Form No. J(1)

CALCUTTA HIGH COURT

IN THE CIRCUIT BENCH AT JALPAIGURI

CRIMINAL APPELLATE JURISDICTION

Present :

The Hon'ble Justice Rajasekhar Mantha
And
The Hon'ble Justice Reetobroto Kumar Mitra

C.R.A. (DB) 25 of 2023
With
I.A. No. CRAN 4 of 2026

Nikhil Rai
-Versus-
The State of West Bengal

For the Appellant:	Mr. Nirmal Rai, Mrs. Madhushri Dutta.
For the State:	Mr. Jagriti Mishra, Ld. A.A.A.G., Mr. Rajdeep Das.
Heard on:	October 5, 2026.
Judgment on:	October 5, 2026.

Rajasekhar Mantha, J.:

1. The appointment of Mrs. Madhushri Dutta by the High Court Legal Services Authority is regularized notwithstanding Mr. Nirmal Rai, learned Advocate having been appointed by the appellant himself to present the case. Mrs. Dutta shall assist Mr. Rai in this appeal.

2. The subject appeal is directed against judgment of sentence dated 15th December, 2022 and order of conviction dated 17th December, 2022 passed by the learned Additional Sessions Judge, 3rd Court, Darjeeling in Sessions Case No. 23 of 2019 corresponding to Sessions Trial No. 16(11) 2019. The appellant was

convicted to suffer Rigorous Imprisonment of ten years for the offence punishable under Section 304 of the Indian Penal Code and to pay fine of Rs.10,000/-, in default whereof suffer Simple Imprisonment for six months. The aforesaid sentence should run concurrently.

THE PROSECUTION CASE:

3. The prosecution case in brief is that the appellant was a driver and was carrying Tourist from Darjeeling to Tiger Hill to witness the Sunrise on 16th May, 2019. He, finding a traffic jam, moved his vehicle to right side of the road and tried to proceed further. The victim was also driving another vehicle full of CRPF Personnel, who were on a holiday. He was also driving his vehicle to reach Tiger Hill for his passengers to see the Sunrise. The deceased victim upon seeing the appellant overtaking his vehicle and stationing it on the right side of the road, got off and abused the appellant in filthy languages stating that he would create a further traffic jam by blocking vehicles coming from the opposite direction.

4. The appellant thereupon got down and told the victim that he would end his life. A scuffle ensued between the appellant and the victim. The driver of nearby vehicles immediately got down as did PW-1, who was the driver of the vehicle immediately behind that of the victim. They tried to stop the appellant and the victim from scuffling and pacify them. The victim was by this time stabbed on his left chest by the appellant before anybody could realize. When PW-1 caught the victim and started rubbing his chest, he saw a

bloodied steel knife shining in the hands of the appellant. The victim stated that he was feeling dizzy and wanted help PW-1. The appellant and others rushed the victim to Darjeeling Sadar Hospital, whom he was declared bought dead.

5. PW-1 lodged a formal complaint with Jorebunglow Police Station, Darjeeling narrating the entire incident. Inquest was conducted on the victim, which recorded the history of assault by the appellant on him. The appellant is stated to have confessed to the victim's father and PW-2 & PW-9 that he had stabbed the victim after being suddenly enraged on the abusive and filthy languages used by the victim on him. Post Mortem was conducted on the body by PW-5. Charge-sheet was filed after investigation was completed.

6. Charges were framed against the appellant under Section 302 of the Indian Penal Code on 4th November, 2019.

TRIAL AND EVIDENCE ON RECORD:

7. **PW-1** was the de facto complainant, Ujjwal Singh. He narrated the entire prosecution case. He was an eyewitness to the incident. He confirmed having deposed before PW-17 under Section 164 of the Code of Criminal Procedure, which was duly recorded by the latter. The defense could not in any way shake his evidence.

8. **PW-2** was Gopal Pariyar, who stated that the appellant admitted outside the hospital before him, to have stabbed the victim. The offending weapon, namely, the knife and two vehicles, one driven by the appellant and the other by the victim were all

seized by the Police and **PW-6**, **PW-7**, **PW-8**, **PW-10** and **PW-11** were witnesses to the seizure of the aforesaid items.

9. **PW-13** was the inquest officer, who confirmed the actual seizure of the blood stained apparels of the victim.

10. **PW-15** was Dr. Jagadish Biswas, who conducted the post mortem on the victim. He found following injuries on the body of the victim and opined as regards the cause of death.

> *"On examination I found the following injuries:*
> *1. Penetrating wound of with sharp margin measuring about 1/2" x 1/4" obliquely placed present over anterior surface of left chest wall. 2/1/2 above left nipple and ½" left lateral border of sternum and 3" below from mid part of the left clavicle.*
> *2. Abrasion measuring 1/2" x 1/2" incised present over anterior surface of the upper part of the left leg. It is 2 cm. below from the left knee.*
> *3. Blood stain present over right palm.*
> *4. On dissection heamatoma measuring 2"x2" present over 3rd to 4th rib and inter coastal space at left side.*
> *5. Cut fracture present in lower border of left 5th rib.*
> *6. Heamatoma measuring 5"X3" present over interior surface of pericardium.*
> *7. Penetrating wound with sharp margin 1/2" over interior aspect of upper part of the pericardium corresponding the 3rd and 4th rib and haematoma with clotted blood 150 grms in pericardial cavity.*
> *8. Penetrating wound with sharp margin measuring 1/2" X 1/4" longitudinally placed over interior surface of the root of the pulmonary tongue.*
> *In my opinion the death was caused due to the affect of above mentioned injuries. It is anti mortem and homicidal in nature."*

11. **PW-17** was the Judicial Magistrate, before whom the statement of the appellant under Section 164 of the Code of Criminal Procedure was recorded.

12. Based on the evidence as above, the Trial Judge has convicted the appellant under Section 304 of the Indian Penal Code.

ANALYSIS OF THE COURT:

13. This Court has carefully considered the evidence on record and the arguments advanced by the learned Counsel for the appellant and the State. The conviction of the appellant by the Trial Court does not call for any interference. The evidence on record is clear and explicit. The arguments advanced by the learned Counsel for the appellant as regards the minor differences in the evidence of the witnesses for the prosecution are not so material that would upset the finding of guilt and conviction of the appellant.

14. As for the quantum of sentence imposed on the appellant, this Court, however, notices that the Trial Judge has not given due credence to the conduct of the appellant post the incident. It is the appellant, who rushed the victim to the Hospital in question to ensure that there is some treatment given to him and to save his life. The facts and circumstances under which the appellant had stabbed the victim was definitely spontaneous road rage and not pre-planned. There is no evidence of prior enmity between the appellant and the victim.

15. The incident, therefore, clearly occurred amongst fellow drivers in the spur and heat of the moment. The appellant has undergone six years of incarceration. He is remorseful of the incident.

16. In the light of the facts and circumstances under which the appellant committed offence in question, this Court is, therefore, inclined and reduced the sentence of the appellant from ten years

to seven years. This would be commensurate with facts and circumstances under which the offence took place. The appellant shall be entitled to the benefit of any remission available to him in accordance with law.

17. C.R.A. (DB) 25 of 2023 is allowed in part.

18. In view of disposal of the appeal itself, the connected application being CRAN 4 of 2026 is also disposed of.

19. Let a copy of this judgment along with the Trial Court's Record be forthwith sent down to the trial Court.

20. Urgent photostat certified copy of this order, if applied for, be supplied to the parties as early as possible.

(Rajasekhar Mantha, J.)

I agree.

(Reetobroto Kumar Mitra, J.)