

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

APPELLATE SIDE

CRA (DB) 314 of 2025

With

CRAN 1 of 2025

Mobaidul Hossain @Islam @ Sk. Mobaidul Islam

Vs.

The State of West Bengal

With

CRA(DB) 278 of 2025

With

CRAN 1 of 2025 and CRAN 2 of 2025

Barun Diger & Ors.

Vs.

State of West Bengal

With

CRA(DB) 279 of 2025

With

CRAN 1 of 2025 and CRAN 2 of 2025

Gopal Diger @ Diger & Ors.

Vs.

The State of West Bengal

Before: The Hon'ble Justice Arijit Banerjee

&

The Hon'ble Justice Apurba Sinha Ray

For the Appellants in CRA (DB) 314 of 2025	: Mr. Sabir Ahmed, Adv. Mr. Dhiman Banerjee, Adv. Mr. Amit Singh, Adv.
For the State in CRA (DB) 314 of 2025	: Mr. Debasish Roy, Id. P.P. Ms. Amita Gour, Adv.
For the appellants in CRA (DB) 278 of 2025 and CRA (DB) 279 of 2025	Mr. Bikash Ranjan Bhattacharyya, Sr. Adv. Mr. Rabi Sankar Chattopadhyay, Adv. Mr. Uday Sankar Chattopadhyay, Adv. Mr. Suman Chatterjee, Adv. Mr. A. R. Bhattacharya, Adv. Ms. Trisha Rakshit, Adv. Mr. S. Rakshit, Adv. Ms. B. Chakraborty, Adv. Ms. S. Parveen, Adv.
For the State in CRA (DB) 278 of 2025 and CRA (DB) 279 of 2025	Mr. Debasish Roy, Id. P.P. Ms. Anasuya Sinha, Adv. Ms. Nandini Chatterjee., Adv.
Reserved on	: 22.01.2026
Judgment on	: 12.03.2026

Apurba Sinha Ray, J.:-

1. The above criminal appeals have been filed by the appellants against the judgment and order of conviction dated 23.06.2025 and order of sentence dated 24.06.2025 passed in connection with the S.T. Case No. 01 (07) 2016 (S.C. Case No. 95 of 2015) of the Learned Court of Additional District and Sessions Judge, 1st Court, Arambagh at Hooghly on the grounds inter alia that the learned Trial Judge did not consider the evidence on record in proper perspective and the above judgment was passed on the basis of deposition of witnesses who were highly interested parties. Although the incident of murder of one Sk. Naimuddin allegedly took place due to political rivalry, the learned Trial

Judge has solely relied upon the deposition of politically interested witnesses. Moreover, although there was an allegation that most of the appellants were carrying firearms at the time of incident and they opened fire on the air, neither any fire arm nor any empty cartridges were recovered from the alleged place of occurrence. No ballistic report was submitted in support of the prosecution case. Furthermore, although in the inquest report the witnesses did not name the actual assailants, the present appellants were entangled in the relevant case due to political rivalry.

2. Md. Samim, Learned Advocate appearing for one of the appellants namely Mobaidul Hossain @ Islam has argued that there were several contradictions in the prosecution case in respect of the person who actually shot at the deceased. No eyewitness implicated the present appellant Mobaidul Hossain. But without taking into consideration the materials on record, the Learned Trial Judge has convicted Mobaidul Hossain alongwith others. Mr. Samim has further submitted that there was no seizure of firearms or anything from the appellant Mobaidul. The blood stained nomination paper was seized after almost one year and eight months of the alleged incident from the house of the deceased. Mr. Samim has further argued that no bomb or remnants of a bomb was seized either from the place of occurrence or from the possession of the appellant Mobaidul.
3. Mr. Samim has relied upon several judgments in **Meharaj Singh vs. State of UP** reported in **(1994) 5 SCC 188**, **Mohd. Muslim vs. State of Uttar Pradesh (Now Uttarakhand)** reported in **(2023) 7 SCC 350**,

Zainul vs. State of Bihar reported in **(2025) SCC Online SC 2152**, ,
Masalti and Ors. vs. State of Uttar Pradesh reported in **(1964) SCC Online SC 30**.

4. The Learned Counsel appearing for the other appellants adopted the arguments of Mr. Samim and Mr. Bhattachryya who had made his detailed submission in connection with CRA (DB) 272 of 2025 Baladeb Paul @ Baldeb Paul vs. State of West Bengal and Ors.
5. We have considered the submission of the learned Counsel of the above appellants and also taken into consideration the reported judgments as cited from the side of the aforesaid appellants.
6. From the deposition of PW 1 it is found that she came to know about the presence of the above appellants from one Kajal Roy who was examined as PW 8. Therefore, PW 1 did not see any of the appellants with her own eyes in committing the crime. PW 2, Ashok Kumar Roy and PW 4 Kanailal Dey were declared hostile. PW 3 Sk. Harun Ali Rashid, brother of the deceased was also informed about the presence of the appellants at the time of occurrence by the said PW 8 Kajal Roy. However, in his deposition PW 3 has stated that after receiving the information he went to the spot and found that one Baldeb Pal was with a firearm in hand in running condition and he also found one Saheb Pal was firing and Sahadeb Pal was roaming on the spot with Lathi in hand. He further deposed that one Mobaidul Islam was present or roaming on the spot with a bomb in hand. Santosh Pandit, Tapas Khan, Swapan Roy, Tarun Kanti Mondal, Gajan Paramanik, Sk. Abdul Safique, Chowdhury Kamrul Alam, Chowdhury Mehebab Hossain,

Chowdhury Akhtarul Haque and others were present there with firearms etc. He also deposed that they were also trying to throw bombs towards the public to create fear amongst them. PW 5 Tarapada Roy was declared hostile whereas PW 6 Sk. Sairaf Ali deposed that on the relevant date when they were filling up the form, some miscreants namely Baladeb Paul, Saheb Pal, Santosh Pal, Tapas Kha, Swapan Roy, Asit Ghosh, Santosh Pandit, Akhtar Chowdhury (Chowdhury Akhtarul Haque), Asit Singha Roy, Gajan Paramanik, Nakul Diger, Sitaram Pal, Tapan Chowdhury, Chowdhury Kamrul Alam suddenly came to the spot and attacked them. In his cross-examination he has stated that Baladeb Paul, Saheb Pal, Nakul Diger, Tapas Khan, Santosh Pandit were with revolver and rest were with lathi, tangi, etc. and Baladeb Paul shot Naimuddin and others were firing in the air.

7. PW 7 Samir Malik has stated that when Kajal Roy and Naimuddin were filling up the election form suddenly Baladeb Paul, Saheb Pal, Sahadeb Pal, Swapan Roy, Asit Ghosh, Santosh Pandit, Tapas Khan, Nakul Diger, Barun Diger, Pannalal Mondal, Akhtarul Haque Chowdhury, Kamrul Alam Chowdhury, Meheubub Chowdhury, Gajon Pramanik attacked them with fire weapons, gun lathi, rod tangi etc. and Baladeb Paul shot Sk. Naimuddin.

8. PW 8 Kajal Roy has deposed that when they were engaged in filling up the nomination papers suddenly about 50 persons surrounded them and started assaulting them. They all had firearms, lathi, tangi, bombs etc. in hand. Baladeb Paul fired at Naimuddin at the left side of his neck. Apart from that Sk. Abdul Safique, Nakul Diger, Saheb Pal,

Sahadeb Pal, Tapas Khan, Swapan Roy, Sitaram Pal, Asit Singha, Santosh Pandit, Chowdhury Meheebub Hossain, Chowdhury Kamrul Alam@Topa, Chowdhury Akhtarul Haque@Akhtar, Barun Diger, Asit Ghosh were also carrying fire arms in their hands.

- 9.** PW 9 Fatik Mallik deposed that on the relevant date around 10.30 a.m. he was in the market and suddenly he heard a sound and found some persons were loitering or running hither and thither and also found that Baladeb Paul was shouting with a pistol in his hand as “*kaj hoyegache, kaj hoyegache*” and also found that Naimuddin was lying on the ground with bleeding injuries. He also found Saheb Pal and Nakul Diger were helping Baladeb Paul.
- 10.** PW 10 Sk. Nausher Ali deposed that he found four persons with lathi and they were Saheb Pal, Tapas Kha, Nakul Diger, Barun Diger who were with Baladeb Paul.
- 11.** PW 11 Chowdhury Ajahar Ali deposed that he found Baladeb Paul firing at Naimuddin at the backside of his head. At some distance some other persons like Saheb Pal, Sahadeb Pal, Barun Diger, Nakul Diger, Asit Ghosh, Tapas Kha and others were rejoicing with weapons in their hands.
- 12.** From the deposition of PW 6 it appears that Baladeb Paul shot Naimuddin and the concerned appellants were present. Some of the witnesses have deposed that they were with firearms. PW 6 being one of the alleged eye-witnesses has named 14 persons including one Baladeb Paul whereas PW 7 disclosed the name of 13 persons who accompanied the principal accused Baladeb Paul. It is also found that PW 8, another

vital and important witness, has named 14 accused persons apart from Baladeb. Another eyewitness PW 9 has named only two appellants namely Saheb Pal and Nakul Diger who were allegedly helping Baladeb. PW 10 saw Saheb Pal, Tapas Kha, Nakul Diger and Barun Diger with lathi whereas PW 11 Chowdhury Ajahar Ali has stated that Saheb Pal, Sahadeb Pal, Barun Diger, Nakul Diger, Asit Ghosh, Tapas Kha and others were enjoying and running towards Naimuddin with weapons in their hands. The record shows that not a single fire arm was recovered from the said accused persons inspite of there being sufficient opportunity to recover and seize the said fire arms from the possession of the said accused persons. It is also found from the depositions of some of the witnesses that the accused were firing in the air. If that be so, there must have been some empty cartridges in the place of occurrence but not a single empty cartridge was seized by the Investigating Officer from the alleged place of occurrence.

13. Although the present appellants were convicted and sentenced to suffer life imprisonment, one Baladeb Paul was sentenced to death. In view of such a sentence of death, a Death Reference being no. 08 of 2025 was considered by this Court alongwith the Criminal Appeal being no. CRA 272 of 2025 filed by the said death row convict Baladeb Paul against the judgment of conviction and death sentence. Today this Court by a judgment and order dated 12.03.2026 has concluded that the prosecution case had serious loopholes and after considering all the materials on record, the said death row convict was acquitted and the sentence of death in connection with Death Reference no. 08 of 2025

was not confirmed. CRA 272/2025 was allowed, and the judgment and conviction was set aside so far as the said convict is concerned.

14. When the principal accused Baladeb Paul has been able to show that there are several lacuna in the prosecution case, we find that the present petitioners are also entitled to the same benefit. In its judgment dated 12.03.2026 this Court has pointed out several loopholes and they are as follows:-

- i) *“No independent witness supported the prosecution case; the prosecution has relied upon some interested witnesses in convicting the accused Baladeb Paul.*
- ii) *No recovery of the weapon was done by the investigating officer.*
- iii) *The gun/revolver which the convict Baladeb Paul was alleged to have used at the time of commission of offence was neither seized nor sent to forensic laboratory for analysis to pin point that the said convict made the gunshot upon the victim Naimuddin.*
- iv) *The contents of the inquest report were withheld by the prosecution and were not made admissible in the evidence.*
- v) *The doctor who recovered the bullet from the body of the deceased had deposed that the bullet shown to him during trial was not recovered from the body of the victim.*
- vi) *The FIR was sent to the concerned police station more than three hours after the incident via a relative of the defacto complainant.*
- vii) *PW19, the second investigating officer has stated that none of the witnesses in the inquest report name Baladeb Paul as the assailant of the deceased. It is not clear if the witnesses to the*

said inquest report knew that Baladeb Paul fired Naimuddin from the back side, what prevented them from narrating the same before the concerned officer conducting the inquest report.

- viii) No injury report for the assault upon the witnesses apart from the deceased or any weapon in that regard was seized by the investigating officer.*
- ix) The GDs mentioned in the formal FIR are not brought on record to lend support to the prosecution case,*
- x) Four local witnesses declined to support the prosecution case,*
- xi) No ballistic report was received during the trial.*
- xii) The contents of statements under Section 164 Cr.P.C. were not admitted in evidence but the learned Judge relied upon their unexhibited contents.*
- xiii) Non-production of Judicial Magistrates who recorded the statements under Section 164 Cr.P.C.”*

15. The learned Trial Judge at page no. 54 of his judgment has explained as to why the learned Trial Judge did not consider non-seizure of offending weapon as a fatal blow to the prosecution case. According to him all the prosecution witnesses from PW 1 to PW 11 deposed that they saw Baladeb Paul and other accused persons with fire arms and other offending weapons in their hands at the time of incident and “such clear, consistent, reliable and cogent evidence of such witnesses does not require the offending weapon to be seized by the police as such weapon which has been used in the commission of the crime and as such this is not fatal to the prosecution.”

16. We have already discussed that it is wrong appreciation of evidence on the part of the learned Trial Judge that “*PW 1 to PW 11 deposed that they saw Baladeb Paul and other accused persons with fire arms at the time of incident and such witnesses clearly deposed that Baladeb Paul shot the victim on his head and other accused persons were firing in the air after Baladeb Paul shot the victim*”. From the evidence on record it transpires that PW 1, PW 3, PW 5, PW 9, PW 10 did not say that they saw Baladeb Paul shoot Naimuddin and other accused were firing on the air after Baladeb Paul shot Naimuddin. PW 2 and PW 4 were declared hostile. Therefore, it is incorrect to say that all the PWs including PW 1, PW 2, PW 3, PW 4, PW 5, PW 9 and PW 10 saw the convict Baladeb Paul to shoot Naimuddin and the other accused were firing in the air. At the time of the incident the said witnesses were not present as per their deposition on record. In spite of such circumstances, the learned Trial Judge has made the wrong observation. The remaining witnesses namely PW 6, PW 7, PW 8, PW 11 have supported the prosecution case. PW 6, Sairaf Ali has disclosed the names of 14 accused persons namely Baladeb Paul, Saheb Pal, Santosh Pal, Tapas Khan, Swapan Roy, Asit Ghosh, Santosh Pandit, Akhtar Chowdhury (Chowdhury Akhtarul Haque), Asit Singha Roy, Gajan Paramanik, Nakul Diger, Sitaram Pal, Tapan Chowdhury, Chowdhury Kamrul Alam. He has further stated that Baladeb Paul, Saheb Pal, Nakul Diger, Tapas Khan, Santosh Pandit were with revolver and rest were with lathi, tangi, etc. and Baladeb Paul shot Naimuddin and others were firing in the air. PW 7, Samir Mallick has named 14

persons as their attackers. They are Baladeb Paul, Saheb Pal, Sahadeb Pal, Swapan Roy, Asit Ghosh, Santosh Pandit, Tapas Khan, Nakul Diger, Barun Diger, Panna Lal Mondal, Akhtar Chowdhury, Kamrul Alam Chowdhury, Mehebab Chowdhury, Gajon Pramanik attacked Sourav Mondal, Samir Mallick (PW 7), Sk. Nausar Ali, Azad Chowdhury, Sitaram Panja by fire weapons, gun, lathi, rod tangi etc. and he further stated Baladeb Pal shot Sk. Naimuddin.

- 17.** PW 8 has named 14 persons as accused apart from Baladeb Paul and they are Sk. Abdul Safik, Nakul Diger, Saheb Pal, Sahadeb Pal, Tapas Khan, Swapan Roy, Sitaram Pal, Asit Singha, Santosh Pandit, Chowdhury Mehebab Hossain, Chowdhury Kamrul Alam@Topa, Chowdhury Akhtarul Haque@Akhtar, Barun Diger, Asit Ghosh. They were carrying fire arms in their hands and firing in the open air. PW 9 Fatik Mallick has named only 3 accused namely Saheb Pal, Nakul Diger and Baladeb Paul. According to him Saheb Paul and Nakul Diger were helping Baladeb Paul. PW 11 had mentioned that Saheb Pal, Sahadeb Pal, Barun Diger, Nakul Diger, Asit Ghosh, Tapas Kha along with others were present and they were rejoicing and running towards Naimuddin with weapons at hand. There is noticeable deviation in the depositions of the said witnesses namely PW 6, PW 7, PW 8, PW 9, PW 11 regarding the names of the accused persons who were present along with Baladeb Paul. However, it appears that the learned Trial Judge did not consider the evidence on record properly.

18. At page nos. 6 and 7 of the judgment the learned Trial Judge has mentioned in a tabular form the list of exhibits from the side of prosecution and they were as follows:-

Sl. No.	Exhibit Number	Description
1.	Exhibit 1	Written complaint.
2.	Exhibit 1/1	Endorsement on written complaint with signature and seal of PW 18.
3.	Exhibit 2	Seizure List dated 10.07.2023.
4.	Exhibit 2(a)	Signature of PW 1 on seizure list dated 10.07.2013.
5.	Exhibit 2/2	Signature of PW 16 on seizure list dated 10.07.2013.
6.	Exhibit 2/3	Signature of PW 17 on seizure list dated 10.07.2013.
7.	Exhibit 3/a	Signature of PW 3 on inquest report.
8.	Exhibit 3/b	Signature of PW 8 on inquest report.
9.	Exhibit 4/a to Exhibit 4/d	Signatures of PW 3 on statement u/s 164 Cr.P.C.
10.	Exhibit 5/a to Exhibit 5/d	Signatures of PW 8 on statement u/s 164 Cr.P.C.

11.	Exhibit 6	Post Mortem Report of the victim.
12.	Exhibit 6/1	Signature of PW 14 on Post Mortem Report.
13.	Exhibit 6/2	Signature of PW 15 on Post Mortem Report.
14.	Exhibit 7	Carbon process of Dead Body Challan.
15.	Exhibit 8	F.S.L report.
16.	Exhibit 9	Formal FIR.
17.	Exhibit 10	Seizure list dated 09.12.2011.
18.	Exhibit 11 and 11/1	Rough Sketch Map of P.O with Index.
19.	Exhibit 12	Seizure list dates 09.12.2011 prepared by Satya Barik.
20.	Exhibit 13	Carbon copy of forwarding letters to FSL, Kolkata of bullet head & other items, comprising of 4 pages.

19. It appears that from page no. 52 of the judgment the Learned Trial Judge has mentioned as follows:-

“Exhibit 3 is the Inquest Report which was held on the date of incident at 13.30hrs which

inquest was held immediately after filing of the complaint.”

20. But from the original record, we find that there is no Exhibit 3 in the list of exhibits of the prosecution. Although the signatures of PW 3 and PW 8 on the inquest report have been marked as Exhibits 3a and 3b respectively and although the contents of the said inquest report were not admitted in evidence, the learned Trial Judge has proceeded to dispose of the case as if the inquest report has been marked as Exhibit 3. We have already mentioned that the Officer who conducted the inquest report namely Satya Barik was not examined by the prosecution. If the contents of the inquest report were not admitted in evidence how the Learned Trial Judge has recorded that the inquest report has been marked as Exhibit 3 and the same was held immediately after filing of the complaint.

21. Similar is the situation in case of the statement of PW 3 recorded under Section 164 Cr.P.C. Although the Magistrate was not called as a witness and his deposition was not recorded, the learned Trial Judge proceeded to dispose of the matter holding that the statement under Section 164 Cr.P.C. has been marked as Exhibit 4. From the list of Exhibits of the prosecution, it appears that there is no such Exhibit 4 mentioned in the said list at page nos. 6 and 7. Only the signatures of PW 3 on the statement of 164 Cr.P.C. was marked as Exhibit 4a to Exhibit 4d. It is also found that although the concerned Magistrate was not examined before the learned Trial Judge at the time of trial, the statement of PW 8 before the learned Magistrate recorded under

Section 164 Cr.P.C. was shown in Page No. 52 of the judgment as Exhibit 5 but actually there is no Exhibit 5 in the list of exhibits of the prosecution as mentioned above. Only the signatures of PW 8 on the statement under section 164 Cr.P.C. were marked as Exhibit 5a to Exhibit 5d. In spite of the fact that the two statements of PW 3 and PW 8 recorded under Section 164 were not proved by producing the concerned Judicial Magistrate or Magistrates before the learned Trial Court, and the contents of the said statements of the witnesses under Section 164 Cr.P.C., were not admitted in accordance with law, the Learned Trial Judge has proceeded to hold that PW 3 and PW 8 narrated the entire incident to the learned Magistrate and it is seen that Exhibit 4 and Exhibit 5 (not mentioned in the Exhibit list) corroborated the evidence of such witness in all respects. We have gone through the original Trial Court record and examined the same and found that there is no Ext. 3, Ext. 4, Ext. 5 as depicted by the learned Trial Judge. This is a clear non-application of mind and dereliction of duties entrusted upon a Judicial Officer.

22. The prosecution has relied upon the evidence of interested witnesses only and there is no corroborative piece of evidence to support such deposition of the said witnesses.

23. In view of the above discussion we are not satisfied that conviction of the above appellants is sustainable in law and in facts. Hence, we are inclined to set aside the judgment and order of conviction dated 23.06.2025 and order of sentence dated 24.06.2025 passed in connection with the S.T. Case No. 01 (07) 2016 (S.C. Case No. 95 of

2015) of the Learned Court of Additional District and Sessions Judge, 1st Court, Arambagh at Hooghly.

24. Accordingly, the appeals are allowed. The judgment of conviction and sentence recorded by the learned Trial Judge is **set aside** and the appellants are acquitted of the charge.

25. The appellants **Barun Diger, Nakul Diger, Saheb Pal, Akhtarul Hauque Chowdhury, Swapan Roy@ Nikhil, Kamrul Alam Choudhury@ Tapan, Tapas Kha, Gopal Diger, Pannalal Mondal, Gajan Pramanick Madon@ Madan Mohan Ghosh, Sk. Abdul Safik, Asit Ghosh@ Udo, Choudhury Mahadhub Hossain, Santosh Pandit, Tarun Kanti Mondal@ Abhi, Asit Singha Roy, Mobaidul Hossain@ Islam@ Sk. Mobaidul Islam** be set at liberty at once if they were not wanted in any other case.

26. The appeals being nos. **CRA (DB) 278 of 2025 with CRAN 1 of 2025 and CRAN 2 of 2025, CRA (DB) 279 of 2025 with CRAN 1 of 2025 and CRAN 2 of 2025, CRA (DB) 314 of 2025 with CRAN 1 of 2025,** are hereby **allowed**. No order as to Costs.

27. Accordingly, **CRA (DB) 278 of 2025 with CRAN 1 of 2025 and CRAN 2 of 2025, CRA (DB) 279 of 2025 with CRAN 1 of 2025 and CRAN 2 of 2025, CRA (DB) 314 of 2025 with CRAN 1 of 2025** are **disposed of**.

28. Let a copy of this judgment along with the Trial Court Records be sent to the Learned Court below.

29. Urgent photostat certified copies of this Judgment, if applied for, be supplied to the parties on compliance of all necessary formalities.

I agree.

(APURBA SINHA RAY, J.)

(ARIJIT BANERJEE, J.)