



Sessions Case No : 05(04)2018
S.T. No. 06(07)2019
Registration No. : 64/2018
CNR no. WBBK090001502018

Form A

IN THE COURT OF ADDITIONAL SESSIONS JUDGE KHATRA, BANKURA	
Present :	Sri Dilip Kumar Das Additional Sessions Judge, Khatra, Bankura. J.O. Code- WB00638
<u>S.T.- 06(07)2019</u> <u>S.C Case No : 05(04)2018</u> <u>REG NO. 64 of 2018</u> <u>G.R- 28/2018</u> CNR no. WBBK09000150 2018	
Date of Delivery of Judgment: Khatra, the 21st day of July, 2026	
In reference to the Indpur PS Case No. 08 of 2018, dated 17.01.2018 Under Sections 302/379/201/34 of the Indian Penal Code.	
Prosecution	State of West Bengal
Represented by	Shri Tapas Kumar Pathak: Ld. P.P- Incharge
Accused Person	1. Sahabul Khan, 2. Mansur Ali Khan and 3. Mijanur Rahaman Mondal.
Represented by	1. Sri Dharanidhar Pathak and 2. Sri Barid Baran Bag : Learned Advocates for the accused persons.

Date of Offence	16.01.2018
Date of FIR	17.01.2018
Date of charge-sheet	16.04.2018
Date of Framing of Charges	15.07.2019
Date of commencement of evidence	07.11.2019
Date on which Judgement is reserved	Not applicable
Date of the Judgement	21.07.2026
Date of the sentencing order, if any.	Not applicable



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ACCUSED DETAILS:

Rank of the accused	Name of accused	Date of arrest	Date of release on Bail	Offences charged with	Whether acquitted or convicted	Sentence imposed	Period of detention undergone during Trial for purpose of Section 428 Cr.P.C.
1.	Sahabul Kha, S/o- Late Mansur Ali Khan of Vill- Dhuniagarh, P.S- Indpur Dist- Bankura	18.02.2018	13.02.2019	Under Section 302 of the Indian Penal Code.	Acquitted	N.A.	N.A.
2.	Mansur Ali Kha, S/O- Dilbar Ali Khan @ Dilu of village- Dhuniagarh, P.S- Indpur Dist- Bankura.	19.01.2018	10.09.2018	Under Section 302 of the Indian Penal Code.	Acquitted	N.A.	N.A.
3.	Mijanur Mondal @ Mijanur Rahaman Mondal, S/O- Hapijul Mondal of village- Dhuniagarh, P.S- Indpur Dist- Bankura	Surrendere d before the court on 23.07.2018	14.12.2018	Under Section 302 of the Indian Penal Code.	Acquitted	N.A.	N.A.

LIST OF PROSECUTION WITNESSES

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS
PW-1	Dhiren Chandra Hari	De facto complainant
PW-2	Tapan Hari	Other Witness
PW-3	Pintu Saini @ Hari	Other Witness
PW-4	Kartick Hanri	Other Witness
PW-5	Asit Mondal	Scribe
PW-6	Mamata @ Kalpana Hari	Other Witness
PW-7	Laxmikanta Hari	Other Witness



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PW-8	Malay Mahapatra	Police Witness
PW-9	Abul Dalal	Other Witness
PW-10	Sanjay Hari	Other Witness`
PW-11	Uttara Hari	Other Witness
PW-12	Taranisen Hanri	Other Witness
PW-13	Kuddush Mondal	Other Witness
PW-14	Kalipada Hanri	Other Witness
PW-15	Shantanu Chakraborty	Police Witness

LIST OF PROSECUTION EXHIBITS

A. Prosecution:

Sr. no.	Exhibit Number	Description
1	Exbt.1/1	Signature of the PW-1 on the written complaint.
2	Exbt.2	Signature of the PW-1 on the Carbon Copy of the inquest report.
3	Exbt.3	Signature of the PW-1 upon the Seizure List dated 17.01.2018.
4	Exbt.2/1	Signature of the PW-2 upon the Inquest Report.
5	Exbt.3/1	Signature of the PW-2 on the Seizure List dated 17.01.2018.
6	Exbt.P-2(2)	Signature of the PW-3 on the inquest report.
7	Exbt.P-1(2)	Signature of the PW-5 on the written complaint.
8	Exbt. P-1(3)/PW-5	Whole written complaint.
9	Exbt. P-4	Signature of the PW-12 on the seizure list prepared in between 06.25 hrs. to 06.45 hrs. on 19.02.2018.
10	Exbt. P-4(1)	Signature of the PW-14 on the seizure list prepared in between 06.25 hrs. to 06.45 hrs. on 19.02.2018.
11	Exbt. P-5(obj. to)	Signature of the PW-15 on the seizure list prepared at 20.25 hrs. on 09.03.2018.
12	Exbt. P-6	The postmortem report of the victim.



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B. Material Objects:

Sr. no.	Material Object Number	Description
1.	Nil	Not applicable

J U D G E M E N T

01. The briefly stated prosecution case before the court is that the de facto complainant, Sri Dhiren Chandra Hanri, son of Late Manu Hanri of village- Dhuniagarh, PS- Indpur, District- Bankura lodged a written complaint to the Officer-in-Charge of the Indpur P.S. on 17.01.2018 alleging inter alia that around 07.30 pm on 16.01.2018 the victim went to the brick field and he was already in the brick field since prior to going of the victim there and he was storing coal there. Then he heard the shouting of his brother, the victim herein and after arrival at the PO he found that the victim was lying beside the bricks in bleeding condition. He called the victim but he did not get any reply. At that time profuse bleeding was going on to the head of the victim then the de facto complainant began to shout loudly and after hearing his shouting the local people including Laxmikanta Hanri, the nephew of the victim and other para people rushed there and they came to learn that the victim was no more.

02. The de facto complainant also stated that when he was coming to the victim after hearing his shouting then he found in torch light that three miscreants were fleeing and in the light of that torch the de facto complainant found that those miscreants were 1. Sahabul, 2. Mansur Ali Khan and 3. Dilu.

03. The de facto complainant also alleged that 2-3 days prior to the incident Mizanur Mondal threatened the victim to murder him and so that the de facto complainant came to learn that the accused



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persons are involved in the incident of this case. It is further stated that the accused Sahabul used to suspect that the victim had illicit relation with his second wife and due to that reason Sahabul threatened the victim in presence of the para people.

04. The de facto complainant also came to learn that the victim was murdered with sharp cutting weapon. At the time of the incident the victim was with a mobile phone of the Nokia company along with some liquid cash and the miscreants have looted those articles from the victim.

05. By lodging the instant complaint to the Officer-in-Charge the de facto complainant prayed for taking appropriate action against the accused persons namely, 1. Sahabul Khan, 2. Mansur Ali Khan and 3. Mijanur Rahaman Mondal of this case in accordance with law.

06. Receiving the complaint, the Officer-in-Charge of the Indpur P.S. registered a Specific Case being the Indpur P.S. Case No. 08 of 2018, dated 17.01.2018, Under Sections 302/379/34 of the Indian Penal Code.

07. The case was endorsed to SI Debprasad Mukherjee of the Indpur PS for investigation. The said Investigating Officer then and then started investigation. On completion of investigation, the IO submitted charge-sheet against the accused persons namely, 1. Sahabul Khan, 2. Mansur Ali Khan and 3. Mijanur Rahaman Mondal, being the Indpur PS charge sheet no. 23 of 2018, dated-16.04.2018, Under Sections 302/379/201/34 of the Indian Penal Code.

08. After receiving the charge-sheet, the Court of Ld. ACJM, Khatra took cognizance of the above stated offence on 17.04.2018 and thereafter committed the case record to this court for trial. As per the direction of the Ld. ACJM, Khatra the accused persons appeared before this court.

09. On appearance of the accused persons, charge was framed against them on 15.07.2019 by this Court Under Sections 302/34 of the Indian Penal Code.

10. The charge so framed was read over and explained to the



accused persons in Bengali to which they pleaded not guilty by saying 'Amra Nirdosh' and claimed to be tried. The accused persons also stated that they have been falsely implicated in this case.

11. This court thereafter framed different schedules by fixing different dates for examination of the prosecution witnesses and recording their evidences.

12. After examination of 15 witnesses out of 19 charge-sheeted witnesses the prosecution declared that they would not be able to examine any other witness and prayed before the court for closure of the recording of evidence of the prosecution.

13. As per the submission of the Ld. PP the recording of evidence of prosecution was accordingly closed and date was fixed for examination of the accused persons Under Section 313 of the Cr.P.C. At the time of their examination the accused persons stated that they are totally innocent and they have no connection with this case but the de facto complainant and the prosecution has implicated them in this case falsely.

14. The court gave the accused persons liberty to adduce evidence on their behalf before the court, but they declined to adduce any evidence. They did not file any document also in their favour.

15. The case was accordingly fixed for hearing of argument of both sides and after completion of hearing of argument of the respective parties, the court fixed the case for delivery of judgment.

POINTS FOR CONSIDERATION

The point before this Court is :

Whether the prosecution has been able to prove the guilt of the accused persons namely, 1. Sahabul Khan, 2. Mansur Ali Khan and 3. Mijanur Rahaman Mondal for alleged commission of offence to murder the victim Birbal Hanri of this case Under Section 302/34 of the Indian Penal Code or not !



DECISION WITH REASONS

16.00. Before drawing a conclusion about the ultimate fate of the prosecution case we are to meticulously discuss the entire materials which could be brought before the court on behalf of the prosecution. In other words, we have to carefully go through the oral as well as documentary evidences available before this Court on behalf of the prosecution. On the other hand, the accused persons themselves in their defence neither examined any witness on their behalf nor they filed any document on behalf of them against the allegation of the prosecution.

16.01. On perusal of the evidences of the prosecution, it is seen that the PW-1, Dhiren Chandra Hari is the de facto complainant of this case. He in his examination in chief stated before the court that the deceased victim namely, Birbal Hari is his elder brother. He stated that the alleged incident took place around 07.30 pm on 16.01.2018 at the brick field of their village. He was working in the field at the relevant point of time. All on a sudden he heard hue and cry of his elder brother, the victim herein from the opposite side of the brick field where the PW-1 was working. Then he rushed to that place and found that the victim was lying on the earth with seriously bleeding injuries on his person. He also noticed that blood was coming out from the injured portion of the head.

16.02. The PW-1 in his examination-in-chief also stated before the court that he called the victim by his name but did not get any reply from him. Then he raised alarm and his nephew Laxmikanta Hanri and some of their villagers came there. Then the PW-1 realized that his elder brother was already dead. When the PW-1 was coming to hear the hue and cry of his elder brother then he noticed that three persons were fleeing away from the PO by holding torch light in their hands. Then the PW-1 switched on his light towards them and found the accused Sahabul Khan and his father Mansur Ali Khan who were fleeing away from that place. The PW-1 also stated that 2 to 3 days prior to the alleged incident accused Mijanur Mondal of their village



threatened the victim with dire consequences. The PW-1 also stated that the accused Mijanur Mondal was also involved with the murder of the victim.

16.03. The PW-1 further alleged that Sahabul thought that the victim had an illicit relation with his wife Ayesha Bibi and for that reason he also threatened the victim with dire consequences. At the relevant point of time the victim was carrying a mobile bearing the SIM Card no. 9732066990 and some liquid money was also snatched away by the miscreants. The signature of the PW-1 on the written complaint is marked as Exbt. 1/1. The PW-1 identified all the accused persons namely, 1. Sahabul Khan, 2. Mansur Ali Khan and 3. Mijanur Mondal.

16.04. Police took photograph and also collected the blood stained earth from the PO by preparing a seizure list and the PW-1 signed the said seizure list as a witness. The Inquest report of the body of the victim is marked as Exbt. 2. The signature of PW-1 on the seizure list is marked as Exbt. 3. So, in his examination-in-chief the PW-1 brought direct incriminating material against the accused persons of this case.

16.05. On the other hand, PW-2, Tapan Hanri is an other witness as well as a charge-sheeted witness of this case. He in his examination in chief stated before the court that Birbal Hanri used to work in the brick field. The accused Mijanur Mondal also used to deal with bricks. Accused Sahabul used to believe that Birbal had an illicit relation with his wife and for that reason one day i.e. on 15.01.2018 Sahabul threatened the elder sister of Birbal and told her that he would murder Birbal as he had illicit relation with his wife. On 16.01.2018 accused Mansur Ali Khan also told the nephew of Birbal namely, Laxmikanta Hanri that his maternal uncle would be murdered in near future. Around 07.30/08.00 pm on 16.01.2018 the brother of Birbal namely, Dhiren Chandra Hanri while was working in the brick field then he heard some noise and thereafter discovered that Birbal was lying dead with serious bleeding injuries in the said brick field. Then Dhiren raised hue and cry and after hearing the same the PW-2 along



with other co-villagers went there and found the dead body of Birbal there.

16.06. The PW-2 also stated that then the matter was informed to the Indpur Police Station. PW-2 identified all the three accused persons namely, 1. Sahabul Khan, 2. Mansur Ali Khan and 3. Mijanur Mondal before the court.

16.07. PW-2 is also a inquest witness and his signature on the inquest report of the body of the victim is marked as Exbt. 2/1. He is also a signatory to the seizure list dated 17.01.2018 and the said signature of PW-2 is marked as Exbt. 3/1. So, the PW-2 also in his examination-in-chief brings direct allegation against the accused persons of this case.

16.08. On perusal of the record it is seen that the PW-3, Pintu Saini @ Hanri is also an inquest witness and he signed the inquest report as a witness. His signature on the inquest report is marked as Exbt. P-2(2). Considering his examination-in-chief the PW-3 was declared hostile by the prosecution and with the permission of the court he was cross-examined by the Ld. PP. But no incriminating material could be obtained from his mouth against the accused persons.

16.09. The PW-4, Kartick Hanri is an other witness and he knows the parties involved in this case. He identified the accused persons before the court. But he in his examination-in-chief stated before the court that he was not examined by the IO of this case. So, he was also declared hostile by the prosecution and no incriminating material for helping the prosecution could be found from him. So, his evidence practically is of no help for the prosecution case.

16.10. PW-5, Asit Mondal is also an other witness. He stated that about 3 to 4 years ago from the date of his deposition Madhu Hanri asked him to accompany him to Indpur PS as some incident took place and so that he accompanied him. PW-5 is also the scribe of the written complaint of this case. He write the complaint as per the wordings of the de facto complainant Dhiren Chandra Hanri. The signature of PW-5 on the written complaint is marked as Exbt. P-1(2) and the entire



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written complaint is marked as Exbt. P-1(3)/PW-5. Ultimately the PW-5 also turned hostile and so that he was cross-examined by the prosecution after obtaining the permission from the court. But he also did not bring any incriminating material against the accused persons of this case.

16.11. PW-6, Mamata @ Kalpana Hanri is the wife of the victim Birbal Hanri. She in her examination-in-chief stated before the court that around 06.00 pm about 5 years ago her husband returned from Gunnath Bazar and went to brick factory situated nearer to their house. After that she went to the pond from there and therefrom she saw that there was no light at the brick factory and accordingly she returned to the house. Then she told her bhagna (nephew) Laxmikanta that her husband did not return to his residence and asked him to accompany her for searching the victim. Accordingly her bhagna and she herself went to the brick factory and found her brother in law Dhiren Hanri shouted by saying "mere dilo mere dilo" (killed killed) and then she reached to the brick factory and saw the dead body of her husband Birbal was lying there.

16.12. The PW-6 categorically stated that Sahabul and Mansur murdered her husband Birbal Hanri. PW-6 also stated that Sahabul told her that there was love affairs between Birbal Hanri and wife of Sahabul. She identified the accused persons before the court. So, the PW-6 also labelled allegations against the accused persons. But at the same time the PW-6 stated that she was not examined by the IO of this case. So, this evidence of PW-6 became doubtful to the prosecution and so that with the permission of the court she was cross-examined, but not a single word could be obtained from her mouth by the prosecution.

16.13. On the other hand, in her cross-examination by the defence the PW-6 who is one of the vital charge-sheeted witnesses of this case stated that she did not see the incident of murder of her husband in her own eyes and she had no discussion about the incident with anyone. She had no talk with the police also about the incident of



this case. So, though the PW-6 is the wife of the victim, in spite of that her evidence practically is not strong and helpful for the prosecution.

16.14. The PW-7 Laxmikanta Hanri is the nephew of the victim Birbal Hanri. He in his examination-in-chief stated before the court that on the day of the incident he was going to Mukutmanipur from Manipur village by driving an Omni Van and when he stopped the said vehicle at Hatirampur, then the accused Mansur Ali Khan stated to him that Birbal would not be alive that day as he (Mansur Ali Khan) had arranged some persons. Then the PW-7 went to Mukutmanipur and when he returned to the house at Dhaniagarh in the evening time and went to the house of Birbal Hanri for paying hire charges of Omni Van his aunt Mamata Hanri told that Birbal Hanri went to brick factory. Then the PW-7 started to go towards the brick factory which was situated at a distance of about 200 meters from the house of Birbal and then he suddenly heard the sound of Dhiren Hanri, his younger maternal uncle and he reached at the brick factory he found that the victim Birbal was lying on the ground in bleeding condition.

16.15. The PW-7 in his examination-in-chief also stated before the court that when he asked Dhiren Hanri about the murder of Birbal Hanri at that time Dhiren Hanri told him that two persons namely, Sahabul Khan and Mansur Ali Khan murdered Birbal Hanri and fled away and after that huge number of people assembled there. He was examined by the IO of this case. So, in his examination-in-chief PW-7 narrated the incident before the court. But the prosecution felt that the PW-7 was not telling the truth then they declared him hostile and with the permission of the court Ld. PP cross-examined him but nothing more could be obtained from his mouth in the said cross-examination.

16.16. On the other hand, PW-8, Malay Mahapatra is a police witness who stated before the court that on 17.02.2018 he was posted at the Indpur PS as SI of police. On 18.02.2018 he arrested the accused persons namely, Sahabul Khan from Cuttock Railway Platform, Orissa and he identified the said accused before the court. The PW-8 provided



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no other material in this case and considering the examination-in-chief the prosecution did not cross-examine him at all.

16.17. The PW-9, Abul Dalal is an independent witness. He stated before the court that he knows the parties involved in this case. He heard that around five years ago Birbal Hanri was murdered at brick factory at Dhaniagarh. He was not examined by the IO of this case according to his examination in chief. So, considering his examination in chief of his deposition on dock the prosecution declared him also hostile and no incriminating material against the accused persons could be found from his mouth.

16.18. On the other hand, PW-10, Sanjay Hanri is the son of the victim Birbal Hanri. He in his examination in chief stated before the court that his father died around 7.00 pm on 16.01.2018 in front of the brick field of the village. According to his examination in chief coal for the brick field was brought and that was being unloaded to the brick field of their village. His father, the victim herein went to see the said unloading of coal brought to the brick field. PW-10 also stated that hearing the shouting of his uncle Dhiren Hanri they rushed to the PO and then his uncle told that the accused persons namely, Sahabul and Mansur chopped him on the right side of the head. He at the same time also stated that he cannot say why the accused persons murdered his father. He also does not know the weapon which was used by the accused persons for murdering his father. PW-10 at the same time also stated that he was not examined by the IO of this case and considering his examination in chief prosecution declared him hostile and with the permission of the court Ld. PP cross-examined him but no specific incriminating material against the accused persons could be found from his mouth.

16.19. The PW-11, Uttara Hanri is the younger sister of the victim Birbal Hanri. She also stated that the accused persons namely, Mansur Ali Khan and Sahabul Khan murdered Birbal Hanri. She stated that coal was brought to the brick field and it was being unloaded and the victim went to see/monitor the same. All on a sudden Dhiren



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Hanri began to shout and from him they came to learn that the accused persons namely, Mansur Ali Khan and Sahabul Khan chopped the victim on his head and he was lying at the PO in profusely bleeding condition. The PW-11 identified the accused persons namely, Mansur Ali Khan and Sahabul Khan before the court. She failed to say anything about the remaining accused of this case.

16.20. In her cross-examination the PW-11 admitted that she did not see anything in her own eyes. She also did not see that the accused persons chopped the victim on his head. She had no talk with anyone about the incident. So, the PW-11 also tried to bring incriminating material against the accused persons of this case.

16.21. PW-12, Taranisen Hanri is an other witness of this case. He in his examination-in-chief stated before the court that Birbal Hanri was murdered probably in the year 2016 in a brick field situated beside their village. At the same time he stated that he cannot say how Birbal was murdered. He identified all the three accused persons before the court. He is a signatory to the seizure list prepared in between 06.25 hrs. to 06.45 hrs. on 19.02.2018 and his signature on the said seizure list is marked as Exbt. P-4.

16.22. In his cross-examination the PW-12 admitted that he signed the seizure list at Indpur PS. He also admitted that he cannot say the content of the said seizure list. So, His evidence regarding the seizure of the alleged tangi with which the victim was allegedly murdered by the accused persons is not free from doubt.

16.23. PW-13, Kuddus Mondal is a co-villager of the victim and identified the accused persons as his co-villagers. But he was not examined by the IO of this case. So, considering his examination in chief, the PW-13 was declared hostile and no incriminating material for holding the accused persons guilty could be obtained from his evidence.

16.24. On the other hand, PW-14 Kalipada Hanri is also a co-villager of the victim. He heard that Birbal died int the night time in the month of January, 2018. He also heard that Birbal was murdered but he cannot say who murdered Birbal. He was examined by the IO.



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He also stated that the IO of the case seized one iron made tangi fitted with wooden butt measuring approximately 3 inch X 2 inch in his presence by preparing a seizure list in between 06.25 hrs. to 06.45 hrs. on 19.02.2018. He signed the said seizure list as a witness and his signature on the said seizure list is marked as Exbt. P-4(1). The prosecution declared the PW-14 also hostile as according to the prosecution he deviated from his previous statement made before the IO when he was examined under Section 161 of the Cr.P.C.

16.25. In his cross-examination by the defence the PW-14 stated that he signed the seizure list at the Indpur PS and he has no further knowledge about this case. So, from the evidence of PW-14 this court does not find any specific information about the actual involvement of the accused persons with the painful murder of the victim Birbal Hanri.

16.26. PW-15, Shantanu Chakraborty videographed and prepared a CD as per the instruction of the then O.C. of the Indpur PS. He handed over the CD to the OC subsequently. The IO seized the said CD during investigation by preparing a seizure list. PW-15 signed the said seizure list and his signature on the said seizure list prepared at 20.25 hrs. on 09.03.2018 is marked as Exbt. P-5 (objected to).

16.27. But in his cross-examination by the defence, the PW-15 stated before the court that he does not know the contents of the CD without going through it. So, it not clear to the court whether the above stated CD was prepared in accordance with law or not. The IO also did not state anything regarding the preparation, contents and seizure of the said CD. So, the evidence of PW-15 also cannot be said to be sacrosanct for the prosecution case.

17.00. Ld. PP argued in support of the prosecution case stating inter alia that the prosecution has been able to examine 15 witnesses out of 19 Charge Sheeted Witness and they have also been able to prove the guilt of the accused persons before the court with the evidences discussed above.

17.01. Ld. PP also argued that most of the witnesses who are



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examined on behalf of the prosecution brought direct incriminating materials against the accused persons and those evidences are very convincing and believable.

17.02. Ld. PP also argued that the PW-1, PW-2, PW-11 provided direct and strong incriminating materials against the accused persons before the court in their deposition and so that it can be held that the prosecution is able to prove the case in the eye of Law. It is also argued that though some of the prosecution witnesses became hostile but the above mentioned witnesses are able to prove the guilt of the accused persons before the court. At the time of his argument Ld. PP argued that the offending weapon is recovered and it is proved before the court in accordance with law and so that it should be held that the guilt of the accused persons is established before this court in the eye of law and accordingly, they should be convicted.

18.00. On the other hand, Ld. Defence counsel argues that the prosecution case suffers from want of strong incriminating materials before the court against the accused persons. It is also argued that most of the witnesses examined before the court turned hostile and the evidences of the remaining witnesses who are not hostile to the prosecution are also stereotyped and the said witnesses are the family members of the victim. So that as per the argument of the Ld. Defence Counsel they are the interested witnesses and there are also different loopholes in their deposition against the accused persons of this case.

18.01. Ld. Defence counsel further argued that the prosecution though examined as many as 15 witnesses before the court, but they failed to examine any medical witness before the court. It is also argued that the prosecution even failed to bring the IO of the case before the court for recording his evidence and as a result of it the defence is deprived of the cross-examination of the Investigating Officer. So, it is a very vital lacuna on the part of the prosecution.

18.02. It is also argued that the alleged offending weapon could not be exhibited in accordance with law before this court and this is also a glaring defect on the part of the prosecution.



18.03. Ld. Defence Counsel argued that there are contradictory statements in the evidences of the prosecution witnesses. In other words, the depositions of the prosecution witnesses sharply contradicted each other and it made the prosecution case seriously weak. It is also argued that the entire case of the prosecution is based on surmise and conjecture which is not entertainable in deciding a sessions case as per the principle of criminal law and the defence is entitled to the due benefit of this situation of the prosecution case.

18.04. It is also seen that the Ld. Advocate for the accused emphatically argued that though 15 (fifteen) witnesses are examined on behalf of the prosecution, but those are not very strong and reliable for holding the accused persons guilty. There are serious lacunae in those evidences. In other words, there is no similarity between their evidences before the court and their statements made before the IO of this case during investigation.

18.05. Ld. advocate for the accused advances before the court that the case of the prosecution suffers from serious doubt as there are so many inconsistencies in their evidences. It is also argued that no strongly impartial evidence relating to the involvement of the accused persons with this case could be brought before the court by the prosecution.

18.06. It is also argued that there is no eye-witnesses in the instant case and the all the evidences of the witnesses examined on dock are hearsay evidences. Ld. Defence counsel strongly argued that due to previous hostility, the accused has been falsely implicated in this case intentionally without any direct evidence.

18.07. Ld. Defence Counsel ultimately advanced before the court that in the eye of law there is no believable incriminating material against the accused persons of this case and so that, the prosecution case cannot be said to be proved beyond reasonable doubt. In view of the above argument Ld. Advocate for the accused persons strongly and categorically submitted that the prosecution case has no leg to stand before this court in the eye of Law and consequently the accused



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persons held not guilty and they should be acquitted in this case accordingly.

19.00. On scrutiny of the record it is seen that the IO cited as many as 19 witnesses in his charge-sheet before the court. But ultimately the prosecution examined the aforementioned 15 witnesses including the most vital witnesses like the the de facto Complainant and the known persons of the deceased victim etc. The said witnesses also stated many things to the IO during investigation against the accused persons.

19.01. They also deposed before the court in support of the prosecution, but they failed to maintain exact parity of those statements before this court at the time of their cross examinations.

19.02. On further scrutiny of the record, it is seen that the PW-1 is the de facto complainant and in his examination in chief he brought direct allegation against the accused persons. But in his cross-examination he admitted that his elder brother was the proprietor of the above stated brick field having the area around 5/ 7 bighas and other villagers are the owners of that 5/7 bighas of land of the village. He also admitted that the scribe Asit Mondal resides at the village Saloni which is at distance of about 30 KM from the PO. So, it is natural that he may not have knowledge about the reason of death of the victim. Similarly, Madhu Hanri is the brother in law of the victim and he also resides at a distance of about 30 KM from the village of the PW-1. So, his evidence is also cannot be said to be very cogent and convincing in regard to the direct knowledge regarding the involvement of the accused persons with the alleged incident. The PW-1 also admitted that the villagers informed the police about the incident and after arrival of the police the complaint was submitted to the PS. He has no knowledge when police came first for investigation.

19.03. It is further seen that the PW-1 in his cross-examination admitted that Baruipara is situated on the northwestern part of the brick field and their village is densely populated. So, it is very peculiar that the nearby neighbours could not know anything



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about the direct involvement of the accused persons with the case. Though it is alleged that the accused Mijanur Mondal threatened the victim with dire consequences but the PW-1 in his cross-examination admitted that he did not inform the police station about the alleged threat by Mijanur Mondal. It is further seen that on the date of the alleged incident the de facto complainant went to the brick field around 05.00 pm and at the relevant point of time the victim was not present there. Police did not seized the alleged torch from which light came out and the accused persons could be seen to flee away from the PO. So, this is also a vital lacuna of the IO in regard to the investigation of this case.

19.04. On the other hand, PW-2 though is an independent witness and she made statement in his examination-in-chief against the accused persons but in his cross-examination he admitted that police came around 09.00/09.15 pm on the date of the incident and many people assembled at the PO at that time. But none threatened with the consequences of the murder to anyone in his presence. The PW-2 himself was also not present when accused Mansur Ali Khan allegedly threatened Laxmikanta about Birbal on 16.01.2018. So, the allegation of threat is not beyond doubt.

19.05. The PW-2 in his cross-examination also admitted that he cannot say on which paper he put his signature at the police station. He has also no knowledge about the contents of those papers in which he put his signatures. So, the alleged seizure in which he is a signatory is also not free from doubt. After his signature the PW-2 was not interrogated by the IO about the alleged incident. He also admitted that he did not witness the alleged incident. So, though the PW-2 brings direct allegation against the accused persons but his cross-examination practically suffers from doubt.

19.06. On the other hand, PW-3, PW-4, PW-5, PW-6, PW-7, PW-9, PW-10, PW-13 and PW-14 turned hostile and ultimately their depositions practically did not help the prosecution case in any way.

19.07. Furthermore, the PW-8 though not turned hostile but he has no direct knowledge about the involvement of the accused



persons in the alleged murder of the victim Birbal Hanri.

19.08. In the same way, though PW-11 did not turn hostile but he categorically stated that he did not see anything in his own eyes. He also did not see that the accused person chopped the victim on his head. So, the evidence of PW-11 practically is not very cogent and convincing in the eye of law for holding the accused persons guilty in this case.

19.09. Similarly, though the PW-12 is a seizure witness and did not turn hostile but his evidence is very formal and not strong enough. At the same time it is strengthened when he in his cross-examination stated before the court that he signed the seizure list at the Indpur PS and he does not know the contents of the said seizure list.

19.10. The PW-15 though did not turn hostile and he videographed as per the instruction of the OC of the Indpur PS is not sufficient to hold that the videography was done in accordance with law and that videographed can be applied against the accused persons without any question. In other words, the evidence of PW-15 cannot be held to be sacrosanct against the accused persons.

19.11. It is the settled principle of administration of Criminal Justice that the prosecution is to prove the guilt of the accused persons with cogent and convincing evidences before the court beyond all reasonable doubts. The slightest doubt in the mind of the Court regarding the involvement of the case in the commission of offence bears very negative impact upon the prosecution case.

19.12. In view of above discussion of the present case, this Court finds that the evidences of the prosecution cannot be considered to be very cogent, convincing and beyond any shadow of doubt. In other words, the evidences brought on record on behalf of the prosecution can not be said to be strongly satisfactory to the court for holding the accused persons guilty in this case. This means that as per the above discussions and reasons the prosecution case suffers from reasonable doubt meaning thereby the accused persons are entitled to the benefit of



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that doubt as per the principal of law.

19.13. Therefore, in the light of the above discussion and background of the instant case, evidences both oral as well as documentary before the court, arguments of both sides, spirits of the above provisions of laws under which charge was framed against the accused persons and trial of the case is being conducted, this Court is of the strong view that in the eye of law the prosecution has failed to prove the guilt of the accused persons before this Court beyond all reasonable doubt. Therefore, the accused persons are held not guilty in this case. Accordingly, they are entitled to an order of acquittal.

Hence, it is,

ORDERED,

that the accused persons namely, **1. Sahabul Khan, 2. Mansur Ali Khan and 3. Mijanur Rahaman Mondal** are held not guilty of the offences punishable under Section 302/34 of the Indian Penal Code.

As such, they are acquitted of the said charge under Section 235(1) of the Criminal Procedure Code.

The accused persons be set at liberty by discharging them from their respective bail bonds at once.

Seized alamats be confiscated to the State after the expiry of the period of appeal.

Dictated & corrected by me

A.S.J.
Khatra , Bankura

Additional Sessions Judge,
Khatra , Bankura
J.O. Code- WB00638