

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 Ajay Kumar Gupta**

C.R.A. No. 617 of 2017  
Anath Bandhu Mondal @ Voutto @ Bhutto  
Versus  
The State of West Bengal  
With  
C.R.A. No. 521 of 2017  
With  
Bijoy Das & Ors.  
Versus  
The State of West Bengal  
With  
C.R.A. (DB) No. 173 of 2017  
Kinkar Mondal  
Versus  
The State of West Bengal

(in C.R.A. (DB) 173 of 2022)

For the Appellant :Mr. Rajdeep Mazumder, ld. Sr. Advocate,  
Mr. Pritam Roy,  
Ms. Arushi Rathore

(in C.R.A. No. 617 of 2017)

For the Appellant :Mr. Manjit Singh, ld. Sr. Advocate,  
Mr. Biswajit Mal,  
Mr. Arkaprabha Roy

(in C.R.A. No. 521 of 2017)

For the Appellant :Mr. Moinak Bakshi

For the State :Mr. Zareen N. Khan  
Mr. Ashok Das.

Heard on : 11<sup>th</sup> February, 2025.

Judgment on : 18<sup>th</sup> February, 2025.

**Rajasekhar Mantha, J.:**

1. The three appeals are directed against the judgment dated 18<sup>th</sup> August, 2017, order of conviction dated 19<sup>th</sup> August, 2017 and judgment in Sessions Trial Case No. 03(04) of 2014 arising out of Sessions Case No. 63(02) of 2014, passed by the learned Additional Sessions Judge, Haldia, Purba Medinipur. CRA (DB) No. 173 of 2022 is directed against the judgment and order of conviction dated 20<sup>th</sup> May, 2022 passed in Sessions Trial No. 08(11) of 2017 arising out of Session Case No. 63(02) of 2014 and order of sentencing dated 21<sup>st</sup> May, 2022.
2. Each of the appellants has been convicted for life under Section 302 read with Section 34 of the Indian Penal Code. The appellants have also been sentenced to pay a fine of Rs. 5,000/-, and in default, suffer rigorous imprisonment for one more year.
3. The brief facts relevant to the case are that on 27<sup>th</sup> March, 2013 the deceased Srihari Mondal came to look for a Rickshaw Van near the local Ganga Mansha Mandir at Village – Jhikurkhali under Police Station Durgachak at around 03:00 PM.
4. On the previous day one Dinesh Mondal, son of Chanchal Mondal (PW 6), fell from a tree and sustained a serious fracture injury. He was treated by a doctor and bandaged on the same day. However, on the next day, Dinesh complained of severe pain. To take him to a hospital, the deceased came to look for a Rickshaw Van near the local Ganga Manasa Mandir. Due to the

festival of Holi on that day, no Rickshaw Van was available near the place of occurrence. The deceased thereafter sat in front of a tea stall near the Temple.

5. When the deceased did not return home Rina Mondal (PW 1), his wife, sent their son Asit Mondal (PW 9) to look for his father. Before Asit, Chanchal Mondal (PW-6), nephew of the deceased, reached the Rickshaw Van Stand but did not find the deceased there. Amalesh Mondal (PW 4) and Dhananjay Mondal (PW 5) were already sitting at the Ganga Manasa Mandir and were witnessing a religious programme.
6. The said PW 4, PW 5 and PW 6 heard a hue and cry near a tea stall close to the temple around 3 PM. They immediately rushed to the spot to find that the 4 appellants and 7 other persons dragging the deceased away and taking him into the house of appellant Bijoy Das near the tea stall. The said accused persons assaulted the deceased/victim with a knife, sickle, kural, axe, thick bamboo stick, tangi, iron rod and a sharp cutting weapon used for culling chicken. The assault on the deceased was so aggressive that the door of the house of Bijoy Das was broken and blood-stained. The deceased was thereafter dragged from the house of Bijoy Das and left lying with severe injuries at a nearby lamp-post between two ponds.
7. The deceased was found with injuries inflicted with sharp cutting weapons on the forehead, left knee and right shoulder. The left knee and right shoulder were almost severed from the body of the deceased.

8. Thereafter PW 6 and PW 10, Biswajit Mondal, a resident of the village and other persons took the deceased to a local hospital. The deceased, Srihari Mondal, was declared "brought dead" at the hospital. The Police arrived at the place of occurrence and the body was taken for inquest and sent for post-mortem thereafter to the Haldia Sub Divisional Hospital. By this time a U.D. Case No. 17/13 dated 27<sup>th</sup> March, 2013 was registered by the police. However, the complainant PW 1, wife of the deceased submitted a written complaint stated to have been received at 17:25 hrs by the Durgachak Police Station registered as FIR No. 59/2013 dated 27<sup>th</sup> March, 2013, under Sections 302 and 34 of the IPC.
9. After post mortem was conducted the body was handed over to the family of the deceased. He was cremated on the same day in the evening between 7:00 PM and 9:00 PM.
10. The Durgachak Police Station launched an investigation and seized the wearing apparel of the deceased, the blood-stained earth next to the lamppost the broken door of the house of appellant Bijoy Das. FSL report was obtained of the blood-stained earth which indicated that the blood was human.
11. Several other independent persons assembled at the place of occurrence but were not ready to depose evidence. The Police recorded statements of PW 6 and PW 10 under Section 164 of the Cr.P.C. before PW 8. Several statements under Section 161 of the Cr.P.C. were recorded by the

Investigating Officer, Sudipto Chakraborty (PW 15). Chargesheet was submitted against the 4 appellants, Kinkar Mondal, Sanjoy Das, Swapan Das Samir Das, and Bimal Nayek under Sections 302 and 34 of the IPC.

12. Initially appellant Kinkar Mondal and accused Sanjoy Das and Swapan Das were absconding. Kinkar Mondal was apprehended in the year 2021 and a de novo trial was held against him. He was allowed to cross-examine each of the witnesses of the prosecution.
13. Accused Samir Das and Bimal Nayak were tried before a Juvenile Justice Board. Accused Sanjay Das and Swapan Das are still absconding. Orders of proclamation and attachment have been obtained against them.
14. PW 1 has narrated the incident as recorded hereinabove. However, she has only heard of the incident from PW 6. She reached the place of occurrence within minutes of being informed and found her husband between two ponds near a lamppost in a severely injured condition. She described the injuries indicated hereinabove.
15. PW 2 is Rameswar Maity, the father-in-law of Asish Mondal, the son of the deceased. He reached the place of occurrence after being informed of the incident by PW 9. He was witness to the seizure of the blood-stained earth and the broken door of the house of Bijoy Das. He found the victim lying and breathing when he reached the place of occurrence. He saw that the victim's left knee was almost severed, right shoulder was broken and somehow attached to the body. He also found several injuries on the forehead of the

victim and rushed him to a local hospital in a rickshaw van. The doctor at the hospital declared him dead on arrival. He went to the Police Station along with PW 1 and wrote the complaint on her instructions. He heard of the incident from PW 9. The Seizure list of the broken door and the blood-stained soil signed by him was produced in Court. The broken door was also produced in Court and marked exhibit.

16. He further deposed that post-mortem of the body of the deceased was held around 6:00 PM and the family received the body within half an hour thereafter. They went to the house of the deceased along with the dead body around 6:45 PM. The cremation of the deceased was held at about 7:30 PM and they returned to their residence between 9:30 and 9:45 PM. Several persons assembled at the place of occurrence. He confirmed that he went to the Police Station before the post-mortem was conducted. He also confirmed enmity and grudge between the families of the accused and the victim prior to the incident. In cross-examination, he denied that Kinkar Mondal attended the funeral of the deceased.

17. PW 3 was the photographer who had a studio outside Haldia Sub-divisional Hospital. At about 3:30 PM police came to the studio and asked him to take photographs of the dead body. He took 5 photographs of the deceased at the S.D. Hospital that were exhibited.

18. PW 4 Amalesh Mondal nephew of the deceased was an eye-witness. He stated that he and PW 5 were standing near the Ganga Manasa Mandir

searching for a rickshaw van for taking Dinesh Mondal to the hospital at about 3:00 to 3:30 PM. He then heard a he and cry from a nearby tea stall. Upon reaching the tea stall he saw the accused dragging the victim to the house of appellant Bijoy Das. He further deposed that all the accused persons were armed with sharp cutting weapons used for culling chicken, axe, bamboo sticks, tangi, and iron rods. They started to assault the deceased in front of the house of Bijoy Das. PW 4 and PW 5 tried to shout out for help when the accused threatened them. Nobody could come to save the victim because the accused were armed with weapons.

19. PW 4 further deposed that after severely assaulting the accused, they threw the victim's living body near a lamppost between two ponds. PW 4 saw the bleeding body of the deceased with severe injuries, the lower part of the left knee of the deceased was found nearly severed and the right shoulder was also hanging from the body of the deceased. He could also see deep incise wounds on the forehead of the deceased. He confirmed that PW 6, PW 9 and PW 10 took the victim to the hospital along with others. He also deposed of a previous enmity between the victim and the accused persons. His evidence could not be shaken in cross-examination by the accused in the first trial or at the instance of Kinkar Mondal in the de novo trial.

20. PW 5, Dhananjoy Mondal, was the son-in-law of the cousin brother of the deceased and the 2nd eyewitness to the incident. He corroborated the statement of PW 4 that they were standing near the temple looking for a

Rickshaw Van. Both PW 4 and PW 5 confirmed that there were children playing outside the temple as a religious ceremony was going on inside. He deposed having reached the temple since Chanchal Mondal PW 6 did not return with the Rickshaw Van to take his son to the hospital.

21. At the relevant point of time, PW 9 and PW 10 also reached the place of occurrence. PW 5 confirmed that the accused persons assaulted the victim with sharp cutting weapons like lathis, rod, axe, Tangi and knife used for culling chicken. After the assault, he stated that PW 6 and PW 10 went to the house of the deceased to inform his wife. He went to the spot along with PW 4 and PW 9 where the deceased was thrown at a nearby lamppost after the assault.
22. He confirmed several injuries in the forehead; the right shoulder and left leg were also severed from the body of the victim. He further corroborated that the victim was dragged by the accused persons to the house of Bijoy Das and severely assaulted with the weapons indicated above. He confirmed that the victim was thereafter taken to the local hospital where the victim was declared dead. He was interrogated by the police. He was also related to the victim's family. His evidence could not be shaken in the cross-examination. He also confirmed that he raised a hue and cry seeking help to prevent the assault on the victim along with PW 4, PW 9 and PW 10. He was therefore an eyewitness to the incident. Even in the cross-examination by Kinkar Mondal, his evidence could not be shaken.

23. PW 6 was Chanchal Mondal, the nephew of the deceased. He was the 3rd eyewitness to the incident. He confirmed that he had reached the Ganga Manasa Temple looking for a Rickshaw Van to take his son Dinesh Mondal to the doctor. Upon reaching the temple he heard a hue and cry coming very near the tea stall close to the temple. He saw the accused persons dragging the victim away to the house of Bijoy Das. He confirmed that the accused assaulted the victim with a sharp meat cutting knife, Kathari, axe, Tangi, rods and lathis near the house of the Bijoy Das. He deposed that the assault lasted for 5 to 7 minutes near the house of Bijoy Das and thereafter the accused threw the body of the victim at a nearby lamppost between two ponds and escaped from the place. He found the victim groaning in pain with deep injuries on the forehead, and the leg of the victim was almost amputated and the right hand of the victim was also amputated from the shoulder. He confirmed as having accompanied the victim and others on a rickshaw van to the local hospital where the doctor declared him dead. He recorded his statement before the Judicial Magistrate under Section 164 of the Cr.P.C. He also identified the wearing apparel of the victim. His evidence could not be shaken in cross-examination by the first set of accused and/or by the cross-examination by Kinkar Mondal.
24. PW 7 was a police official who conducted the inquest at Haldia S.D. Hospital, Durachak. He also took the body for post-mortem and collected the post-mortem report.

25. PW 8 was the Judicial Magistrate, 1<sup>st</sup> Class, Haldia, who recorded the statements of PW 6 and PW 10, Biswajit Mondal under Section 164 of the Cr.P.C.
26. PW 9, Asit Mondal, one of the sons of the deceased was the 4th eye witness. He confirmed the entire incident and named the accused persons as narrated by PW 4, PW 5 and PW 6. His evidence could not be shaken in cross-examination by the accused in the first trial or by Kinkar Mondal in the de-novo trial.
27. PW 10, Biswajit Mondal, was the 5th eye-witness to the incident. He deposed that he accompanied PW 9 to the place of occurrence upon finding that PW 6 and the deceased had not returned home with a Rickshaw Van. He confirmed the accused attacking the victim with the weapons mentioned by PW 4, PW 5 and PW 6. He further stated that when he tried to rescue the deceased victim, along with PW 6 and PW 9, the accused showed him a knife and started throwing stones at them. He confirmed that the accused dragged the victim near the house of Bijoy Das and assaulted him severely. The accused thereafter threw the body near the lamppost in front of the house of Bijoy Das.
28. He confirmed the injuries of the body of the deceased as stated by PW 4, PW 5 and PW 6. He was witness to the inquest and he confirmed having made a statement under Section 164 CrPC before PW 8. He identified the wearing apparel of the victim that was marked as an exhibit. He named all the

accused persons in Court. His evidence could not be shaken during cross-examination by the first set of accused or Kinkar Mondal later.

29. PW 11 was Dr. Haradhan Barman, the post-mortem doctor. He confirmed the following injuries on the body of the victim.

*“On the examination of the body of Srihari Mondal who was average built, I found rigormorits present, bleeding detected from right shoulder joint, dislocation of right shoulder joint, multiple injury detected (1) over left upper eye brow measuring 2”x1” in diameter (2) over left lower eye lid involving cheek, measuring 1”x1/2” (3) open fracture/dislocation of right both bones namely, humerus and scapula of right upper arm and right shoulder joint with skin wound and fracture and dislocation of both bones of right forearm. (4) deep cut injury mark measuring 1”x2”x3” over left leg below left knee joint with clear cut margins (5) a backlash abraded skin mark over right side of frontal aspect anterior chest wall upto right shoulder joint (6) moderate size scalp injury measuring 2”x1” with scalp haematoma detected over occipital region of scalp (7) blood clot detected at laryngeal and tracheal lumen.*

*Two number of tattoo marks were found on the lower part of both the forearm. Viscera of the dead body was preserved for pathology and biochemical examination. The viscera consisted of (1) stomach with its contents (2) portion of right liver (3) portion of right kidney (4) blood measuring 200 ml.*

*In my opinion death might have been due to antemortem multiple injuries including head injury, open fractured and dislocation of bones, haemorrhages and hypovolemic shock thereafter.*

*Final report was supposed to be prepared on receipt of viscera examination report and I.O.’s circumstantial evidence. The injuries detected by me on the dead body of Srihari Mondal could have been caused with spade, sharp cutting weapon, and iron rod. The injuries detected by me was caused within 24 hours before my examination. The injuries detected were outcomes of direct force. This is the carbon copy of post mortem report of Srihari Mondal marked as Exhibit 7. This carbon of postmortem report bears my seal and signature.”*

30. PW 12, Joyhari Mondal brother of the victim and the 6th eyewitness to the incident. He was present at the place of occurrence. He had also gone along with the victim to look for a rickshaw van near the local temple. Finding no such rickshaw van, the deceased sat near a tea stall when each of the accused persons came to the stall and dragged the victim to the house of Bijoy Das. He came rushing from the temple near the tea stall. He later found the victim thrown in front of the house of the Bijoy Das. He deposed that the accused dragged the victim to the house of Bijoy Das severely assaulting the victim. He confirmed that he and 4 others took the victim to the local hospital where the victim was declared dead. He identified all the accused persons and stated that there was a previous enmity and grudge between the victim and the accused persons. His evidence could not be shaken in cross-examination.
31. PW 15, Sudipta Chakrabarty, was the Investigating Officer deposed as regards the investigation conducted by him. He confirmed the recording of the statement of PW 6 and PW 10 under Section 164 of the Cr.P.C. PW 15 was cross-examined by all the accused persons. Each of the accused persons was thereafter examined under Section 313 of the Cr.P.C.
32. The Learned Trial Judge, in a very detailed, exhaustive and comprehensive discussion of the entire evidence on record, found the appellant guilty under Section 302 read with Section 34 of the IPC and convicted them as indicated

hereinabove. The trial of Kinkar Mondal was held in the year 2018 after he was arrested. The trial of the other accused persons was held in the year 2015.

33. Learned Counsel for the appellants argued the following:-

- (a) All 6 eyewitnesses namely, PW 4, PW 5, PW 6, PW 9, PW 10 and PW 12 are family members of the deceased and their evidence could not have been relied upon by the Trial Court.
- (b) The role of each of the accused persons and the exact injury inflicted by each of them has not been established in course of Trial.
- (c) No weapons were seized by the Investigating Officer and the fingerprints on the weapons have not been obtained.
- (d) The role of each of the accused persons and the weapons used have not been co-related with the injuries on the body of the victim. The conviction of the appellants under Section 34 of the IPC therefore is sustainable.
- (e) Each of the accused could not have known that the victim would be at the tea stall at 3:30 PM on the same date, place and time of occurrence. The common intention of the accused under Section 34 therefore could not be established by the prosecution.
- (f) It is next argued that no attempt has been made by the prosecution to bring on record any independent witness. Habibul Sekh named as the Rickshaw Van puller and Tutu, the tea stall owner named by the witness have not been examined by the prosecution.

(g) The tea stall has not been marked in the sketch map prepared by PW 15.

The first part of the incident, i.e. abduction of the deceased and dragging him into the house of Bijoy Das is correct then none of the eyewitnesses could have seen the assault or identified the accused.

34. Mr. Manjit Singh, learned Counsel for the appellant, firstly relied upon the decision of the Supreme Court in the case of ***State of Haryana v. Gurdial Singh and Anr.*** reported in ***(1974) 4 SCC 494***, particularly Para 21 thereof. It appears from the facts of the said case that inconsistencies were found between the versions of the statements given to the police and the deposition of the said persons as witnesses in the trial. There were also inconsistencies between the versions of the incident between the witnesses therein. The accused were acquitted on the basis of such inconsistencies. The said case cannot be applied in the facts of the instant case as the overwhelming and clear evidence of PW 4, PW 5, PW 6, PW 9, PW 10, and PW 12 are clear and consistent.

35. In support of the argument that the prosecution has not been able to bring in any independent witness and therefore the evidence of witness related to the deceased should not be accepted without corroboration. Reliance is also placed on the decision of ***Kanakarajan v. State of Kerala*** reported in ***(2017) 13 SCC 597*** and the case of ***Jaikam Khan v. State of Uttar Pradesh*** reported in ***(2021) 13 SCC 716*** particularly para 46 thereof.

36. In the ***Jaikam Khan Case (Supra)*** it was found that the two eyewitnesses PW 1 and PW 2 could have witnessed the assault on two of the deceased, ie, Shaukeen Khan and Mausam Khan but not on the other four deceased persons. It is in that context that the evidence of PW 1 and PW 2 therein was found neither wholly reliable nor wholly unreliable. There was no corroboration of the evidence of PW 1 and PW 2, the eyewitnesses.
37. In the instant case this Court finds that even though the 6 eyewitnesses were related to the deceased, they must be categorized as "wholly reliable" as the incident has been described similarly and there are no inconsistencies in their evidence. The injuries on the victim indicated by the aforesaid 6 witnesses are corroborated by the evidence of the post-mortem doctor and the post-mortem report. Their statements have not been proven inconsistent with any of the evidence of the other witnesses that has come on record. In the above circumstances, the ***Jaikam Khan decision (Supra)*** would not apply to the facts of the case.
38. In the ***Kanakarajan decision (Supra)***, the non-examination of the credible independent witness was found fatal to the prosecution case because of infirmity and lacunae in the prosecution case itself. The testimony of the witnesses was not found cogent or trustworthy. In the instant case, this Court finds that the evidence of six eye witnesses PW 4, PW 5, PW 6, PW 9, PW 10 and PW 11 is consistent. The post-mortem report is clear and supports the injuries indicated by the 6 witnesses. The wearing apparel, the

broken blood-stained door and the FSL report of the seized earth exhibited in Court, confirm and clearly corroborate the aforesaid eye witnesses. The prosecution brought on record all the seized items and proved the same and were marked as exhibits in the Trial. The FSL report of the blood-stained earth further bolsters the case of the prosecution. The evidence of the witnesses is both cogent and trustworthy. The said ***Kanakarajan case (Supra)*** has no manner of application in the facts of the case.

39. Insofar as the decision of the ***Krishnamurthy v. State*** reported in **(2022) 8 SCC 664** cited by Mr. Manjit Singh, learned Counsel for the appellant, this Court finds that the accused no. 1 and 3 had not challenged their conviction the State had not preferred an appeal against the findings recorded by the High Court against them. It was found that it could not be established by the prosecution as to the exact role played by the appellant therein in so far as the weapons used and the injuries suffered by the deceased. It was also found that the appellant could not have had any intention to cause the injuries to the deceased. It is in that context a conviction under Section 302 was converted to Section 304.
40. In the instant case, this Court in no uncertain terms finds each of the accused persons have been named by 6 eyewitnesses. They were stated to be carrying sharp cutting instruments like axe, knives, meat-cutting knives, chicken culling knives, iron rods and bamboo sticks. In an attack of this nature and given the injuries found on the victim named by the eyewitnesses

as well as the post-mortem doctor and the huge number of weapons wielded and used by the accused persons, it is impossible for the post-mortem doctor or the eyewitnesses to identify who inflicted what blow and injury on the victim.

41. As opposed to the above, in the ***Krishnamurthy decision (Supra)***, there was clear evidence that the appellant no. 2 attacked the deceased with a wooden log. Appellant no. 1 attacked the deceased using an iron pipe and appellant no. 3 also attacked using a wooden log. The Court also found that the assault on the victim in the said case was not done with intent to cause death. In the instant case, the Court finds that nearly all the prosecution witnesses have stated that there was a previous enmity and grudge between the family of the accused and the deceased with regard to land. The accused persons belong to one family unit and/or extended versions thereof.
42. Given the overwhelming evidence against each of the accused persons, this Court is of the view that the absence of proof or identification of the role played by each of the accused persons need not be independently proved by the prosecution. It is clear and explicit from the evidence on record that all the accused persons inflicted severe and fatal injuries on the deceased. They are all therefore equally guilty of the offences under Section 302 read with Section 34 of the IPC.

43. For the same reasons as indicated above, the decision of **Devendra Kumar & Ors. v. State of Chattisgarh** reported in **[2024] 11 S.C.R. 523** is also not applicable to the facts of the case.
44. Insofar as the evidentiary value of a related witness is concerned, it appears that from the cross-examination no attempt was made either by the first set of accused or Kinkar Mondal that the prosecution was trying to falsely implicate the accused or shield the actual culprits. None of the accused mentioned any other person or persons involved. A close relative cannot be ipso facto characterized as an interested witness. He is a natural witness, whose evidence must be scrutinized carefully. The inherent probability, trustworthiness, reliability and credibility of the evidence must also be seen and have been found in the evidence of the eyewitnesses, in the instant case. Reference in this regard is made to the case of **Harbans Kaur v. State of Haryana** reported in **2005 SCC (Cri) 1213** and the case of **Namdeo v. State of Maharashtra** reported in **2009 1 SCC (Cri) 773**. Reliance placed by the Trial Judge on the aforesaid cases is apt and appropriate.
45. The non-seizure of the weapons by the Investigating Officer and the absence of any fingerprint report of the weapons from the prosecution cannot be fatal to their case in the light of the overwhelming consistent, reliable and clear evidence of the eyewitnesses. The said evidence is duly corroborated by the PM report and the other material exhibits on record.

46. Insofar as the argument that the appellants could not have known that the victim would be at the same place of occurrence, this Court notices that the accused Bijoy Das whose house is visible from the tea stall could have easily ascertained the presence of the deceased thereat and assembled the other accused persons.
47. The nature of injuries on the deceased inflicted by the accused cannot be stated to have occurred in the heat of the moment. The enmity between the accused and the deceased as per the evidence of the witnesses was brewing and shimmering for quite some time. The nature of the injuries clearly indicates an intention to kill the victim.
48. Given the motive and the manner of attack on the victim, the ingredients of section 302 read with section 34 of the IPC are clearly established in the facts of the case.
49. Insofar as the argument that the medical opinion has not been given by a qualified forensic examiner, this Court notes that the injuries on the body of the victim can be easily ascertained, identified and measured by any qualified medical practitioner. The absence of the opinion of the doctor as to whether the death was homicidal or natural is totally irrelevant to the facts of the instant case.
50. The argument of Counsel for the appellants is that the eyewitnesses could have seen the assault on the victim if he had been dragged inside the house of Bijoy Das. This Court notices that most of the eyewitnesses have stated

that the assault occurred in front of or very close to the house of Bijoy Das. The assault was such that it broke the door of the house and the same was produced as evidence in the course of trial.

51. Learned Counsel for the appellant Kinkar Mondal pointed out discrepancies in the evidence of PW 1, PW 2 and PW 3 and the other witnesses. While this Court notices the inconsistencies in the evidence, the factum of the occurrence of the incident, the death of the victim, and the assault by the accused on the victim with weapons like an axe, meat cutting knife, chicken culling knife, iron rod and bamboo sticks would be established beyond all reasonable doubt. The minor inconsistencies between the timings and the evidence of prosecution witnesses would therefore not be fatal to the prosecution case. On the contrary, they lend credence to the evidence of the eyewitnesses who did not parrot the incident in a mechanical and pre-tutored manner.
52. Insofar as the decision of ***Laxmi Singh and Ors. v. State of Bihar*** reported in **(1976) 4 SCC 394**, it was held that not sending blood-stained earth for chemical examination can be fatal to a prosecution case and that the defence only needs to create a reasonable doubt. It was also held that it was a failure on the part of the prosecution that the injuries caused to the accused would help the defense case. In the instant case not only the FSL report of the blood-stained earth has been brought on record but there are no injuries on the accused persons.

53. The evidence against the accused persons is direct and there is no falsehood or serious inconsistencies in the evidence of the eyewitnesses amongst themselves or the evidence of the other witnesses. In fact, the medical evidence and material exhibits fully support the case of the prosecution and corroborate the evidence of the eyewitnesses namely PW 4, PW 5, PW 6, PW 9, PW 10 and PW 11. The case of ***Dharam Singh and Ors. v. State of Punjab*** reported in ***1993 Supp (3) SCC 532***, it was found that identical statements were made by the three eyewitness which suffered from the same contradictions and omissions. That is not the case in the Trial at hand.
54. The prosecution in the instant case has not been able to establish any enmity between the eyewitnesses and the accused persons. There is only mention of enmity between the deceased and the accused persons. The ***Dharam Singh case (Supra)*** can also be distinguished on this ground. The relationship between the eyewitnesses and the deceased therefore would not reduce the reliability and/or credibility of the related witnesses.
55. The case of ***Rambilas and Ors. v. State of Madhya Pradesh*** reported in ***1997 SCC (Cri) 1222*** also cannot come to the aid of the appellant. The 6 eyewitnesses in the instant case may have deposed about the incident and the role of the accused persons as seen by them. Their versions did not contain any serious omissions or contradictions or improvements. It cannot be said that the eyewitnesses had been tutored in the instant case, given the

evidence in the manner deposed by them and the corroborating medical evidence and material exhibits produced in the course of the trial.

56. Insofar as the ***Ek Nath Ganpat Aher and Ors. v. State of Maharashtra and Ors.*** reported in ***(2010) 6 SCC 519***, the facts of the case are completely distinguishable from the instant case. In the said case a mob of 75 to 100 people descended to the disputed site from an adjacent hill and pelted stones on the complainant. When the complainant and other victims, started running, they were attacked by the accused persons with 6 iron rods and swords resulting in two deaths. 14 accused persons also received injuries for which no explanation was given. None of the eyewitnesses or the injured witnesses named any particular accused, inflicted any particular injury. The statements of the witnesses therein were omnibus in nature. It is in those circumstances that the Supreme Court acquitted the accused persons.
57. The last decision of ***Rai Sandeep Alias Deepu v. State (NCT of Delhi)*** reported in ***(2012) 8 SCC 21***, cited by Counsel for Kinkar Mandal also has no manner of application in the facts of the case. In in the said case, which was in respect of an offense under Section 376(2)(g) the Supreme Court found the forensic evidence not supporting the prosecution case. The seized articles did not match the evidence of the prosecutrix. Material variations were found in the complaint and deposition in the prosecution in the Court. The versions of the alleged eyewitnesses were found therefore not reliable and did not support the prosecution case. The seized articles did not also

match the evidence of the prosecutrix and that of the eyewitnesses. The said case will not have any manner of application to the facts of the instant case.

58. In the light of the discussion made hereinabove and the clear evidence of 6 eyewitnesses duly corroborated by the medical evidence and the forensic evidence of the blood-stained earth, the nature of injuries on the body of the victim clearly establish the guilt of the accused persons. The appellants have, therefore, been rightly convicted under section 302 read with section 34 of the IPC and sentenced to life imprisonment.

59. The aforesaid appeals therefore fail and are hereby dismissed.

60. Let a copy of this judgment be sent down to the Court below for information.

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

***(Rajasekhar Mantha, J.)***

I agree.

***(Ajay Kumar Gupta, J.)***