

1Form No. J(1)

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

Present :

**The Hon'ble Justice Rajasekhar Mantha
And
The Hon'ble Justice Md. Shabbar Rashidi**

C.R.A. 564 of 2016

**Sekhar Kirtania and another
Versus
The State of West Bengal
With**

**CRA 15 of 2021
Sumit Biswas
Versus
The State of West Bengal**

For the Appellant
in CRA 564 of 2016: Mr. Swapan Kumar Mallick,
 Mr. Mazahar Hossain Chowdhury

For the Appellant
In CRA 15 of 2021 Mr. Subhasish Pachhal

For the State
In CRA 564 of 2016: Mr. Debasish Roy, Ld. PP
 Ms. Anasuya Sinha,
 Ms. Rajnandini Das

For the State
In CRA 15 of 2021 Mr. Madhusudan Sur, APP
 Mr. A. Manna

Heard on: 19.02.2026.

Judgment on: 19.02.2026.

Rajasekhar Mantha, J.:

1. CRA 564 of 2016 is directed against judgement dated 12.07.2016 and order of conviction dated 13.07.2016 respectively passed by the learned Additional Sessions Judge, 5th Court at Barasat in Sessions Case No. 26(4) of 2014 and Sessions Trial No. 1(7) of 2014.
2. CRA 15 of 2021 is directed against judgement dated 21.12.2020 and order of conviction dated 22.12.2020 respectively in Sessions Case No. 1056 of 2014 and Sessions Trial No. 1(7) of 2014.
3. The two appeals are taken up together as the genesis is a common incident where one Pintu Biswas was killed.
4. Originally six persons were named as accused in the FIR No. 609 of 2013 of Ashok Nagar P. S. dated 03.11 2013. Charge sheet was also filed against six persons. However, since four persons were absconding, Trial commenced against the appellants in CRA 564 of 2016 and was concluded.
5. The two appellants, namely, Sekhar Kirtania and Goutam Ballav were sentenced to rigorous imprisonment for life and fine of Rs.5000/- for committing offence under Sections 302/34 of the IPC.
6. The Original trial being ST 1(7)/2014 was also continuing in respect of accused Sumit Biswas. He was present until the

examination of PW 9. He was granted bail by this Court and absconded thereafter.

7. After he was apprehended, the Trial recommenced when PW 9 and 11 were recalled. He adopted cross-examination of PW 10 and 11 by the appellants in CRA 564 of 2016. The examination-in-chief of PW-10 and PW-11 were reiterated by them without repetition.

8. The appellant in C.R.A. 15 of 2021 was examined under Section 313 of the Code of Criminal Procedure and separate judgment and order of conviction was delivered. The said Sumit Biswas was convicted under Section 302 read with Section 34 of the Indian Penal Code and sentenced to suffer Rigorous Imprisonment for life and pay fine of Rs.10,000/-. The other three accused persons in the charge-sheet remain absconding as on the date. Hence, no trial was held against them.

PROSECUTION CASE, THE EVIDENCE ON RECORD, AND ANALYSIS OF THIS COURT

9. The facts common to both these appeals are that on the day of Kali Puja (Deepavali in Bengal) of the year 2013 i.e. 2nd November, 2013, the victim Pintu Biswas, a local resident and President of a local Club that was holding Kali Puja festival, objected to the appellants and three others bursting fire crackers.

10. The evidence on record indicates that the victim may have been intoxicated. The daughter, namely, Payel Biswas (PW-2) was present throughout the evening and witnessed the incident. Her mother, namely, **Namita Biswas (PW-1)**, who was present at the place of occurrence until 10:30 P.M. went back home and slept off.

11. It appears from the evidence that an altercation had broken out between the victim on one hand and six persons, namely, Tanmoy, Sumit Biswas, Goutam Biswas, Sekhar Kirtania, Dwarik @ Dilip and Sunil on the other.

12. The victim had objected the accused persons bursting fire crackers. The accused enraged with the victim and possibly due to a past rivalry, attacked the victim.

13. The appellant Sekhar Kirtania is stated to have assaulted the victim with a chopper on his forehead and neck thrice. On the victim falling down, the aforesaid accused persons started to assault the victim with a spade and bricks lying nearby.

14. As the altercation ensued, PW-1 was alerted. She woke up and came rushing to the place of occurrence. She and her daughter (PW-2) Payel Biswas, who was already present at the place of occurrence tried to resist and protect the victim from being assaulted. They claim to have sustained some injuries.

15. The victim was thrown near a drain. PW-1 is stated to have informed her brother Sufal Sarkar (PW3), who arrived at the place of occurrence along with his wife.

16. PW-1 and PW-2, PW-3 and his wife and one Sankar Das (PW-4) are stated to have taken the victim to Barasat District Hospital. The victim was declared dead or alive.

17. Police arrived at the Hospital. Inquest was conducted against the UD case by PW-8, Samiran Dey. He also prepared the seizure list of the wearing apparels of the victim. Inquest report clearly names the accused persons including the appellant herein as the assailants. The Inquest Officer found several injuries on the head, neck and scalp of the victim. These injuries are consistent with the prosecution case and the evidence of PW-1 and PW-2.

18. The body of the victim was sent for Post Mortem on the next day in the morning. Post Mortem Doctor (PW-5), namely, Dr. Suipriti Ghorai listed out the following injuries on the victim.

- “1. Incised chop wound 4” x ½” inch x scalp x bone x cranial cavity deep placed obliquely on fronto parietal region of vault area of head along with evidence of cut fracture of underlying skull bones.*
- 2. Incised wound 2”x ½ x bone on right frontal area of head transversely placed 2 x 1/4” above root of nose and placed just right to anterior mid line along*

with evidence of cut fracture of underlying skull bone.

3. Lacerated wound 1" x ½" scalp placed slight obliquely on frontal area of scalp 2" above left eye brow and medial end of it merged with injury no. 2.

4. Lacerate wound 1" x 1/3" x muscle on right eye brow.

5. Abrasion 1" x 1/2" on left zygomatic area.

6. Lacerate wound 1" x 1/3" x scalp on left parietal area of scalp placed obliquely ½" anterior of left parietal eminence.

7. Lacerate wound 3" x ½" scalp x bone x cranial cavity deep placed on left occipital region of head paced at a level of left mastoid process and external occipital protuberance along with evidence of depressed comminuted fracture of underlying skull bone and extensive subdural hemorrhage with blood clots over both cerebral hemispheres and there under surfaces.

8. Abrasion 1" x 1/3" on the top of the left shoulder.

9. Fracture of left sixth rib in a line 2" left from posterior mid line along with bruising of left posterior chest wall correspondingly along with laceration of left pleura and left lung correspondingly with profuse intrathoracic hemorrhage.

10. Bruise 1 ½ x 1 ¼ on left orbital area."

19. He further opined that there was a small percentage of alcohol in the victim's stomach along with food. He clearly

opined that the injuries were due to assault and not due to a fight or altercation.

20. Investigation was conducted by PW-9, namely, Md. Imran Hossain. Charge-sheet was submitted against six accused persons.

21. The charge was framed against the appellants under Section 302 read with Section 34 of the Indian Penal Code.

22. PW-1 and PW-2 are the main witnesses of the prosecution. PW-2 was present throughout at the place and time of the occurrence. While this Court does not believe that PW-1 and PW-2 may have sustained any serious injuries requiring medical attention, PW-2 was clearly an eyewitness to the entire incident. P.W1 may have witnessed the incident partly as he arrived in course of the occurrence of the incident. The evidences of PW-1 and PW-2 are clear and explicit and proved the entire prosecution case beyond reasonable doubt. Their evidences read with the evidence of PW-3 and PW-5, the Post Mortem Doctor and the Inquest Officer (PW-8) establishes the case against the appellants without an iota of doubt.

23. The Investigating Officer of the case had recorded the statements of PW-1 and PW-2 before a Magistrate under Section 164 of the Code of Criminal Procedure. The said learned Magistrate was PW-7, who proved the contents of the

statements of PW-1 and PW-2. Their signatures on the 164 statements were proved by PW-1 and PW-2 themselves.

24. The defence has tried to discredit the investigation and the antecedents of the victim. There are omissions on the part of the Investigating Officer of the case listed in cross-examination, inter alia, that the seized weapons upon the leading statements of the two of the appellants, namely, Sekhar Kirtania and Sumit Biswas were not sealed or marked. The said weapons were however produced in Court. The blood stained Shabal was sent for FSL examination but report of the FSL was not collected.

25. The defence produced two witnesses, namely, Ranjit Biswas and Mira Sarkar, DW-1 and DW-2 respectively. Ranjit Biswas claimed to know the victim. He deposed about the antecedents of the victim and his involvement in several criminal cases.

26. The defence also in cross-examination of the investigating officer confronted him with six several criminal cases pending against the victim.

27. Apart from establishing the criminal antecedents of the victim, the defence had in no way been able to disprove the occurrence of the incident and the assault by the accused persons on the victim.

28. It is now well-settled that minor inconsistencies, in the investigation, cannot upset an otherwise well supported decision of conviction.

29. As already stated hereinabove the evidence of P.Ws. 1, 2 and 3 read with the evidence of P.W. 5 and 8, have established the prosecution case beyond any reasonable doubt.

30. The omission on the part of the investigating officer in not producing the FSL report and non labelling of the weapons that were produced in Court along with the seizure lists duly proved by the seizure witnesses, namely, P.Ws. 3, 6, 8 and 9 himself, are sufficient to indicate seizure of weapons.

31. The medical officer P.W. 5 has clearly stated that the injuries on the victim could have been inflicted by a chopper and/or a sabol.

32. In the backdrop of the above, one needs to consider the arguments advanced by learned Counsel for the appellants Mr. Swapan Kumar Mallick and Mr. Subhasish Pachhal. It is argued that there was no premeditation on the part of the appellants in committing the offence. The case and the evidence on record indicate that the offence committed by the appellants may not fall under Section 302 IPC but under Section 304 Part I.

33. This Court, however, notes that the principal assailant Sekhar Kirtaniya had inflicted as many as four blows on the head and neck of the victim with a chopper.

34. A crime of passion or sudden provocation may result in one assault or at best two. Four consecutive strikes on the head and neck of the victim with a chopper clearly establishes an intention to end the life of the victim. There are ten injuries on the body of the victim, enlisted by the P.M Doctor, PW5.

35. Clearly, therefore more than four strikes could have been made by one appellant, Sekhar Kirtaniya. Indeed it is on record that the victim was also assaulted with the help of a Sabol and bricks by other appellants. There is no evidence on record to suggest that the victim gave any provocation to the appellants to attack the victim. Mere protest by the victim cannot be construed as a provocation to the appellants.

36. It is impossible for this Court to believe that the repeated assault with a chopper, Sabol, spade and bricks on the victim would not end his life.

37. The intention of the appellants was therefore to end the life of the victim. While it is true that any past rivalry has not clearly been mentioned by any witness, the evidence of P.W. 2 in cross-examination and the attempt by the defence to discredit the character of the victim, suggests in no uncertain terms a rivalry between the appellants and the victim. The

criminal antecedents of the victim cannot be a ground for scaling down the offence committed by the appellants.

38. On the contrary, Section 53 of the Evidence Act, 1872 provides for the relevancy of the character of an accused in a criminal trial. It does not however provide for the character of a victim to be of any relevance to the guilt of the accused. The rationale is that no one can take law in his own hands. A person may be of a bad character. A private citizen however is not empowered thereby to commit a crime on that person.

39. Having regard to the above discussions, this Court is of the view that the conviction and sentence of the appellants by the trial Judge does not call for interference.

40. Accordingly, CRA 564 of 2016 with CRA 15 of 2021 are dismissed. Consequently, all pending applications shall stand dismissed.

41. Let the TCR be returned back to the trial Court for necessary action.

42. 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.

(Md. Shabbar Rashidi, J.)