

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 Md. Shabbar Rashidi**

**CRA 618 of 2016
Surjyo Haldar @ Tanmoy Halder @ Surya Halder & Ors.
Vs.
The State of West Bengal**

With

**CRA 124 of 2021
With
CRAN 1 of 2021
With
CRAN 2 of 2024
Banamali Sharma
Vs.
The State of West Bengal & Anr.**

With

**CRA 241 of 2016
Indrajit Deb @ Khapa
Vs.
The State of West Bengal**

With

**CRA 746 of 2015
With
CRAN 1 of 2016 (Old No: CRAN 3336 of 2016)
With
CRAN 2 of 2025
Tanmoy Chatterjee
Vs.
The State of West Bengal**

For the Appellant in CRA 124 of 2021: Mr. Moinak Bakshi
Ms. Niketa Bhattacharjee

For the Appellant in CRA 746 of 2015 : Mr. Partha Sarathi Bhattacharyya
Ms. Sukla Das Chandra
Mr. Bhaskar Seth
Ms. Swarnali Saha

For the Appellant in CRA 618 of 2016 : Mr. Saryati Datta
& CRA 241 of 2016

For the State : Mr. Madhusudan Sur, Ld. A.P.P.
Mr. Mainak Gupta

Heard on : 17.02.2026 & 19.02.2026

Judgment on : 19.02.2026.

Rajasekhar Mantha, J.:

1. The subject appeals are directed against a judgement and order of conviction dated 30th September, 2015 and 5th October, 2015 respectively, passed by the Additional Sessions Judge, Bishnupur, Bankura in Sessions Trial No.04(04)/2007 arising out of Sessions Case No.01(02)/2007.

2. The appellants were convicted under Section 302 of the IPC to suffer rigorous imprisonment for life and with fine of Rs.10,000/- each. In default thereof, to suffer further imprisonment for a term of two years. Fine amount, if realized, is to be paid to the mother of the victim.

3. The appellants were also sentenced under the later part of the first paragraph of Section 307 of the IPC to suffer rigorous imprisonment for life and with fine of Rs.5,000/- each. In default thereof, to suffer imprisonment for a term of one year. Fine amount, if realized, was to be paid to the mother of the injured victims. The sentences were run consecutively after the expiry of other.

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

4. On 8th January, 2006, the appellants namely Tanmoy Chatterjee, Banamali Sharma @ Rakshit, Sagar Bauri, Kartick Bauri @ Bagdi, Surya Haldar and Indrajit Deb @ Khapa entered the house of **PW-1 Ramchandra De** at village Hut Krishnanagar, Bankura at about 1:30 am. The house was large in size. The victims Susanta Dey, Prasanta Dey, Sumonta Dey and Srikanta Dey(deceased victim) lived there and were present in the said house.

5. The said Susanta Dey, Prasanta Dey, Sumonta Dey and Srikanta Dey were sleeping in their rooms in the house. The appellants were carrying sharp cutting weapons like, bhojali, khukri and knives and attacked the victims with the said weapons. There were long pending land dispute between the parties. While running away from the P.O the appellant threw a bomb at P.W1. It however hit a wall. P.W1 hid away out of fear.

6. The injured victims sustained serious injuries and were initially taken to Patrasayer BPHC and latter to Bankura Medical College and Hospital. They recovered from their injuries.

7. The appellants, however, inflicted fatal injures on said Srikanta Dey that his internal organs from the abdomen protruded and fell out at the PO. He was also taken to Patrasayer BPHC, where he was declared dead.

8. All the appellants except Surya Haldar fled the place of occurrence. Surya Haldar was restrained by two of the injured witnesses and their family members and tied him with a post.

9. The police arrived at the place of occurrence early in the morning. The incident was witnessed by **PW-1 Ramchandra De, PW-4 Lakxikanta De, PW-5 Rawni Dey, PW-6 Smt. Hiru Dey, PW-7 Soma Sharma, PW-9 Smt. Priya Dey, PW-10 Smt. Purnima Dey and PW-11 Piru Dey. They were eye witnesses.**

10. **PW-14 Prasanta Dey, PW-16 Srimanta Dey and PW-17 Sushanta Dey were the injured eyewitnesses.**

11. A UD case was registered in respect of the said incident. The inquest on the deceased victim, was conducted by **PW-33 SI Phalari Kumar, who was also the investigating officer.** The said inquest was witnessed by PW-1 Ramchandra De, PW-2 Jagabandhu Sutradhar, PW-3 Haru Banerjee, PW-4 Lakxikanta De and PW-12 Sadhananda Sharma. It was conducted at the Patrasayer BPHC.

12. All the accused persons were later arrested from time to time.
13. On the leading statement of the accused Indrajit Deb @ Khapa, Banamali Sharma, and Tanmoy, the police seized the blood stained weapons and a bomb. The I.O also seized blood stained earth and a bomb splintered earth from the P.O.
14. PW-1 Ramchandra De woke up first after the incident. He shouted to alert the others.
15. Indrajit Deb @ Khapa threw a bomb which hit the wall of the said house. The earth strained with the splinters of the bomb also seized by the police. Another bomb was recovered from the appellant/ Indrajit Deb @ Khapa.
16. After investigation was completed by PW-33 SI Phalari Kumar and PW-34, charge sheet was filed. Charges were framed against the appellants under Sections 149, 302 and 307 of the IPC.
17. PW-1 Ramchandra De filed a formal complaint after Srikanta Dey was declared death. The complaint was written by PW-2 Jagabandhu Sutradhar, on the instruction of PW-1 Ramchandra De.
18. The list of prosecution witnesses are given below:-
 - PW-1 : Ramchandra De, uncle of the deceased.
 - PW-2 : Jagabandhu Sutradhar, scribe and nephew of PW-1.
 - PW-3: Haru Banerjee, local villager and a seizure witness

PW-4: Lakxikanta De, cousin of the injured witnesses and an eyewitness

PW-5: Rawni Dey, granddaughter of PW-1 and an eyewitness.

PW-6: Smt. Hiru Dey, wife of PW-1 and an eyewitness.

PW-7: Soma Sharma, neice of PW-1

PW-8: Subhas Kundu, a seizure witness

PW-9: Smt. Priya Dey, wife of Prasanta Dey who was an injured eyewitness.

PW-10: Smt. Purnima Dey, granddaughter of PW-1 and wife of Susanta Dey, the injured witness.

PW-11: Smt. Piru Dey, wife of Panchanan Dey and sister-in-law of PW-1.

PW-14: Prasanta Dey, injured victim and an eyewitness.

PW-16, Srimanta Dey, nephew of PW-1 and an injured eyewitness.

PW-17: Sushanta Dey, injured victim and eyewitness.

PW-18: Meghnad Bagdi, a local villager and a seizure witness.

PW-19: Jaladhar Sutradhar, a seizure witness and maternal uncle of accused Banamali Sharma

PW-20: Milan Karmakar, Seizure witness.

PW-21: ASI R. Pati, a police personnel and a seizure witness.

PW-22: NVF S. Ghosh, a police personnel and seizure witness.

PW-23: Const. A.K. Sarkar, a police personnel and seizure witness.

PW-24: Const. A. Sannigrahi, a police personnel and seizure witness.

PW-25: Const. B. Misra, police personnel and inquest witness, who took dead body to morgue.

PW-26: Const. D. Das, police personnel and seizure witness.

PW-29: Dr. Ramkrishna Mondal, Medical Officer of the Patrasayer BPHC

PW-30: Dr. D. Gautom is an Associate Professor of Surgery at Bankura Sammilani Medical College & Hospital.

19. PW-1 Ramchandra De, PW-4 Lakxikanta De, PW-5 Rawni Dey, PW-6 Smt. Hiru Dey, PW-7 Soma Sharma, PW-9 Smt. Priya Dey, PW-10 Smt. Purnima Dey and PW-11 Smt. Piru Dey narrated the entire incident on the lines of the prosecution case in course of trial. Their statements were recorded by the investigating officer in course of investigation.

20. The evidence of PW-14 Prasanta Dey, PW-16 Srimanta Dey and PW-17 Sushanta Dey, who are injured witnesses, clearly establish the role of each of the appellants in commission of the crime.

21. The formal FIR was written by PW-32, SI P.C. Roy.

22. The injured witnesses including the deceased were initially examined by PW-29 Dr. Ramkrishna Mondal at the Patrasayer BPHC, who detailed injuries of the victims. The injury report was exhibited and taken

on record. The referral card of the victim to Bankura Hospital was also taken on record.

23. PW-30, Dr. D. Gautom, who treated the injured victims at the Bankura Medical College and Hospital. Exhibit-17, Exhibit-18 and Exhibit-19 were the bed head tickets, referral cards and discharge certificates of the injured victims.

24. PW-29, another person also named Dr. Ramkrishna Mondal, was a Medical Officer of the Patrasayer BPHC listed out the following injuries on the victims, which are set out hereinbelow:-

“I found injuries on the person of Susanta Dey, 1. Stab injury on the right side of abdomen and part of small intestine is out from the wound, 2. 1 and half inch incised wound back of the right knee joint, 3. 2 inches incised wound below and medial side of right knee, 4. 10 inches chop wound lateral side of right thigh, 5. 2 inches incised wound left side of buttocks.

On examination of Srimanta Dey I found 1. One inch incised wound on left hand.

On examination of Prasanta Dey I found 1. Five inches incised wound back of waist.

The parties were brought by Kartick Ch. Bit, Laxmikanta Dey and Tarapada Sharma. The patients were referred to the Bankura Sammilani Medical College & Hospital for better treatment on that date. The details of reports injuries may be obtained from higher center. This is the document which was sent to the OC Patrasayer PS stating therein the injuries of the injured persons. This document was written by me which also bears my signature and seal. The document is marked exbt. 15.

In case of injuries of Susanta Dey the same may be caused by bhojali or sharp cutting weapon. This is a referral card which was written by me. This referral card is marked exbt. 16 which relates to the injured

person namely Prasanta Dey. Under the same process Srimanta Dey and Susanta Dey were also referred.”

25. The injuries of Susanta Dey, Srimanta Dey and Prasanta Dey were enlisted by PW-30, Dr. D. Gautom, which are set out hereinbelow:-

“On examination I found the following injuries of Susanta Dey.

Stab wound in the thigh and mid abdomen. Colon was also stabbed. He was brought to OT and Emergency surgery was done on that date. The patient was also admitted on that date and he was discharged on 18.1.06. This is that referral card which was issued from the BPHC. This is the BHT. This is the discharge certificate. These documents are marked exbt. 17 series. The injuries were grievous in nature. The injuries were also caused by sharp cutting weapon.

After examination of Srimanta Dey I found the following injuries.

Stab injury over left palm and wrist. The patient was admitted on 8.1.06 and he was discharged on 10.1.06. This is the referral card. This is the BHT and this is the discharge certificate which are marked as exbt. 18 series. The injuries were caused by stabbing.

After examination of Prasanta Dey I found the following injuries:-

Stab injury in the back. This is the BHT and this is the discharge certificate which are marked as exbt.19 series. The treatment sheets of all the patients have been attached with the certificates.

There is similarity in respect of the injuries which were noticed by Dr. RamKrishna Mondal of Patrasayer BPHC with the injuries which I found. Exbt.15 is al shown to the witness.”

26. PW-33 Phalari Kumar was the first investigating officer, who took up the investigation on the date of the incident. He conducted the inquest on

the victim Srikanta Dey. He seized the clothes of the victim and the bomb strained earth. He also recovered one more bomb and a bulb. PW-1 and other witnesses identified the appellants.

27. On the leading statements under Section 27 of the Evidence Act of Kartick Bauri @ Bagdi, Tanmoy Chatterjee, Surya Haldar and Indrajit Deb @ Khapa and Banamali on different dates, the I.O recovered the offending weapons namely a Chora/Knife, two or three Bhojalis and a Khukri and a bomb.

28. PW-34 is the second investigating officer who claims to have sent one of the Bhojalis for FSL. But no FSL report was, however, produced in Court and only some of the offending weapons were produced.

29. The post mortem on the deceased victim was conducted by PW-27 Dr. T.K. Pal, who stated that several injuries on the body of the victim in the nature of incised wounds that were homicidal and ante mortem in nature. The victim died due to hemorrhage shock. He identified the post mortem report in the trial, which was exhibited as Exhibit No.-14. He confirmed that the injuries might have been inflicted by Bhojali and kukri.

30. A confessional statement of Surya Haldar was also taken on record by the Trial Court.

31. Having regard to the evidence that has come up on record, the Trial Judge convicted each of the appellants under Sections 302 and 307 of the IPC.

32. Mr. Moinak Bakshi, learned counsel for the appellant, Banamali Sharma has argued that the appellants not having been convicted under Section 149 of the IPC or even under Section 34 of the IPC the prosecution was required to prove the role of each of the appellants in the commission of the crime. Absence of Section 34 of the IPC would negate common intention. Absence of Section 149 of the IPC, according to Mr. Bakshi, would not prove that the appellants and each of them acted in concert and as part of a prior assembly and with common motive.

33. This Court, however, notes that the role of each of the appellants have been clearly and distinctly described by the injured witnesses namely PW-14 Prasanta Dey, PW-16 Srimanta Dey, PW-17 Sushanta Dey. The Trial Court found common intention amongst the appellants in committing the offence against the victims.

34. Section 34 and 149 of the IPC do not define any substantive offences. They are invoked for the purpose of proving a premeditated common intention or an assembly for that matter to commit a crime in which a majority of the members of the assembly participate. The absence of mention of Section 34 and 149 of the IPC in the order of conviction, therefore, is not fatal to the prosecution case.

35. The appellants were put on notice as regards the charges against them. The framing of charge clearly linked the appellants with one another. The appellants were made to understand by the Trial Court that they were tried together for collectively committing the said offences on the

victims. The appellants have led evidence along the lines of they being tried together for committing the said offences. No prejudice therefore has been caused to the appellants for non-mention of Sec.34 and 149 of the IPC in the impugned judgment.

36. This Court further notices that the evidence on record is overwhelming and proves the offence under Sections 302 and 307 of the IPC having been committed by the appellants beyond any reasonable doubt. The judgement and order of conviction, therefore, calls for no interference.

37. However, in so far as the appellant Tanmoy Chatterjee is concerned the Trial Court records indicates that he was apprehended and participated in the trial at the inception. While on bail, he absconded. The trial was split by the Trial Court to proceed against the other appellants.

38. After being apprehended, Tanmoy Chatterjee applied before the Trial Court for recall of the witnesses, who are examined in his absence. By an order dated 2nd January, 2014 the Trial Judge declined the prayer for recall of the aforesaid witnesses for examination and cross-examination. The Trial Judge was of the view that the appellant Tanmoy Chatterjee abandoned the trial and allowed the witness action to continue against the other accused at his own peril.

39. The Trial Judge further attempted to reason the refusal by holding that Tanmoy Chatterjee cannot be allowed to take advantage of his own wrong. Based on the above reasoning the Trial Court declined the prayer

for recalling of the witnesses examined in the absence of Tanmoy Chatterjee.

40. Mr. Partha Sarathi Bhattacharyya, learned counsel for the appellant Tanmoy Chatterjee has relied upon a judgement of the Supreme Court in the case of ***Atam Ram and Ors. Vs. State of Rajasthan*** reported in ***(2019) 20 SCC 481*** particularly paragraph 17, 20 and 24 to 26.

41. A trial of an accused is split and is conducted independently when a joint trial cannot be held. In ***JAMIN & ANR. v. STATE OF UTTAR PRADESH & ANR.*** reported in ***2025 INSC 330***, it was held as follows:-

*58.... To illustrate, say in a case with accused 'A' and accused 'B' **the trial was split-up by the court in respect of accused 'B' because he was found to be absconding, then the main trial in respect of the accused 'A' can continue separately without any hindrance or delay.***

Emphasis Applied

42. One of the exceptions to the conduction of the joint trial is, thus, when the accused is absconding.

43. A trial is split in light of Art. 21 of the Constitution of India, since the other accused persons and the victim have a right to speedy trial.

In ***A.T. Mydeen v. Commr. of Customs, reported in (2022) 14 SCC 392***, it was held as follows:-

42. The provisions of law and the essence of case laws, as discussed above, give a clear impression that in the matter of a criminal trial against any accused, **the distinctiveness of evidence is paramount in light of accused's right to fair trial**, which encompasses two important facets along with others i.e. **firstly, the recording of evidence in the presence of accused or his pleader and secondly, the right of accused to cross-examine the witnesses.....In other words, the culpability of any accused cannot be decided on the basis of any evidence, which was not recorded in his presence or his pleader's presence and for which he did not get an opportunity of cross-examination**, unless the case falls under exceptions of law, as noted above.

43. The essence of the above synthesis is that evidence **recorded in a criminal trial against any accused is confined to the culpability of that accused only and it does not have any bearing upon a co-accused, who has been tried on the basis of evidence recorded in a separate trial, though for the commission of the same offence.**

44. The consequence of a split trial is that the evidence adduced in the other trial cannot be imported to the split trial. In **MAMMAN KHAN v. STATE OF HARYANA reported in 2025 INSC 1113**, it was held as follows:-

16. From the above, the following propositions stand reiterated:

(iv) ***Evidence recorded in one trial cannot be imported into another, which may give rise to serious procedural complications if the trial is bifurcated; 22.....Separate trials would necessarily involve recalling the same witnesses.....***

Emphasis applied

45. The Trial Court, has in its order dated 2nd January, 2014 therefore, has recalled its own order of splitting the Trial. It did so by relying on the evidence of prosecution witnesses to convict Tanmoy. The trial Court did not allow the appellant Tanmoy to recall and cross-examine the said witnesses. A split trial is independent of the trial held earlier even though the witnesses of the prosecution are the same in both the Trials. The accused has a right to distinguish the same witness in his own way. The said right is one of the facets of the fundamental right of fair trial.

46. Having regard to the aforesaid discussions, this Court is of the view that the order of the Trial Judge dated 02.01.2014 refusing to recall the witnesses who were examined in the absence of Tanmoy Chatterjee for

examination is ex facie illegal. Tanmoy Chatterjee could not have been examined under Section 313 of the Cr. P. C. since he has not heard or noticed the evidence of any of the witnesses, who were examined in his absence when he was absconding. The Trial Judge ought to have recalled the said witnesses.

47. Hence, the conviction of Tanmoy Chatterjee by the Trial Court is illegal and contrary to the provisions of the Cr. P. C. His conviction is set aside.

48. The Trial Judge shall recall all witnesses of the prosecution only to examine the participation of Tanmoy Chatterjee in the offences alleged against him in the charge sheet and those he has been charged with by the Trial Court.

49. The Trial Judge, therefore, commence afresh insofar as Tanmoy Chatterjee is concerned.

50. Accordingly, Tanmoy Chatterjee, the appellant in CRA 746 of 2015 shall be released on bail upon furnishing a bond of Rs.20,000/- with two sureties of like amount each, one of whom must be local, to the satisfaction of the Trial Judge on condition that Tanmoy Chatterjee shall not leave the jurisdiction of the Trial Court without its leave. He shall attend the Trial Court on all days of the split trial.

51. In view of the above, CRA 746 of 2015 is allowed and disposed of. Consequently all connected pending applications, if any, are also disposed of

52. CRA 618 of 2016, CRA 124 of 2021 and CRA 241 of 2016 are dismissed. Consequently connected all pending applications, if any, are also dismissed.
53. Let the Trial Court Records be returned to the Trial Court for necessary action as indicated herein above.
54. 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.)