch the weapons in question. The appellants thus clearly intended to end the life of the victim by reason of using a double barrel gun which they otherwise in the

normal course of their work were possessing. The appellants with common intention of ending the life of the victim. The appellants were trained in use of and was aware of the capacity of such double barrel gun. Thus, they also carried the iron rod with them.

48. In the backdrop of the aforesaid discussion, this Court is of the clear and unequivocal view that the prosecution has been able to prove its case beyond reasonable doubt. The impugned judgment and/or order of conviction and sentence, therefore, call for no interference.

49. Accordingly, CRA 388 of 2017 fails and hereby dismissed. Consequently, all connected applications, if any, stand dismissed.

50. However, the statutory remedies, inter alia, for remission would still be available to the appellants in accordance with law.

51. Let the TCR along with a copy of this judgment be returned back to the trial Court for necessary action.

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

(RajasekharMantha, J.)

I agree.

(Rai Chattopadhyay, J.)