

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

Present:

The Hon'ble Justice Rajasekhar Mantha

And

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 664 of 2017

Jaydev Sarkar @ Paltu

-Vs-

The State of West Bengal

For the Appellant : Mr. Amit Roy, Adv.
Mr. Anish Tewari, Adv.

For the State : Mr. Pradip Banerjee, Id. Addl. Public Prosecutor
Mr. Sankalpa Bhattacharjee

Heard on : 02.07.2026

Judgment on : 02.07.2026

Rajasekhar Mantha, J. :-

1. This appeal is directed against judgment and order of conviction dated 08.01.2016 passed by the learned Additional Sessions Judge, 1st Court, Raiganj, Uttar Dinajpur in Sessions Trial No. 15/2013 arising out of Sessions Case No. 51 of 2013. The appellant was convicted under Section 302 of the Indian Penal Code as well as Sections 25(i)(a)/27 of the Arms Act and sentenced to suffer imprisonment for life and to pay a fine of Rs.5,000/-, in default, to suffer simple imprisonment for six months

more for the offence punishable under Section 302 IPC. He was also sentenced to suffer simple imprisonment for two years for the offence punishable under Sections 25(i)(a)/27 of the Arms Act; both the sentences were to run concurrently.

Prosecution case:-

2. The prosecution case against the appellant is as follows :

The complainant, Smt. Rekha Das (Sarkar) was the wife of Jayanta Sarkar. On 22.12.2012 at about 09.30 A.M. when the victim returned from the market after buying groceries and was handing over the same to the complainant, the victim's brother viz. Jaydeb Sarkar @ Paltu, upon being egged on by their mother placed a country made pistol on the neck of the victim and fired at him. The victim collapsed immediately. The complainant raised hue and cry whereupon locals assembled. A formal complaint was scribed by one Barun Banerjee, local Councillor (PW 3). The incident occurred on 22.12.2012 in the house of the victim at Kasimpur.

3. The police upon being notified by third parties arrived at the place of occurrence. Inquest was conducted against the U.D. Case. A formal FIR was registered after receipt of the complaint by the Raiganj Police Station being Raiganj Police Station Case No. 1109 of 2012 dated 22.12.2012.

4. The appellant was arrested two days later on 24.12.2012 at Mohanbati, Ghari More. A pipe gun and a bullet were recovered from his

possession. The investigation commenced. At the time of inquest, the family of the deceased and other persons stated that there was a property dispute between the appellant and his deceased brother. On the date of the incident the appellant became excited and shot the victim. The victim was declared dead upon being brought to the hospital.

5. Investigation was conducted and charge sheet was filed. Charges were framed against the appellant on 06.06.2013 under Section 302 IPC and Sections 25(i)(a)/27 of the Arms Act.

The evidence on record:-

6. PW 1 (Rekha Das), wife of the victim, is the sole eyewitness to the incident. She took over the victim's shop room after the incident and was running it. She deposed that she got married to the appellant a few years prior to the incident and had a girl child out of the wedlock. She narrated the entire prosecution case. She further confirmed that the complaint was scribed by PW 3 and the same was registered as FIR. She briefly indicated that there was some dispute with regard to money matters between the appellant and the victim. Admittedly, the appellant lived in the ground floor of the house with his mother and the victim lived on the first floor with PW 1. She further deposed that there were also property disputes and an apprehension on the part of the appellant that the victim would appropriate the family property exclusively.

7. PW 2 (Kajal Sarkar) was a local resident who turned hostile. His evidence was hearsay. He denied the prosecution case completely.

8. PW 3 (Barun Banerjee) was the local Councillor who scribed the FIR. He was a Life Insurance Corporation agent by profession. He knew both the appellant and the victim. He confirmed that after the death of the father of the appellant, the local villagers assembled and divided their family shop room into two parts. The portion of the shop room that fell into the share of the deceased was prosperous and doing well. The portion of the appellant's shop room was mostly closed down. He confirmed the arrest of the appellant and recovery of the weapon. He was a seizure witness to such recovery. His evidence could not be seriously shaken in cross-examination.

9. PW 4 (Braja Gopal Dey Sarkar) was a photographer who took photographs of the dead body of the deceased.

10. PW 5 (Netai Saha) was a neighbour of the victim's family.

11. PW 6 (Dr. Tapash Ranjan Bhunia) was the doctor who conducted post mortem on the victim's body. He narrated the wounds on the neck of the victim and his right ear. He opined that death was caused due to gunshot injury.

12. PW 7 (Rupai Mardi) was the constable who took the dead body from Raiganj District Hospital morgue to the post mortem doctor.

13. PW 8 (Gopal Jamadar) collected the wearing apparels of the victim.

14. PW 9 (ASI Tapati Dey Chowdhury) conducted inquest on the body of the deceased.

15. PW 10 (Ranjit Aditya) was the driver of the police vehicle. He carried the body of the deceased from the house to the hospital.

16. PW 11 (SI Atanu Chakraborty) was the Investigating Officer of the case. He narrated the entire steps taken in course of investigation and having recorded statements of the witnesses, he could not recover any bullet from the place of occurrence. He also did not receive any bullet from the post mortem doctor.

17. PW 12 (Sankar Kumar Roy) was the second Investigating Officer who completed investigation and filed the charge sheet. The victim was examined under Section 313 of the Code of Criminal Procedure. All circumstances against him in the evidence were duly confronted to him.

18. Based on the evidence, the trial Judge convicted the appellant as already indicated hereinabove.

Analysis and findings:-

19. This Court has carefully heard the arguments advanced by the learned Advocates for the appellant as well as the State-respondents.

20. It appears that in no uncertain terms to this court that there was no premeditation for the purpose of commission of any offence by the appellant except for a brewing rivalry between two brothers over family property and monetary matters. The appellant on the date and time of the incident was already having an argument with his mother. The appellant was provoked by his mother to commit the offence upon the victim.

21. This is, therefore, more a case of immediate provocation than a case of premeditated murder within the meaning of Section 302 of the Indian Penal Code. An offence of this nature between two family members would not render the appellant a threat to the society at large. This Court is, therefore, of the view that the offence committed by the appellant would fall under Part-I of Section 304 of the Indian Penal Code.

Conclusion:-

22. Having regard to the discussions made hereinabove, this Court is of the view that the sentence of the appellant must be reduced to the extent of incarceration that he has already suffered. The appellant shall however, be liable to pay the fine of Rs.5,000/- already imposed upon him by the trial court.

23. Accordingly, conviction of the appellant is upheld.

24. The sentence of the appellant is however, converted to the period of incarceration that he has already undergone.

25. We are informed that the appellant is on bail granted by a coordinate Bench of this Court on 07.04.2026.

26. The appellant shall be discharged from the bail bond after expiry of six months in terms of Section 437A of the Code of Criminal Procedure, upon payment of fine of Rs.5,000/- imposed upon him by the trial court.

27. CRA 664 of 2017 is accordingly, disposed of.

28. Trial court records along with a copy of this judgment be sent down at once to the learned trial Court for necessary action.

29. Photostat certified copy of this judgment, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Rajasekhar Mantha, J.)

30. I agree.

(Ananya Bandyopadhyay, J.)

akd