

**IN THE COURT OF THE ADDITIONAL DISTRICT & SESSIONS' JUDGE
2ND FAST TRACK COURT, CITY SESSIONS COURT,
BICHAR BHAVAN, CALCUTTA.**

-:- Present -:-

Shrutirupa Ghosh (Majee)
Additional District & Sessions Judge.
2nd Fast Track Court, Bichar Bhavan. Calcutta.
J. O. Code No. WB-00821

Sessions Case No. 31 of 2023
Sessions Trial No. 01 (July) of 2023
CNR No. WBCS01-000484 of 2023

**Arising out of Muchipara Police Station Case No. 15 of
2023 dated 06. 02. 2023 under Sections 302/34 of IPC.**

STATE OF WEST BENGAL

.....Prosecution.

-:- Versus -:-

- (1). Alope Chakraborty,
- (2). Ajay Das,
- (3). Jayanta Bhuia and
- (4). Amitava Saha @ Jamai.

..... Accused Persons.

Sanjay Singh and Jayanta Kumar Ghosh,

- Ld. Public Prosecutors for the State.

Sri Sandip Chakraborty and Debjyoti Bharati,

- Ld. Advocates for the accused persons.

-:- Date of delivery of Judgment and date of sentence -:-

7th & 8th day of July, 2026.

-:- J U D G M E N T -:-

A criminal trial for the offence of murder demands the highest degree of judicial scrutiny, for it concerns not only the gravest violation of law but also the irreversible deprivation of human life.

In the words of Benjamin N. Cardozo:

***"Justice, though due to the accused,
is due to the accuser also. The concept
of fairness must not be strained till it
is narrowed to a filament."***

The duty of the Court, therefore, is not merely to guard against wrongful conviction but also to ensure that justice is not defeated by overlooking credible and convincing evidence.

In this case four accused persons, namely, (1) Aloke Chakraborty, (2) Ajay Das, (3) Jayanta Bhuia and (4) Amitava Saha @ Jamai are facing trial for commission of offence punishable **under Section 302/34 of Indian Penal Code.**

PROLOGUE

The factual score of the instant case in a nutshell is that one Meghnath Sahani, son of Dilip Sahani, residing at 167 Bipin Behari Ganguly Street, Kolkata-12, PS-Muchipara lodged the written complaint before Officer-in-Charge of Muchipara Police Station wherein he had stated that he runs a business of 'Chicken' and has a 'Motor cycle' being Registration No. WB 08J-9354, Super Splender Hero, which was used for 'Rapido' bike service. One Ayush Julka used the said bike for rapido since last seven days from 10 a.m. in the morning till 10 p.m. in the night and deposited the same to the defacto-complainant after completion of his work.

He has further stated that on 05. 02. 2023 at about 10.30 p.m. in the night he returned the motor bike to the complainant in front of a toilet at Santosh Mitra Square and they talked for about one hour. Ayush Julka told him that he would return within one hour but after passing one hour, but when he did not return, the defacto-complainant became worried and went in search for him. At about 1.30 a.m. in the night, he reached in front of R. Ahmed Dental College at 115A AJC Bose Road as Ayush Julka used to reside at the footpath beside the Dental College.

He has further stated that when he reached there, he found that four people were assaulting Ayush Julka with fists,

blows and kicks and also with wooden rod in random. He found blood was oozing from his nose and mouth. At that time, street lights were on at the spot and he found that out of those four persons, one person was Alope Chakraborty, who has a rice hotel on the footpath in front of R. Ahmed Dental hospital. Out of the other three, one was fat with dark complexion, one was thin and another was medium structure and medium completion.

He has further stated that when he reached near them, they threatened him with dire consequences and out of fear, he fled from there and went in search of other friends of his neighbourhood but finding no one, he returned in front of Dr. R. Ahmed Dental Hospital and learnt that Ayush had been taken to hospital by police. Being confused and finding no other alternative, he returned to his home.

On 06. 02. 2023, in the morning, he came to know that Ayush was taken to NRS Hospital by police, where he was declared dead by doctor. He had strong belief that Ayush Julka died due to assault by Alope Chakraborty and his associates. He further stated that he could identify Alope Chakraborty and his three associates in future.

THE INVESTIGATION

Pursuant to such written complaint lodged by Meghnath Sahani a specific case vide Muchipara PS Case No 15 of 2023 dated 06. 02. 2023 under Section 302/34 of Indian Penal Code was started and the law was set into motion when police took up investigation. During investigation, the Investigating Officer visited the P.O, collected GDEs prepared in respect of the incident, made arrangement for taking photographs and preparing sketch map of the place of occurrence, collected post-mortem report of the victim, death certificate of the victim, inquest report of the victim, wearing apparels of the victim and viscera and sent them for medico-legal examination and examined the available witnesses and recorded their statements under Section 161 CrPC.

According to source information, raid was conducted at Taltala P.S. jurisdiction with the help of local police and one of the F.I.R. named accused, namely, Alope Chakraborty was arrested on 06. 02. 2023 in front of his residence at 52/1, Durga Charan Doctor Road, PS-Taltala by maintaining legal formalities. On 07. 02. 2023, during raid, Ajoy Das was arrested from Bhowanipore PS jurisdiction in front of his residence at 9, Dr. Rajendra Road by maintaining legal formalities. On 07. 02. 2023 raid was conducted at Muchipara PS jurisdiction with the help of local police and Jayanta Bhuia

was identified and arrested in front of Saraswati Press at 32 & 32/1 APC Road by maintaining legal formalities. Again on 11. 04. 2023 during conducting raid, Amitabha Saha was arrested in front of Daws Stores, 203 APC Road, Kolkata-4 under Shyampukur PS jurisdiction by maintaining legal formalities.

Accused Alope Chakreaborty was closely interrogated during PC period and according to his statement, had been to the food stall situated at footpath in front of Dr. R. Ahmed Dental College, 114 AJC Bose Road being lead by custodian on 08. 02. 2023 and recovered the weapon of offence (two pieces of wooden batams) which was brought out by the custodian from underneath a wooden cot inside the temporary food stall at footpath in front of Dr. R. Ahmed Dental College, 114 AC Bose Road and seized the wooden batam after observing all formalities.

Thereafter, under order of Ld. Court the sealed, packed, labelled weapon of offence (wooden batam) was produced and sent to the forensic expert for examination and report.

During course of investigation, the investigating officer collected the call log of 100 dial.

The investigation of the case was conducted by the Investigating Officer, SI Subhankar Basak and the same eventually ***culminated in filing of charge-sheet against the four accused persons namely, Alope Chakraborty, Ajay***

Das, Jayanta Bhuiya and Amitabha Saha @ Jamai for the offence punishable under Section 302/34 of Indian Penal Code.

THE TRIAL

The case was received by the Ld. Chief Judge, City Sessions Court, Calcutta on 17. 05. 2023 upon its committal by the Ld. Metropolitan Magistrate, 19th Court, Calcutta and the Ld. Chief Judge transferred the same to this Court for trial and disposal.

Upon receipt of the record on 18. 05. 2023 ***charge was framed*** against the four accused persons, namely, ***Aloke Chakraborty, Ajay Das, Jayanta Bhuiya and Amitabha Saha @ Jamai under Section 302/34 of Indian Penal Code on 17. 07. 2023*** and the same was read over and explained to them individually in their own language. On hearing the charge, the accused persons individually pleaded not guilty and claimed to be tried which gave rise to this trial.

-:- EVIDENCE -:-

During trial, the prosecution examined as many as 22 witnesses in order to prove its case.

List of Prosecution Witnesses :-

PWs	Name	Role play in this case
PW-1	Meghnath Sahani	Complainant of this case.
PW-2	Mokleshur Rahman Majhi	Photographer of this case.
PW-3	Rohit Sahani	Eye witness of the alleged incident.
PW-4	Paresh Chandra Roy	Conducted inquest of the dead body of the victim.
PW-5	Aditya Sahani	Inquest of the dead body was made in his presence.
PW-6	Diya Corray	Wife of the deceased victim.
PW-7	Tapas Kumar Das	Identified the dead body of Ayush Julka before the Autopsy Surgeon.
PW-8	Arun Kumar Bandyopadhyay	Manager, System Control, CESC Limited.
PW-9	Brajendra Nath Kayal	Plan Maker of this case.
PW-10	Aslam Khan	Call police through phone '100' dial and went to hospital with the dead body of the victim.
PW-11	Bhoj Yadav	Seizure witness of this case.

PW-12	Raju Shah	Seizure witness of this case.
PW-13	Rajib Mahato	Seizure witness of this case.
PW-14	Dr. Molly Banerjee	Conducted post mortem examination of the dead body.
PW-15	Dr. Kinkar Kumar Bhowmick	Examined the body of the deceased and prepared provisional death certificate.
PW-16	Basudeb Chowdhury	Received 100 dial phone and went to the spot where the deceased was lying.
PW-17	Subhankar Basak	Investigating Officer of this case.
PW-18	Dr. Chitrakshya Sarkar	Conducted FSL examination and prepared report.
PW-19	Dr. Babul Bandyopadhyay	Conducted FSL examination and prepared report.
PW-20	Harendra Nath Singh	Conducted FSL examination and prepared report.
PW-21	Souvik Ghosh	Conducted TI Parade and prepared report.

PW-22	Jagadish Chandra Kuiry	Made one GDE being No. 399 dated 06. 02. 2023.
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DOCUMENTARY EVIDENCE ON RECORD

List of Paper Exhibits :-

Sl. No.	Exhibit number	-:-	Description of Exhibit.
01.	Exhibit-P1/PW-1	-:-	Written complaint containing two pages.
02.	Exhibit-P1/1/PW-17	-:-	Signature of PW-17 on the letter of complaint.
03.	Exhibit-P2/PW-4	-:-	Inquest report.
04.	Exhibit-P2/1/PW-5	-:-	Signature of PW-5 on the inquest report.
05.	Exhibit-P2/2/PW-6	-:-	Signature of PW-6 on the inquest report.
06.	Exhibit-P3/PW-8	-:-	Letter dated 17. 02. 2023.
07.	Exhibit-P4/PW-8	-:-	CESC report.
08.	Exhibit-P5/PW-9	-:-	Rough Sketch Map.
09.	Exhibit-P5/1	-:-	Signature of PW-17 on the

			Rough Sketch Map.
10.	Exhibit-P6/PW-9	-:-	Final Map.
11.	Exhibit-P7/PW-10	-:-	Signature of PW-10 on the seizure list dated 06.02.2023.
12.	Exhibit-P7/1/PW-11	-:-	Signature of PW-11 on the seizure list dated 06.02.2023.
13.	Exhibit-P7/2	-:-	Seizure list dated 06. 02. 2023.
14.	Exhibit-P7/3	-:-	Signature of PW-16 on the seizure list.
15.	Exhibit-P8/PW-12	-:-	Signature of PW-12 on the seizure list dated 08.02.2023.
16.	Exhibit-P8/1	-:-	Seizure list dated 08.02.2023.
17.	Exhibit-P8/2	-:-	Signature of PW-17 on the seizure list dated 08.02.2023.
18.	Exhibit-P9/PW-13	-:-	Signature of PW-13 on the

			seizure list dated 08.02.2023.
19.	Exhibit-P10/PW-14	-:-	Post-mortem report.
20.	Exhibit-P11/PW-14	-:-	Opinion made in nine pages dated 15. 03. 2025.
21.	Exhibit-P12/PW-14	-:-	Diagram of the weapon used at the time of offence.
22.	Exhibit-P13	-:-	Injury report.
23.	Exhibit-P13/1	-:-	Provisional death certificate.
24.	Exhibit-P14/PW-17	-:-	GDE No. 377 dated 05. 02. 2023.
25.	Exhibit-P15/PW-17	-:-	GDE No. 404 dated 06. 02. 2023.
26.	Exhibit-P16/PW-17	-:-	GDE No. 458 dated 06. 02. 2023.
27.	Exhibit-P17/PW-17	-:-	Formal FIR.
28.	Exhibit-P18/PW-17	-:-	GDE No. 459 dated 06. 02. 2023.
29.	Exhibit-P19 Series.	-:-	03 Memo of Arrest

			03 Inspection Memo and 03 Check list.
30.	Exhibit-P20/PW-17	-:-	GDE No. 479 dated 07. 02. 2023.
31.	Exhibit-P21 (Coll)	-:-	Entire call log of 100 dial.
32.	Exhibits-P22 & P22/1 Exhibit-P22/2	-:-	2 prayers dated 22. 02. 2023 1 requisition dated 23.02.2023.
33.	Exhibit-P23	-:-	Requisition dated 17. 02. 2023.
34.	Exhibit-P24/PW-18	-:-	Report of FSL Examination dated 05. 06. 2023.
35.	Exhibit-P25/PW-19	-:-	FSL report dated 26. 06. 2023.
36.	Exhibit-P25/1/PW-19	-:-	Signature of PW-19 on the FSL report.
37.	Exhibit-P26/PW-20	-:-	FSL report dated 11. 09. 2023.
38.	Exhibit-P27/PW-20	-:-	FSL report dated 11. 09. 2023.

39.	Exhibit-P28/PW-20	-:-	Serological analysis report dated 04. 05. 2023.
40.	Exhibit-P29/PW-21	-:-	Test Identification Report dated 01. 03. 2023.
41.	Exhibit-P30-/PW-21	-:-	Test Identification Report dated 20. 04. 2023.
42.	Exhibit-P31	-:-	UD Case No. 9/2023 dated 06. 02. 2023.
43.	Exhibit-P31/1 & P31/2	-:-	Signature of PW-16.
44.	Exhibit-P31/3 & P31/4	-:-	Signature of OC, Muchipara PS on UD Case No. 9/2023.
45.	Exhibit-P32/PW-22	-:-	GDE No. 399 dated 06. 02. 2023.

List of Material Exhibits :-

Sl. No.	Mat Exhibit No.	-:-	Description of Mat Exhibits.
01.	Mat Exhibit-MI/PW-2	-:-	Photograph along with signature.
02.	Mat Exhibit-MII/PW-2	-:-	Photograph along with

			signature.
03.	Mat Exhibit-MIII/PW-2	-:-	Photograph along with signature.
04.	Mat Exhibit-MIV/PW-2	-:-	Photograph along with signature.
05.	Mat Exhibit-MV/PW-2	-:-	Photograph along with signature.
06.	Mat Exhibit-MVI/PW-2	-:-	Photograph along with signature.
07.	Mat Exhibit-MVII/PW-2	-:-	Photograph along with signature.
08.	Mat Exhibit-VIII/PW-10	-:-	Signature of PW-10 on the envelope.
09.	Mat Exhibit-VIII/1/PW-11	-:-	Signature of PW-11 on the envelope.
10.	Mat Exhibit-VIII/2/PW-20	-:-	Signature of PW-20 on the envelope.
11.	Mat Exhibit-IX/PW-10	-:-	Signature of PW-10 on the envelope.
12.	Mat Exhibit-IX/1/PW-10	-:-	Signature of PW-10 on the

			envelope.
13.	Mat Exhibit-IX/2/PW-20	-:-	Signature of PW-20 on the envelope.
14.	Exhibit-MOX/PW-12	-:-	Big Buttam.
15.	Exhibit-MOX/1/PW-12	-:-	Signature of PW-12 on the label.
16.	Exhibit-MOX/2/PW-13	-:-	Signature of PW-13 on the label.
17.	Mat Exhibit-X/3	-:-	Signature of PW-17 on the label.
18.	Mat Exhibit-X/4	-:-	Signature of PW-18 on the label.
19.	Mat Exhibit-X/5/PW-20	-:-	Signature of PW-20 on the label.
20.	Exhibit-MOXI/PW-12	-:-	Smaller Buttam.
21.	Exhibit-MOXI/1/PW-12	-:-	Signature of PW-12 on the label.
22.	Exhibit-MOXI/2/PW-12	-:-	Signature of PW-13 on the label.
23.	Mat Exhibit-XI/3	-:-	Signature of PW-17 on the

			label.
24.	Mat Exhibit-XI/4	-:-	Signature of PW-18 on the label.
25.	Mat Exhibit-XI/5/PW-20	-:-	Signature of PW-20 on the label.
26.	Mat Exhibit-XII	-:-	Trouser & T-Shirt contained in the envelope.
27.	Mat Exhibit-XII/1/PW-20	-:-	Signature of PW-20 on the packet.
28.	Mat Exhibit-XII/2/PW-20	-:-	Signature of PW-20 on the gray coloured trouser.
29.	Mat Exhibit-XIII/PW-20	-:-	Label pasted on the outer side of blue polythene packet including signature of PW-20.
30.	Mat Exhibit-XIII/1/PW-20	-:-	Label pasted on the cardboard box including signature of PW-20.
31.	Mat Exhibit-XIV/PW-20	-:-	Signature of PW-20 on the envelope.
32.	Mat Exhibit-XV/PW-20	-:-	Signature of PW-20 on the

			envelope.
33.	Mat Exhibit-XVI/PW-20	-:-	Red Coloured lid.
34.	Mat Exhibit-XVI/1/PW-20	-:-	Signature of PW-20 on lid of the container.

List of Defence Exhibit:-

Sl. No.	Mat Exhibit No.	-:-	Description of Mat Exhibits.
01.	Mat Exhibit-A Series	-:-	Five photographs along with chips.
02.	Exhibit-B Series	-:-	Seven certified copies of case record against accused Ayush Julka.

ORAL EVIDENCE ON RECORD

It is perhaps needless to mention that the witnesses are the eyes and ears of justice. Thus, let us have a cursory glance of their evidenciary profundity on the touch stone of credibility.

PW-1, namely, Meghnath Sahani has stated during his examination-in-chief that Ayush Julka was his friend. He used to

ride his Super Splender motor cycle bearing Registration No. WB 08-9354. On 05. 02. 2023 Ayush took his motor cycle from his house at about 10 a.m. and returned the same at about 10.30 p.m. in front of 'Pay & use toilet' at Santosh Mitra Square. Thereafter, they gossiped there for about one hour and he returned to his house. Ayush told him that he would again visit his house after one hour for dinner.

This witness further stated that after one hour, when Ayush did not come to his house, he went to Santosh Mitra Square in search of Ayush. He enquired about him but none gave any reply. Thereafter, at about 1.30 a.m. in the night, he went in search of Ayush near 115 AJC Bose Road in front of Dental Clinic of Dr. P. K. Ghoshal where Ayush used to reside in the footpath. When he reached there, he found that four people were assaulting Ayush at random, one of whom used about a three feet long batam to assault him. When he tried to interfere, they ordered him to go away and thus due to fear, he fled away towards Sealdah Koley Market in search of some friends. He could not find any of his friends and thus returned to 115 AJC Bose Road.

This witness has further stated that when he returned back to the spot, he came to know that police came and took Ayush Julka. Then he returned to his house.

On the following day i.e. on 06. 02. 2023 at about 1 p.m. he learnt that Ayush Julka had died and being mentally shocked came back to his house. Then he wrote a complaint and lodged the same before Muchipara PS.

He has further stated that Aloke Chakraborty, one of the assailants was known to him.

He proved and identified the written complaint, containing two pages before the Court and marked as exhibit.

This witness identified all the four accused persons before the Court. He specifically identified Aloke Chakraborty, wearing glasses and T shirt as the person who assaulted Ayush Julka with battam. He also identified all the four accused persons during Test Identification Parade at correctional home.

During cross-examination, this witness stated that he has a mobile phone but Ayush did not have any mobile phone. This witness admitted that he did not go to the police station to inquire about Ayush Julka when he came to know that Ayush Julka was picked up by police.

PW-2, Mokleshur Rahman Majhi, a photographer attached to the Scientific Wing, Photography Section, DD, Lalbazar, deposed that on 12.02.2023, pursuant to a requisition made by Subhankar Basak in connection with Muchipara P.S. Case No. 15 dated 06.02.2023 under Sections 302/34 of the IPC,

he visited Muchipara P.S. and thereafter proceeded to 115, AJC Bose Road, Kolkata-14. As directed by Subhankar Basak, he took six photographs in and around the place of occurrence. Upon returning to Lalbazar, he developed and printed the photographs. He proved and identified the six photographs as well as the microchip containing the photographs before the Court, and the same were marked as exhibits.

In his cross-examination, PW-2 stated that after developing the photographs, he kept them in the office locker, the key whereof remained in the office.

PW-3, namely, Rohit Sahani has stated during his examination-in-chief that on 05. 02. 2023, after 12 in the mid night, when he went to purchase Biryani from Taj Biryani Center near Moulali with his 'Scooty' and while he was returning home from there at about 1.30 a.m., and reached near Dental hospital, he found 3/4 people were assaulting one person. He knew them by name. He stopped and found the victim's face was full of blood.

This witness has further stated that he found Amitabha was hitting the victim with a wooden batam. The victim's face was known to him but he could not recognize him. Seeing the said incident of assault by four persons, he was afraid to interfere and fled from the spot with his scooty towards his home. After 3/4 days he learnt that a person was killed by some

persons. So, he felt guilty and went to Muchipara police station and informed about the incident and stated that he seen the said incident. He identified four accused persons before the Court. He also identified Amitabha, wearing sky-blue shirt as the person who was beating the victim with a wooden batam.

During his cross-examination, he stated that he did not raise any hue and cry when he saw the accused persons beating the victim.

PW-4, namely, Paresh Chandra Roy has stated during his evidence that on 06. 02. 2023 when he was posted as Sub-Inspector of Police at Entally Police Station, he conducted inquest over the dead body of Ayush Julka at NRS Morgue in connection with Muchipara PS case No. 09 dated 06. 02. 2023 in presence of two witnesses. During examination, he found the height of the deceased was 5 feet 7 inch having medium complexion with thin built. Deceased's mouth was closed. The wearing apparel of the deceased was black half sleeve gangee and deep gray full pant. He prepared the report. This witness proved and identified the said report before the Court and marked as exhibit-P2.

During his cross-examination this witness stated that he has not specified the injuries on the dead body of the deceased while conducting the inquest.

PW-5, namely, Aditya Sahani has stated during his evidence that on 06. 02. 2023 he heard about the death of Ayush Julka and his body was kept at NRS Hospital morgue. He along with Riya Dorrothi Coraya, wife of Ayush Julka went to NRS Morgue to be present during inquest over the dead body of Ayush Julka. After preparation of inquest report, he and Riya Dorerothi Coraya wife of Ayush Julka put their respective signatures there. This witness proved his signature on the inquest report and marked as Exhibit-P2/1.

During his cross-examination, this witness stated that he was not interrogated by the Investigating Officer.

PW-6, namely Diya Coraya being the wife of Ayush Julka has stated during her evidence that on 06. 02. 2023 she learnt that her husband Ayush Julka had died and so she went to NRS Hospital Morgue with police personnel and Aditya Sahani. She found the dead body of Ayush Julka there. Inquest was done in their presence and thereafter report was prepared. She put her signature on inquest report. She proved and identified her signature on inquest report and marked as exhibit-P2/2.

During her cross-examination, she stated that she is the permanent resident of the address which she mentioned before the Court and that she was not a resident of 115 AJC Bose Road. She further stated that she did not lodge any complaint against anyone after the death of Ayush Julka.

PW-7, namely, Tapas Kumar Das has stated during his evidence that on 06. 02. 2023 he was posted as ASI at Entally police station. On 06. 02. 2023 one Ayush Julka was brought dead to NRS hospital in connection with PC No. 230 of 2023 and the death certificate was sent to Entally PS. This witness identified the dead body of Ayush Julka to Autopsy Surgeon.

During cross-examination, this witness stated that he did not prepare any document to show that he identified the dead body of Ayush Julka.

PW-8, namely, Arun Kumar Bandyopadhyay being the System Control, CESC Limited, Victoria House has stated during his evidence that on 17. 02. 2023 he had received a letter from Muchipara PS in connection with Muchipara PS case No. 15 dated 06. 02. 2023 under Section 302/34 of Indian Penal Code. Subsequently he prepared the report after checking their system whether there was any power cut in the locality during the time mentioned in the letter. This witness proved and identified both the letter dated 17. 02. 2023 and report dated 22. 02. 2023 accordingly and marked as Exhibit-P3 and Exhibit-P4 respectively.

During his cross-examination, this witness stated that from exhibit-P4 it cannot be ascertained whether the bulbs in the light posts covered in his report were in working condition.

PW-9, Brajendra Nath Kayal has stated during his examination-in-chief that on 12. 02. 2023 when he was posted at Plan Making Section, DD, Lalbazar as Police Constable and as per verbal order of the Officer-in-Charge of Plan Making Section, he had been to Muchipara PS and contacted Subhankar Basak, the Investigating Officer of this case. The Investigating Officer took him to 115/2A, AJC Bose Road, Kolkata-14 and identified the footpath as the PO. As per request of IO, he drew up the rough sketch map of the PO and returned back to his office. On 13. 02. 2023, on the basis of rough sketch map, he prepared the final map and taking the print out of the same from his office computer and submitted the same before the IO. This witness proved and identified the rough sketch map and final sketch map and marked as Exhibit-P5 and Exhibit-P6 respectively.

During cross-examination this witness stated that no lamp post is shown in his final sketch map.

PW-10, namely, Aslam Khan being the rickshaw puller has stated during his examination-in-chief that on 06. 02. 2023 at about 1/1.30 a.m. when he was returning with his van, he found a dead body near dental hospital, Sealdah. Thereafter, he called police by dialing '100' number from his mobile phone. Police came at the spot, some of them took the dead body and some cordoned the place of occurrence.

This witness has further stated that he also went to the hospital where the dead body was taken. Police collected blood from the dead body in bundles, packed and prepared a document and obtained his signature. Thereafter police took the dead body inside the hospital and he left from there. This witness proved and identified his signature on the document and marked as mat exhibit-MO-VIII and mat exhibit-MO-IX respectively.

During his cross-examination this witness stated that he often has to returned home during night hours and that he generally returned home at 11.30 p.m. to 12 midnight.

PW-11, namely, Bhoj Yadav, having a 'Bhujia shop' near the dental hospital at Sealdah. He was declared hostile by the prosecution and cross-examined by prosecution. During cross-examination by prosecution, this witness has agreed about his bhujia shop opposite 115 AJC Bose Road. Except this, he denied all the questions put by prosecution at the time of cross-examination. His signature on the seizure list dated 06. 02. 2023 was marked as exhibit-P7/1 and his signatures on the labels were marked as mat exhibit-MO-VIII/2 and mat exhibit-MO-IX/2 respectively.

During his cross-examination this hostile witness stated that police did not seize anything from anybody in his presence.

PW-12, namely, Raju Shah has stated during his evidence that on 08. 02. 2023 at about 12.30/1 p.m. while he along with one of his worker, namely, Rajib Mahato were returning from Entally market after collecting money, found a gathering at dental hospital near Moulali. He also found some police personnel were there. Out of curiosity, they went there and learnt that police of Muchipara PS arrested one accused person in connection with a murder case.

This witness has further stated that he found the said accused handed over two wooden buttams to the police which were kept in a stall just in front of the dental hospital. Police seized those two batams in presence of witnesses and by preparing seizure list. When the document was prepared, this witness found that the accused person's name was Alope Chakraborty and the size of the seized batams were 23 inch and 8 inch. This witness and another witness Rajib put their respective signatures on the seizure list.

During his evidence, this witness identified the two batams recovered by the police and proved and identified before the Court his signature on the seizure list as Exhibit-P8, those two wooden batams as Mat Exhibit-MOX and Mat Exhibit-MOXI respectively and his signatures on the labels as Mat Exhibit-MOX/1 and Mat Exhibit-MOXI/1 respectively. This witness identified Alope Chakraborty before the Court.

During his cross-examination, this witness has stated that his fish business is at Baithak Khana bazar near Sealdah and it is his own business. He also stated that he has license for such business. This witness further stated that he had stated to the police that Rajib Mahato was a worker under him. He admitted that he could identify his signature when the two labels were separately produced before him by the Ld. PP. This witness further stated during cross-examination that he has document to show that he was returning from Entally market after collecting money along with one of his worker named Rajib Mahato on 08. 02. 2023 at about 12.30 p.m, however, he could not produce the document at present.

PW-13, namely, Rajib Mahato, who used to work with Raju Shah has stated during his examination-in-chief that on 08. 02. 2023 at about 12.30/1 p.m. while he along with Raju Shah were going towards Moulali, they found a gathering in front of dental hospital beside NRS Medical College & Hospital. They also found police personnel along with one accused person there. Accused person, Alope Chakraborty took out two wooden batams which were kept under two stalls and handed over to police. Police seized the same by wrapping and labelling. Police also prepared seizure list and obtained signatures.

During his evidence, this witness proved and identified his signature on the seizure list as Exhibit-P9, two signatures on

the two labels as Mat Exhibit-MOX/2 and Mat Exhibit-MO/XI/2. This witness identified Aloke Chakraborty before the Court.

During his cross-examination, this witness has deposed that he drives four wheeler Maruti Swift. He stated that he has valid driving license and driving license was issued about two years ago. He further stated that he could not say whether police arrived first or police brought with him the accused person, namely, Aloke Chakraborty. This witness stated that he could not say who were the owners of the two stalls from beneath which the two wooden batams were recovered.

PW-14, namely, Dr. Molly Banerjee has stated during her evidence that on 06. 02. 2023 while she was posted as Assistant Professor, Department of Forensic Medicine & Toxicology at N. R. S. Medical College & Hospital, she performed a post mortem examination over the dead body of Ayush Julka in connection with Muchipara PS UD case No. 9 and Entally PS inquest No. 168 dated 06. 02. 2023. The body was brought and identified by T. K. Das, ASI of Entally PS.

She has further stated that after post-mortem examination, she prepared the report wherein she opined that the death was due to the effect of ante-mortem injuries, homicidal in nature.

She has further stated that on 15. 03. 2023 she gave her opinion in respect of the seized materials placed before her by

SI, Subhankar Basak of Muchipara police station. After examination of exhibit-I, she opined that the said seized article in all probability was the weapon of offence causing the injuries as described in her post-mortem report. From the post-mortem report and other circumstances, death of the deceased was between 03:00 hrs. to 06:00 hrs. of last meal or 02:00 hrs. to 03:00 hrs. to 24 hours of the receipt of body in the mortuary. After examination of post-mortem, she prepared the report in her own handwriting which she proved and identified before the Court and marked as Exhibit-10 (post-mortem report), Exhibit-11 and Exhibit-12 (examination reports).

During her cross-examination, this witness has stated that there are four types of abrasion, out of which one of the abrasions is graze abrasion and that graze abrasion may occur along with other injuries due to road traffic accidents. This witness further stated that she has mentioned in the post-mortem report the specific type of abrasion as abraded contusion which is one type of pressure abrasion. This witness further stated that no external single injury from number 1 to 33 can cause death of a person.

When Exhibit-12 was shown to the witness, she stated that there is no endorsement that she took the photographs but she has put her signature.

PW-15, Dr. Kinkar Kumar Bhowmick has stated during his examination-in-chief that on 06. 02. 2023 while he was posted as Emergency Medical Officer of NRS Medical College & Hospital, had received one brought dead police case in connection with IPC No. 230 of 2023 of Ayush Julka. The patient was brought by one Ashutosh Chowdhury, SI of Muchipara PS. On examination, this witness found no pulse, no BP, no respiration, no pupillary or other reflexes, pupils fixed and dilated bilateral both sides, no rigor mortis. There was evidence of profused fresh bleeding from the nose and mouth without any evidence of any external injury over his head and face. He declared the patient as 'Brought dead' and sent the patient to NRS morgue for post-mortem to detect the actual cause of death. After examination of the patient, he prepared the injury report and provisional death certificate of the patient. During his evidence, this witness proved and identified the injury report as Exhibit-P-13 and the provisional death certificate as Exhibit-P-13/1 respectively.

During his cross-examination, this witness deposed that if a person is hit by a wooden bar, there will be fresh external injuries on his person like cut injury, bruises, swelling and bluish clot.

PW-16, namely, Basudeb Chowdhury being the Sub-Inspector of Kolkata Police has stated during his examination-in-

chief that on 05. 02. 2023 when he was on night duty, he received a call on '100 Dial' from 1.30 a.m. to 2 a.m. and went to 115 AJC Bose Road near Dr. Ambedkar Dental Hospital and found the victim in unconscious condition with head injury. One Aslam Khan had called on '100 Dial'. He and another Bhoj Yadav were present at the spot. This witness brought the victim to NRS Medical College & Hospital in his vehicle. The victim was declared brought dead at the hospital. Thereafter, he returned to the spot and collected the blood stain in a container. He thereafter returned to police station and started an UD case. This witness proved and identified the seizure list dated 06. 02. 2023 as well as his signature on the seizure list before the Ld. Court which were marked as Exhibit-P7/2 (seizure list dated 06. 02. 2023) and Exhibit-P7/3 (signature of PW-16 on the seizure list).

During further examination in chief on recall this witness proved the UD case No. 9 of 2023 dated 06. 02. 2023 which was marked as Exhibit-P31 and his signature were marked as P31/1 and P31/2 respectively. The signatures of OC, Muchiparra PS were marked as Exhibit-P31/3 and Exhibit-P31/4 respectively.

During cross-examination, this witness has stated that it is fact that any police officer need to make entry in GDE before exit from police station and after returning from police station after completion of the work. He further stated that he cannot

say whether a fair price medicine shop is running in 114, AJC Bose Road or whether the said fair price medicine shop remains open 24 hours. He further stated that it is mentioned in Exhibit-P31 that it was prepared at 04:30 hrs. He further stated that it is mentioned in left GDE that he visited the PO at 01:30 hrs.

PW-17, namely, Subhankar Basak being the Investigating Officer of this case has stated during his evidence that on 06. 02. 2023 he was posted as on duty Sub-Inspector of Muchipara Police Station. On that day, Officer-in-Charge of Muchipara PS endorsed him a letter of complaint. Accordingly, he recorded the case and went through the previous records and learnt that on 05. 02. 2023 the on duty officer SI, Basudeb Chowdhury was already on round by GDE No. 377 dated 05. 02. 2023. After receiving information from police station he along with team went to 115 AJC Bose Road and found one person was lying motionless at the spot. He removed the said person to NRS Medical College & Hospital, where the victim was declared 'Brought dead'. He returned to place of occurrence from hospital and collected blood samples under proper seizure list in presence of witnesses. Thereafter, he returned to police station and lodged a UD case being No. 09 dated 06. 02. 2023. He diarised the matter vide GDE No. 404 dated 06. 02. 2023.

This witness has further deposed that thereafter he took charge of documents of Basudeb Chowdhury, alamats, seizure list, UD case and statement of witnesses. The case was recorded by GDE No. 458 dated 06. 02. 2023. He thereafter, made formal FIR vide FIR No. 15 dated 06. 02. 2023 under Section 302/34 of Indian Penal Code.

This witness has further stated that he thereafter took up investigation, formed team and engaged source to apprehend the accused persons. He left PS vide GDE No. 459 dated 06. 02. 2023 and arrested Alope Chakraborty at 22:15 hrs. in front of his residence at 52/1, Durga Charan Doctor Road, PS-Taltala by following legal formalities.

This witness has further deposed that Alope Chakraborty revealed the name of his other associates and accordingly, on 07. 02. 2023 at 00:30 hrs. Ajoy Das was arrested in front of his residence at 9, Dr. Rajendra Road by maintaining legal formalities. On 07. 02. 2023 at 01:30 hrs. Jayanta Bhuiya was arrested in front of Saraswati Press at 32 & 32/1 APC Road by maintaining legal formalities. Thereafter he returned to police station diarised the entire incident by GDE No. 479 dated 07. 02. 2023.

This witness has further deposed that he sent three accused persons to Medical College & Hospital, Calcutta for medical check-up, interrogated them and recorded their

statement, produced before Ld. ACMM-II, Calcutta and PC prayer were allowed. On 08. 02. 2023, during police custody, during further interrogation, accused Alope Chakraborty had revealed the concealment of offending weapon. As such, they went to 114 AJC Bose Road in front of Dr. R. Ahmed Dental College and accused Alope Chakraborty brought out two batams (one measuring 23 inch approx. broken at both ends having iron nails inserted and brownish stains at places) and another (measuring 8 inch approx. broken piece having broken ends and iron nails inserted and brownish stains) from underneath of wooden cot inside the temporary food stall. Thereafter, two batams were seized in presence of witnesses by following legal formalities and obtained signatures of witnesses as well as this witness also put his signature there.

This witness has further deposed during his evidence that during investigation, he made arrangement for plan maker and photographer. He also collected the call log of 100 dial. He also made arrangement for Test Identification Parade of three accused persons and accordingly on 01. 03. 2023 witness Meghnath Sahani identified three accused persons. He sent the seized articles for expert's opinion to NRS Medical College & Hospital and subsequently collected the report and further sent for FSL report. This witness also collected report from CESC

authority by giving requisition and post-mortem report subsequently.

On 10. 02. 2023 one Rohit Sahani, witness of the incident came to the police station and his statement was recorded. Said Rohit Sahani identified four accused persons by name.

During investigation, on 11. 04. 2023 at 20:15 hrs. accused person, namely, Amitabha Saha was arrested in front of Daws Stores. 203 APC Road, Kolkata-4 by maintaining legal formalities and produced before the Court and remanded to police custody till 15. 04. 2023. Subsequently, TI parade was held of this accused on 20. 04. 2023.

During his evidence, this witness proved and identified the signature of Officer-in-Charge of Muchipara PS and marked as Exhibit-P1/1, signature of this witness (PW-17) marked as Exhibit-5/1, GDE No. 377 dated 05. 02. 2023, marked as Exhibit-P14, GDE No. 404 dated 06. 02. 2023 marked as Exhibit-P15, GDE No. 458 dated 06. 02. 2023 marked as Exhibit-P16, formal FIR marked as Exhibit-P17, GDE No. 459 dated 06. 02. 2023 marked as Exhibit-P18, three Memo of arrest, three Inspection Memo and three check list marked as Exhibit-P19 Series, GDE No. 479 dated 07. 02. 2023 marked as Exhibit-P20, signature of PW-17 on the seizure list dated 08. 02. 2023 marked as Exhibit-P8/1 and signature of PW-17 on the seizure list as Exhibit-P8/2, signature of PW-17 on mat exhibit-X

marked as Mat Exhibit-X/3 and on mat exhibit-XI marked as Mat Exhibit-XI/3 respectively, Entire call log of 100 dial (consisting of five pages) marked as Exhibit-P21 collectively, prayers dated 22. 02. 2023 and requisition dated 24. 02. 2023 marked as Exhibit-P22, exhibit-P22/1 and Exhibit-P22/2 respectively, requisition to CESC authority as Exhibit-P23.

This witness identified all the four accused persons by name before the Court. After completion of investigation, the Investigating Officer submitted charge-sheet vide Charge-sheet No. 53/23 dated 27. 04. 2023 against the four accused persons under Section 302/34 of Indian Penal Code, pending FSL reports.

During cross-examination, this witness has stated that he collected all documents of UD case when he took up investigation of the case. This witness further stated that he did not enquire any person from Kalpana Medical Agency regarding the alleged incident as it was beyond visibility. He further stated that during investigation, he did not find any witness who deposed that he had seen Ayush Julka go towards Dental College or who had seen Meghnath Sahani go towards Dental College on the date of alleged incident. He further stated that the shop rooms around Dental college closed at different hours at night, approximately 9 p.m. to 12 mid night. He further stated that as per his investigation, Meghnath

Sahani was the person who last interacted with the deceased Ayush Julka. He further stated that he did not get any complaint against Ayush Julka during his tenure. When this witness was shown the offending weapons, namely, Mat Exhibit-X and Mat Exhibit-XI, he stated that these articles do not contain his signature on their body but he has signature on the label pasted on it. He further stated that the time, place and purpose are not mentioned in the label but the time and case reference are mentioned in the seizure list.

PW-18, namely, Dr. Chitrakshya Sarkar has stated during his examination-in-chief that in the month of June, 2023, while he was posted as Assistant Director, State Forensic Department, he examined three exhibits, namely, C, D and G in connection with Muchipara PS case No. 15 dated 19. 03. 2023 under Section 302/34 of Indian Penal Code. After examination of said three exhibits, he prepared the report vide report No. 2644/FSL dated 05. 06. 2023 and forwarded the same to forwarding authority i.e. Deputy Commissioner of Police, Central Division, Kolkata. This witness proved and identified the report which he prepared and the articles/documents which he had examined and marked as Exhibit-P24 (FSL report dated 05. 06. 2023), Mat Exhibit-XII (Trousers & T shirt, contained in the envelope, exhibit-G), Signatures of this witness on mat

exhibit-X and mat exhibit-XI are marked as Mat Exhibit-X/4 and Mat Exhibit-XI/4 respectively.

During cross-examination, this witness has deposed that it cannot be seen from his report that he found any finger print on the exhibits C and D. He further stated to Court that he is not finger print expert. He has also stated that there is no mention of presence of blood in exhibit-G. On this issue he stated to Court that he is not biological expert.

He further stated that the exhibits came to him after going for examination to biological division. He stated to Court that he is not supposed to see anyone else's report so that he is not biased.

This witness further stated that there may or may not be mark of violence on the apparel of the victim who is assaulted by a wooden rod. He further stated that it is not mentioned in the report the specific date of examination. He stated to Court voluntarily that it is mentioned in the alamats. During cross-examination this witness further stated that there is no separate corresponding number by which biological division sent the articles to his department. He submitted to Court voluntarily that there is no separate corresponding number maintained in the different departments.

PW-19, namely, Dr. Babul Bandyopadhyay has during his examination-in-chief that in the month of May/June, 2023

while he was posted as Assistant Director, Chemistry Division, Forensic Science Laboratory, Kolkata-37, he examined and prepared the report in respect of two plastic jars, marked as 'A' (portion of Viscera of Ayush Julka) and 'B' (little amount of colourless liquid said to be the saturated solution of common salt as used as preservative in the viscera) which were received by his laboratory in sealed condition in connection with Muchipara PS case No. 15 dated 06. 02. 2023 under Section 302/34 of Indian Penal Code. After examination, he prepared the report and sent to forwarding authority i.e. DCP-II, Central Division, Kolkata vide No. 3/45 FSL dated 26. 06. 2023. This witness proved and identified the report and his signature before the Court and marked as Exhibit-P-25 and Exhibit-P-25/1 respectively.

During cross-examination, this witness denied the suggestions that no exhibit was sent to his laboratory or that he did not examine any exhibit in connection with this case.

PW-20, namely, Harendra Nath Singh has stated during his evidence that on 02. 05. 2023, he was posted as Senior Scientific Officer, FSL, Kolkata, examined exhibits-A,B, E, F,G & H (sent exhibit-C, D & G to Physics Division for examination) received from Office of DC, Central Division vide Memo No. 112/CD/CA dated 20. 03. 2023 through Constable No. 15408, namely, R. P. Roy in connection with Muchipara PS

Case No. 15 dated 19. 03. 2023 under Section 302/34 of Indian Penal Code.

This witness further stated that after examination, he prepared report having dated signature. During evidence this witness identified forwarding letter on the basis of which he sent exhibits, C, D, & G to Serologist, Serology Section, FSL, Kolkata, report being No. BIO/PHY/1890/2023/9869/FSL dated 11. 09. 2023 and marked as Exhibit-P26, another forwarding letter being No. 149/23/HS/Bio/Phys/1890/23/FSL dated 03. 05. 2023, marked as Exhibit-P27, the Serological analysis report being No. 283/23/SR/BIO/FSL dated 04. 05. 2023, marked as Exhibit-P28, signature of witness on the label pasted on blue polythene packet marked as Mat Exhibits-PXIII & PXIII/1, signature of PW-20 on the envelope 'A', marked as Mat Exhibit-VIII/2, signature of PW-20 on the envelope 'B', marked as Mat Exhibit-IX/2, signature of PW-20 on outer portion of buttom, marked as Mat Exhibit-X/5, signature of PW-20 on outer portion of small batam, marked as Mat Exhibit-XI/5, signature of PW-20 on the envelope 'E', marked as Mat Exhibit-XIV, signature of PW-20 on the envelope 'F', marked as Mat Exhibit-XV, signature of PW-20 on the envelope 'G', marked as Mat Exhibit-XII/1, Signature of PW-20 on gray coloured trouser, marked as Mat Exhibit-XII/2 and one plastic container with red coloured lid

including its contents, marked as Mat Exhibit-XVI and signature of this witness there, marked as Mat Exhibit-XVI/1.

During cross-examination, this witness has denied the fact that no exhibit was received by their laboratory in connection with this case or that he did not examine any exhibit in connection with this case.

PW-21, namely, Souvik Ghosh being a Judicial Magistrate has stated during his examination-in-chief that on 01. 03. 2023 and 20. 04. 2023 he was posted as Metropolitan Magistrate, 3rd Court, Calcutta. On 01. 03. 2023, he had conducted Test Identification Parade of three accused persons, namely, Alok Chakraborty, Ajoy Das and Jayanta Bhuiya at Presidency Correctional Home in presence of Controller. On 20. 04. 2023 he had also conducted Test Identification Parade of Amitabha Saha @ Jamai at Presidency Correctional Home in presence of Controller. In both TIPs, witness, namely, Meghnath Sahani identified four accused persons. After completion of TI parade, this witness prepared the reports, bears his signature with date and seal, which he proved and identified before the Court and marked as Exhibit-P29 and P30 respectively.

During cross-examination this witness has stated that the exact time of conduction of TI parade is not mentioned in his report. He further stated that it is also not mentioned in his

report that there was sufficient day light when he conducted the TI parade.

PW-22, namely, Jagadish Chandra Kuiry has stated during his examination-in-chief before the Court that on 06. 02. 2023 while he was posted as ASI of Muchipara Police Station from 9 p.m. on 05. 02. 2023 till 8 a.m. on 06. 02. 2023, he received one '100 Dial' call from Lalbazar at 1.38 a.m. on 06. 02. 2023. Thereafter, he registered GDE vide No. 399 dated 06. 02. 2023. This witness brought the original along with certified copy of GDE and proved & identified before the Court as Exhibit-P32.

During cross-examination, this witness has denied that no call was received from '100' dial. He also stated that this GDE does not contain the address of R. Ahmed Dental Hospital.

EXAMINATION OF ACCUSED UNDER SECTION 313 CrPC

After completion of evidence, the accused were examined under Section 313 CrPC. They declined to produce any defence witness. Thereafter, argument was heard at length on behalf of the Prosecution as well as the Defence and thereafter record is taken up for delivery of judgment.

ARGUMENT ON BEHALF OF PROSECUTION

Ld. Public Prosecutor, during the course of his arguments, laid considerable emphasis on the fact that the defacto complainant is an eye witness to the alleged incident. He submitted that the defacto complainant had witnessed all four accused persons assaulting the victim, who subsequently succumbed to the injuries sustained in the said assault.

He further argued that, apart from the defacto complainant, another eye witness, namely, Rohit Sahani, who was examined as PW-3, had also witnessed the incident. According to the prosecution, PW-3 deposed that while returning from Moulali after purchasing biryani, upon reaching near the Dental Hospital, he saw four persons assaulting the victim. He specifically stated that one of them, namely, Amitabha, was assaulting the victim with a wooden *batam*.

The prosecution further contended that another eye witness, namely, Aslam Khan, examined as PW-10, had seen the victim lying near the Dental Hospital immediately after the incident and had informed the police by calling the emergency number '100' from his mobile phone. On the strength of the evidence of the defacto complainant, PW-3, and PW-10, the prosecution submitted that the ocular evidence conclusively establishes the involvement of the accused persons in the commission of the offence.

Learned Public Prosecutor further relied upon the testimony of the post-mortem doctor, who was examined as PW-14. He submitted that PW-14 deposed regarding the multiple injuries found on the person of the deceased and opined that the death was caused by the effect of ante-mortem injuries, which were homicidal in nature. **It was accordingly argued that the evidence on record clearly establishes that the accused persons had acted with the intention of causing death, or at least such bodily injuries as were likely to cause death, and that there exists a direct nexus between the acts committed by the accused persons and the death of the victim.**

On the basis of the oral and documentary evidence adduced during trial, Learned Public Prosecutor prayed for the conviction of the accused persons.

PERCONTRA

Ld. Advocates appearing on behalf of the accused persons advanced several arguments assailing the case of the prosecution. They contended that the prosecution has failed to establish the requisite ***mens rea*** on the part of the accused persons to cause such bodily injury to the victim as would result in his death.

Ld. Advocates further argued that the prosecution has failed to establish a complete and unbroken chain of circumstances culminating in the commission of the alleged offence and leading to the conclusion of the guilt of the accused persons.

It was further contended that one of the witnesses projected by the prosecution as an eye witness had turned **hostile** during the course of trial, which, according to them, clearly indicates that the said witness was a planted witness.

Ld. Advocates also drew attention to the material discrepancies between the evidence of the first attending doctor, who declared the victim as brought dead, and the testimony of the doctor who conducted the post-mortem examination and prepared the post-mortem report.

They further pointed out the alleged infirmities and deficiencies in the Test Identification Parade report and submitted that the same cannot be safely relied upon.

On the basis of the aforesaid submissions, Ld. Advocates appearing on behalf of the four accused persons prayed for their acquittal.

POINTS FOR RUMINATION

From the rival case of the respective parties following points have cropped up for consideration and determination:-

(I). Are the accused persons guilty under Section 302/34 of Indian Penal Code and

(II). Whether the prosecution has been able to prove the charges labelled against them beyond all shadow of reasonable doubt ?

-:- DECISION WITH REASONS -:-

This is a case **under Section 302/34 of Indian Penal Code.**

Section 300 Indian Penal Code defines murder.

300. Murder - Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or

Secondly. - If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or

Thirdly. - If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or

Fourthly. - If the person committed the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such acts without any excuse incurring the risk of causing death or such injury as aforesaid.

Section 302 Punishment for murder. - Whoever commits murder shall be punished with death or imprisonment for life, and shall also be liable to fine.

ANATOMIZATION OF THE FACTS AND EVIDENCE

The present case against the accused persons is in respect of an allegation of murder in which the four accused persons are facing trial in custody.

I shall now proceed to examine the oral as well as the documentary evidence adduced on record in order to ascertain the extent to which the prosecution has succeeded in establishing the charges levelled against the accused persons. The evidence on record shall be analysed and appreciated by correlating the same with the ingredients of the offences alleged. ***For the sake of convenience and clarity, the entire case shall be discussed under the following points for consideration.***

■ **PLACE OF OCCURRENCE**

The place of occurrence as it transpires from the prosecution case is that the victim was allegedly assaulted on the footpath in front of R. Ahmed Dental College at 115 AJC Bose Road.

PW-1, the defacto-complainant and eye witness to the incident stated in his examination-in-chief that he saw four people assaulting the victim at 115 AJC Bose Road.

PW-2, photographer at DD Scientific Wing, Photography Section, Lalbazar stated in his examination-in-chief that he was taken to 115 AJC Bose Road and he took six photographs of the place and its surroundings.

PW-3 corroborated the evidence of PW-1 and PW-2 as regards the place of occurrence. He stated during his examination-in-chief that when he was returning home after purchase of Biryani and was near the Dental hospital, he saw 3/4 persons were assaulting one person i.e. the victim.

PW-9 who prepared the rough and final sketch map of the plan of the place of occurrence stated in his examination-in-chief that Investigating Officer took him to 115/2A AJC Bose Road, Kolkata-14 and identified the footpath in front of the said address as the place of occurrence.

PW-10 is a van rickshaw puller who first called the police at number '100' from his mobile phone. During his examination-in-chief he stated that on 06. 02. 2023 at about 1 a.m. to 1.30 a.m. while he was returning with his van, he saw a dead body lying near Dental hospital.

PW-11 was declared hostile witness by the prosecution. During cross-examination by the prosecution he stated that the address of the building at the opposite side of his Bhujia shop is 115 AJC Bose Road.

PW-16 is the Sub-Inspector of Police who received the call on '100' dial during his night duty from 05. 02. 2023 till the next morning. He stated during his evidence-in-chief that on receiving the call on '100' dial, he went to the spot i.e. 115 AJC Bose Road. He further stated that he found the victim in unconscious condition with head injury and took the victim Ayush Julka to NRS Medical College & Hospital in his vehicle.

Finally, the Investigating Officer of this case, namely, PW-17 stated during his evidence that he had visited the place of occurrence i.e. 115 AJC Bose Road. During his cross-examination, he stated that 115 AJC Bose Road and NRS medical College & Hospital are located opposite to each other of the road.

Thus, it appears from the oral evidence of all these prosecution witnesses that they corroborate the prosecution

case in establishing the fact that the incident occurred in front of or around 115 AJC Bose Road.

I shall now proceed to examine the documentary evidence on record in order to ascertain the place of occurrence.

Exhibit-P3/PW-8 and **Exhibit-P4/PW-8** establish that the place of occurrence is situated in front of 115, AJC Bose Road, Kolkata-14, adjacent to Dr. R. Ahmed Dental College & Hospital. Further, **Exhibit-P5/PW-9** and **Exhibit-P6/PW-9**, being the sketch map and its index, depict the place of occurrence as the footpath in front of 115/2A, AJC Bose Road, Kolkata-14. The sketch map also indicates that the said location is situated immediately beside Dr. R. Ahmed Dental College & Hospital, located at 114, AJC Bose Road.

Upon perusal of **Exhibit-P20**, being G.D.E. No. 479 dated 07.02.2023, I find that the Investigating Officer visited the place of occurrence, namely, the footpath in front of 115, AJC Bose Road, during the course of investigation.

A perusal of **Mat Exhibit-M1/PW-2** reveals a portion of the footpath above which a signboard displaying the address "115, AJC Bose Road, Kolkata-14" is visible. **Mat Exhibit-M4/PW-2** depicts another portion of the footpath, from where the building situated on the opposite side of the road can be identified as NRS Medical College & Hospital.

Mat Exhibits-M1, M2, M3, M4, and M5/PW-2 are photographs of the place of occurrence taken from different angles. A collective appreciation of these photographs reveals that the footpath is sufficiently wide and spacious to accommodate four to five persons at a time, thereby lending support to the prosecution case regarding the occurrence of the altercation at the said place.

Thus, upon a cumulative consideration of the aforesaid documentary evidence, I find that the prosecution has successfully established that the place of occurrence was the footpath in front of 115, AJC Bose Road, Kolkata-14, opposite NRS Medical College & Hospital.

IDENTIFICATION OF THE VICTIM

It is the prosecution case that the victim Ayush Julka is a resident of the footpath adjacent to 115, AJC Bose Road. The defacto-complainant Meghnath Sahani is a friend of the victim Ayush Julka who used to ride the motor-cycle bearing registration No. WB 08-9354 belonging to the defacto-complainant. Said Ayush Julka took the motor cycle of the defacto-complainant on 05. 02. 2023 from his house at about 10 a.m. and returned the motor cycle to him on the same day at about 10.30 p.m. in front of 'Pay & Use' toilet at Santosh Mitra Square. The defacto-complainant deposed as PW-1 to the effect

that he gossiped with the victim Ayush Julka for about one hour when he returned the motor cycle on 05. 02. 2023 and Ayush had told him that he will come to his house for dinner after one hour.

When Ayush did not come to his house after one hour, he again went near the 'Pay & Use' toilet at Santosh Mitra Square in search of him but was informed by the local people that Ayush did not come there. He went near 115, AJC Bose Road in front of a dental clinic in search of Ayush since Ayush used to reside in the footpath adjacent to 115 AJC Bose Road and found that four people were assaulting randomly, one of whom was using a three feet long batam.

Thus, **the defacto-complainant who is also a eye witness to the commission of the offence was well acquainted with the victim Ayush Julka.** The defacto-complainant learnt about the death of Ayush Julka on the following day and thereafter he lodged the complaint.

PW-3, another eye witness stated that while returning home when he was near the dental hospital, he saw three/four people assaulting one person and he knew all the four assailants whose names he disclosed. He also stated that he found the victim's face was full of blood and that the victim's face was familiar to him.

PW-4, conducted inquest over the dead body of the victim Ayush Julka at NRS Morgue.

PW-5 & PW-6 were the witnesses who identified the dead body of Ayush Julka and in whose presence inquest was made by PW-4. PW-6 is the wife of the victim Ayush Julka. PW-6 stated in her evidence that on 06. 02. 2023 she learnt about the death of her husband Ayush Julka and went to see his body at NRS Hospital morgue. She also deposed that in her presence inquest was done over the dead body of her husband and she put her signature on the inquest report. She also deposed that the last rites of her husband were performed in her presence.

PW-7, posted at Entally PS at the relevant point of time, stated in his evidence that on 06. 02. 2023 one Ayush Julka was brought dead to NRS Hospital in connection with PC No. 230/23. He further deposed that he identified the dead body of Ayush Julka to the Autopsy Surgeon.

PW-10, who first informed the police over '100 Dial', stated in his evidence that while he was returning home with his van he saw a dead body lying near dental hospital, Sealdah. After police arrived at the spot, they took the dead body to the hospital and PW-10 accompanied police. Seizure was made by police and PW-10 put his signature on the seizure list and labels.

Ld. Advocate on behalf of the accused persons at the time of argument stressed on the fact that no photographs were taken of the dead body of the victim. He had put the same question to the Investigating Officer of this case at the time of cross-examination who replied that it is not mentioned in P-15 that photographs were taken of the body recovered by SI-Basudeb Chowdhury. PW-17, the Investigating Officer when shown the mat Exhibit photographs, further stated during his cross-examination that it cannot be seen from these photographs, the photograph of the person who was recovered by SI-Basudeb Chowdhury.

Although it is an admitted position that no photograph of the dead body of the victim has been brought on record, the same, by itself, does not create any dispute regarding the identity of the deceased. Upon careful appreciation of the oral as well as the documentary evidence adduced by the prosecution, I find that the **identity of the victim has remained consistent and unchallenged throughout the course of the trial.**

The dead body of the victim, Ayush Julka, was identified by PW-6, who is the wife of the deceased. PW-1, the defacto complainant, was not only well acquainted with the victim but had also witnessed the assault upon him. The evidence of PW-1 reveals that he had known Ayush Julka prior to the incident, as

they were friends and the victim frequently used to ride the motorcycle belonging to him. Similarly, PW-3 was also acquainted with the victim and was, therefore, capable of identifying him. Further, PW-5 and PW-6 were the witnesses in whose presence the inquest over the dead body of Ayush Julka was conducted.

It is significant to note that none of the aforesaid witnesses was cross-examined on the aspect of the identity of the deceased. No suggestion was put to PW-1, PW-3, PW-5, or PW-6 that the person identified by them as Ayush Julka was not the same person who had allegedly been assaulted on the night of the incident. Equally, no challenge was made to the identification of the dead body during the inquest proceedings or during the evidence relating to the post-mortem examination. **The omission on the part of the defence to dispute the identity of the deceased assumes considerable significance while appreciating the evidence on record.**

It is also not the case of the defence that any other person was present at the place of occurrence on the relevant night or that the unconscious person found lying at the place of occurrence by PW-10 was someone other than Ayush Julka. **No alternative version has been suggested to any of the prosecution witnesses to indicate that the body recovered by the police belonged to any person other than the**

victim. In the absence of any such challenge, the identity of the deceased remains undisputed.

Merely because no photograph of the dead body has been produced before the Court, it cannot be inferred that the prosecution has failed to establish the identity of the victim. The identity of a deceased person is not required to be proved exclusively by photographic evidence. Such identity may be established by reliable oral testimony as well as contemporaneous official records. In the present case, **the evidence of the eye witnesses, the inquest proceedings, and the post-mortem examination collectively establish the identity of the deceased beyond any reasonable doubt.**

The evidence of PW-1 establishes that he had witnessed the assault upon the victim. The evidence of PW-10 establishes that an unconscious person was found lying at the place of occurrence immediately after the incident, whereupon the police were informed. Thereafter, the inquest was conducted over the same body in the presence of PW-5 and PW-6, and the body was subsequently subjected to post-mortem examination. ***These events form a continuous and unbroken sequence, leaving no room for any doubt that the person who was assaulted at the place of occurrence was the very same person whose dead body was subjected to inquest and post-mortem examination.***

Having regard to the fact that the victim was personally known to PW-1, being his friend, and to PW-6, being his wife, there is no reason whatsoever to disbelieve their identification of the deceased. Their evidence inspires confidence and has remained unshaken during cross-examination. Consequently, I find no reason to entertain any doubt that the victim of the assault by the assailants was none other than Ayush Julka.

◆ **IDENTIFICATION OF THE ACCUSED PERSONS**

Identification of accused persons refers to the legal process of recognizing or verifying the identity of a person connected with a crime to establish that they are the individuals who committed it.

Identification may be of various types, namely, facial or physical features identifications, voice identification, handwriting or signature identification.

When a witness identifies the accused during trial, it is substantive evidence. When a witness identifies the accused during investigation, namely, Test Identification Parade, it is not substantive evidence but helps evaluate credibility. I will discuss about Test Identification parade later on. First let me dive into the substantive piece of evidence by identification by witnesses.

IDENTIFICATION DURING TRIAL :-

The identification of the accused persons, in the present case, starts from the initiation of the proceedings. There is ***vivid description of the accused persons provided in the written complaint filed by the defacto-complainant (PW-1)*** which is the initial document that starts a criminal investigation. The defacto-complainant took the pains of mentioning the characteristics features of the accused at the time of lodging written complaint.

Section 9 of the Indian Evidence Act, 1872 deals with “Facts necessary to explain or introduce relevant facts” – facts necessary to explain or introduce a fact in issue or relevant fact, or which support or rebut an inference suggested by a fact in issue or relevant fact, or which **establish the identity of any thing or person whose identity is relevant**, or fix the time or place at which any fact is issue or relevant fact happened, or which show the relation of parties by whom any such fact was transacted, are relevant in so far as they are necessary for that purpose.

Facts that **establish the identity of any person or thing** whose identity is relevant – this **includes identification of accused persons.**

This Section is directly relevant to identification of accused persons in criminal cases. It is essential for criminal investigations as it allows police and Courts to accept evidence that identifies the accused.

The defacto-complainant has described in his written complaint that out of the four people beating Ayush Julka, one of them was Alope Chakraborty who has a rice hotel in front of Dental Hospital. He has further described out of the remaining three, one person was fat with dark complexion, one was thin and another one was of medium structure and medium complexion.

In the instant case, **there are two eye witnesses, namely, Meghnath Sahani (PW-1) and Rohit Sahani (PW-3).** PW-1 has stated in his evidence that on the fateful night, while he went in search of his friend namely, the victim, Ayush Julka and reached 115 AJC Bose Road at about 1.30 a.m. he saw that four people were assaulting Ayush randomly, one of whom was using about a three feet long batam (wooden bar) to assault Ayush. He further stated in his evidence that one of the assailants namely, Alope Chakraborty was known to him.

PW-1 identified all the accused persons before the Court and stated specifically that the accused wearing glasses is the person who assaulted Ayush Julka with batam (wooden bar).

This witness identified all four accused persons at Presidency Correctional Home as an identifying witness and specifically identified the accused wearing glasses (who assaulted Ayush Julka with batam), at Presidency Correctional Home.

All the accused persons were in custody and were produced before me during the course of trial. **I have had the opportunity to observe the four accused persons present in Court.** Upon such observation, I find that out of the four accused persons, one was wearing spectacles, one was of dark complexion and stout build, one was thin, and the fourth person was of medium complexion and build.

Thus, on a comparative assessment, I find that the physical description of the accused persons, as given in the written complaint, broadly corresponds with the physical features of the accused persons who are facing trial before this Court.

While appreciating the identification of the accused persons, it is relevant to consider the conditions under which such identification was made, including the duration of observation, the distance between the witness and the accused persons, and the lighting conditions prevailing at the place of occurrence. PW-1 has specifically addressed this aspect in his

evidence as well as in the written complaint, wherein he stated that at the relevant time the street lights were on.

In view of the aforesaid circumstances, I find it quite reasonable and believable that the defacto complainant was in a position to observe the accused persons clearly even during the night hours under street lighting conditions. Moreover, PW-1 has categorically stated that one of the assailants, namely Alope Chakraborty, was already known to him from before the incident, which further strengthens the reliability of his identification.

The identification of the accused persons by PW-1 finds further corroboration from the evidence of PW-3, who has stated in his deposition that all the four assailants were known to him and that he knew them by name as Alope, Jayanta, Amitabha, and Ajay. PW-3 has further specifically deposed that **he witnessed Amitabha assaulting the victim with a wooden batam.**

The consistent identification of the accused persons by PW-1 and PW-3, both of whom claimed prior acquaintance with the assailants, lends assurance to the prosecution case regarding the identity and involvement of the accused persons in the occurrence.

CORROBORATION BY CESC :-

The prosecution examined PW-8 who is the Manager, System Control, CESC Limited, Victoria House. This witness deposed that after receiving the letter from Muchipara PS, he checked their system to ascertain whether there was any power cut in the locality during the time mentioned in the said letter. This witness proved his report dated 22. 02. 2023 which was marked as Exhibit-P4.

I perused **Exhibit-P4**.

It appears from **Exhibit-P4/PW-8** that the Manager, System Control, CESC Limited has stated that as per their record, the power supply of the premises i.e. in front of (on footpath) 115, AJC Bose Road, Kolkata-14 just beside Dr. R. Ahmed Dental College & Hospital of 114 AJC Bose Road, and its surroundings was not interrupted from 22:00 hrs. of 05. 02. 2023 till 05:00 hrs. of 06. 02. 2023.

This document negates any doubt regarding identification of the accused persons by the eye witnesses on account of darkness or power cut.

Learned Advocate appearing on behalf of the accused persons raised the plea that, owing to darkness prevailing at the alleged place of occurrence during the dead of night, the

accused persons could not have been properly identified, thereby casting doubt on the prosecution case.

However, a careful scrutiny of the evidence on record reveals that none of the eye witnesses was cross-examined on this specific aspect. **No suggestion whatsoever was put to PW-1 or PW-3 to the effect that there was darkness at the place of occurrence which could have impaired visibility or prevented proper identification of the assailants.** In the absence of any such challenge during cross-examination, the plea now sought to be raised on behalf of the defence remains unsubstantiated.

It is a well-settled principle of law that the prosecution case is to be tested on the strength of its own evidence and cannot be disbelieved merely on the basis of speculative or unsubstantiated defence contentions. The real issue for determination in this regard is whether the place of occurrence was sufficiently illuminated so as to enable proper identification of the accused persons.

The evidence of PW-1, wherein **he has categorically stated that street lights were on at the relevant time, stands further corroborated by the evidence of PW-8.** PW-8 has proved the relevant CESC records, which establish that on the fateful night there was no power failure, and that electric supply to the premises and its surrounding areas remained

uninterrupted from 22:00 hours on 05.02.2023 till 05:00 hours on 06.02.2023.

The authenticity and correctness of the said CESC records have not been challenged on behalf of the defence in any manner whatsoever. No suggestion has been put to PW-8 disputing the genuineness of the said records, nor has any evidence been led to discredit the same.

In view of the aforesaid evidence, **I find that the prosecution has been able to satisfactorily establish that there was adequate lighting at the place of occurrence at the relevant time. Accordingly, the identification of the four accused persons by the eye witnesses, namely PW-1 and PW-3, remains unshaken and stands duly proved on record.**

TEST IDENTIFICATION PARADE :-

The primary object of a Test Identification Parade in a case of homicide is to test the veracity and memory of a witness with regard to his capability to identify an unknown accused person whom he had seen only briefly at the time of commission of the offence. **The purpose of such a proceeding is to provide assurance to the investigating agency and to furnish corroborative evidence which may later support the**

testimony of the witness in Court when he identifies the accused persons during trial.

Learned Judicial Magistrate (PW-21), who conducted the Test Identification Parade and prepared the relevant reports, has proved the same before this Court. The said reports have been marked as **Exhibit-P29** and **Exhibit-P30** respectively. The record reveals that on 01.03.2023, Test Identification Parade was conducted in respect of three accused persons, namely Alope Chakraborty, Ajay Das and Jayanto Bhuiya. Subsequently, on 20.04.2023, Test Identification Parade was conducted in respect of the remaining accused person, namely Amitabha Saha @ Jamai.

The witness Meghnath Sahani identified all the three suspects, namely Alope Chakraborty, Ajay Das and Jayanto Bhuia, during the Test Identification Parade held on 01.03.2023. He further identified the suspect Amitabha Saha @ Jamai during the Test Identification Parade held on 20.04.2023.

At the stage of argument, Learned Advocate appearing on behalf of the accused persons contended that PW-3, who was admittedly acquainted with all the accused persons, was not subjected to Test Identification Parade, and that he merely identified the accused persons for the first time in Court, thereby rendering his identification doubtful.

In this context, it is pertinent to note that ***Section 9 of the Indian Evidence Act, 1872 provides the legal framework for Test Identification Parades, insofar as they are relevant facts which assist in establishing the identity of the accused persons. Further, Section 54A of the Code of Criminal Procedure, 1973 empowers the Court to direct an arrested person to participate in a Test Identification Parade upon the request of the investigating agency.***

It is well-settled that a Test Identification Parade does not constitute substantive evidence, but is primarily intended to serve as a corroborative aid to the testimony of witnesses recorded in Court. ***The object of holding such a parade is to test the memory and veracity of an eye witness based on his first impression of the offenders and to satisfy the investigating agency that a person not previously known to the witness has been correctly identified as one of the perpetrators of the crime.***

Reliance may be placed on the decisions of the Hon'ble Apex Court reported in ***(2005) 9 SCC 200 and (2007) 2 SCC 310***, wherein it has been held that identification in a Test Identification Parade is not substantive evidence, but can only be used as corroboration of the identification made in Court.

The object of Test Identification Parade is thus to ensure that the investigation proceeds in the right direction and to provide assurance that the suspect shown to the witness is, in fact, the person who was involved in the commission of the offence, thereby lending corroboration to the testimony subsequently adduced before the Court.

In the facts of the present case, PW-1 is the most appropriate witness to have been subjected to Test Identification Parade, inasmuch as he himself has stated that out of the assailants, only one was previously known to him. When PW-1 was placed for Test Identification Parade before the Learned Magistrate, he identified all the four assailants who were present at the place of occurrence on the fateful night. In view of such identification, the further identification of the accused persons by PW-3 in Test Identification Parade was not mandatory or obligatory on the part of the investigating agency, particularly when PW-3 himself has categorically stated that all the four accused persons were known to him and that he disclosed their names during his deposition before the Court.

The question of identification of a suspect in Test Identification Parade does not arise if he is known to the witness from before. Only an unknown suspect can be placed in the parade for identification. This was held in **Simon Vs. State (2004) 2 SCC 694**.

In the above mentioned case, the Hon'ble Apex Court laid down a few observations with rest to Test Identification Parade while upholding convictions and enhancing to death penalty.

The legal principle is that when accused was not known previously to the victim/witness, identification through Test Identification Parade is of "utmost importance".

The Supreme Court held that no hard and fast rule can be laid down that identification of accused for the first time in Court (without TIP) cannot be basis of conviction-it "depends on facts and circumstances". Failure to hold TIP does not make Court identification inadmissible, but weight depends on circumstances. Court identification can be relied upon in given circumstances and hold in TIP is not a rule of law but rule of

prudence.

This principles were laid down in Several Supreme Court Cases as follows :-

- Budhsen Vs. State of UP (1970) 2 SCC 128.
- Rameshwar Singh Vs. State of J & K (1971) 2 SCC 715.
- Sheikh Hasib Vs. State of Bihar (1972) 4 SCC 773.
- Kanan Vs. State of Kerala (1979) 3 SCC 319.
- Heera Vs. State of Rajasthan (2007) 10 SCC 175.
- Mulla Vs. State of UP (2010) 3 SCC 508.

I perused **P29/PW-21** and **P30/PW-21**. In both these reports I find that the identifying witness Meghnath Sahani has made a statement that the incident took place at 1.30 a.m. on 6th February, 2023 near Dental Hospital, Sealdah where four persons were found beating Ayush Julka. He further stated that Alope Chakraborty was beating Ayush with a wooden lathi and stated that he could also identify the other persons beating Ayush.

The identifying witness, in Exhibit P30/PW-21, further stated that he had seen the suspect on 06.02.2023 at about 1:30 a.m. near the Dental Hospital, where the

suspect was seen beating Ayush Julka with a wooden batam.

A perusal of **Exhibits P29 and P30** reveals that in both the Test Identification Parades, the witness **identified the suspects by touching their shoulders with his right hand**, thereby clearly indicating and affirming the identification of the accused persons without any ambiguity.

At the stage of argument, Learned Advocate appearing on behalf of the accused persons submitted that the Test Identification Parade reports, namely **Exhibits P29 and P30**, do not mention the specific time at which the Learned Magistrate conducted the said proceedings, and therefore the same cannot be relied upon.

In this regard, it is well settled that mere omission to mention the exact time of holding a Test Identification Parade in the report does not render the same inadmissible in evidence, nor does it ipso facto vitiate the entire proceeding. A Test Identification Parade conducted by a Learned Magistrate in accordance with due procedure of law carries a presumption of regularity, unless the contrary is established.

In the present case, **there is nothing on record to suggest that the Test Identification Parades were conducted in violation of settled procedure.** The manner of identification, namely **“by touching the shoulder with his**

right hand” as recorded in Exhibits P29 and P30, clearly demonstrates that the witness had no confusion or hesitation in identifying the suspects and that the identification was made in a clear and definitive manner.

It is also reasonable to presume that the Learned Magistrate conducted the Test Identification Parade during Court hours, in the absence of any material to the contrary. There is no evidence or suggestion from the defence side that the proceedings were conducted after sunset or in conditions which could have affected visibility. Likewise, there is no suggestion that the prevailing weather conditions on the dates of the Test Identification Parades were cloudy or dark so as to impair proper identification.

During cross-examination, PW-21 has categorically stated that no police personnel was present at the time of conduct of the Test Identification Parade, thereby ruling out any possibility of police influence or interference in the process.

In the absence of any rebuttal evidence or effective cross-examination challenging the procedure adopted, the Test Identification Parade appears to have been conducted strictly in accordance with established legal norms and safeguards.

In view of the aforesaid discussion, I find that the propriety, fairness, and validity of the Test Identification Parades conducted in respect of all the four accused persons

stand duly established and cannot be doubted on any reasonable ground.

THE WEAPON OF OFFENCE

It is the prosecution case that the accused persons assaulted the victim with fists, blows and a wooden batam. The discovery of the wooden batam is a significant step in order to prove the prosecution case.

ANALYSIS OF WEAPON OF OFFENCE :-

Apart from the bodily injuries inflicted upon the victim by fists, blows, and kicks, it is also the prosecution case that the victim was assaulted with a wooden batam (wooden bar).

At the outset, I propose to examine the wooden batam as it was produced before this Court during trial. A wooden bar or batam may, in appropriate circumstances, constitute an offensive weapon, and may also be regarded as a “dangerous weapon” if it is used in a manner likely to cause death, or with the intention of causing such bodily injury as is sufficient in the ordinary course of nature to cause death.

The wooden batam in question was produced during evidence and marked as **Mat Exhibit-MO-X and Mat Exhibit-MO-XI**, being two separate pieces of a wooden bar. Upon

careful observation of the said material exhibits, I find that each of the two pieces has an elongated wedge-shaped end. These wedge-shaped ends are so fashioned that they precisely fit into each other in a jigsaw-like manner, thereby indicating that the two pieces originally formed part of a single wooden batam.

The nature of the breakage of the wooden batam gives rise to a reasonable inference that it may have been broken at the time of use, presumably due to the force and vigour with which it was employed during the assault upon the victim.

It is further noticed that both pieces of the wooden batam are fitted with iron nails at one end. The said nails are of considerable size and remain embedded in the wood, with portions protruding outward, thereby enhancing the potential of causing serious bodily injury.

The wooden batam pieces are of moderate weight and thickness, and their dimensions broadly correspond with the description as recorded in the seizure list.

It is true that wood, by itself, is not inherently a deadly weapon. However, when a wooden object is used with sufficient force, intensity, and repeated blows, it may assume the character of a dangerous weapon capable of causing death or grievous bodily injury. ***An “offensive weapon” includes not only instruments specifically designed or adapted for causing injury, but also such objects which, though***

ordinarily harmless, are carried or used with the intention of causing harm—such as baseball bats, stones, hammers, or wooden bars.

In the present case, the wooden batam was not a mere ordinary stick, but, having regard to its size, weight, and the manner of its alleged use, it was capable of causing fatal injuries when used with requisite force and intention. Furthermore, **the presence of large iron nails embedded at both ends of the wooden batam renders it imminently dangerous**, as its use in assault would be likely to cause grievous injuries and may, in appropriate circumstances, result in death.

EXPERT OPINION :-

PW-14, namely, Dr. Molly Banerjee gave her opinion in respect of the seized exhibits placed before her by Sub-Inspector, Subhankar Basak of Muchipara police station.

I perused **Exhibit-11**. It appears from the report that Exhibits marked 'C' and 'D' are the offending weapons.

The description of **Exhibit marked 'C'** is : 'One hard blunt moderately weighing elongated wedge shaped dark brownish piece of wood, measuring 23 inches (end to end) with one surfaced flatened, the other angulated, having thus three

surfaces and three borders, both ends roughened; the end having one nail and one screw embedded in it in five inches in length from the tip to proximal smooth surface; the other end is 3.5 inches from tip, the shape is wedged, one end 3.25 inches, the other 4.75 inches’.

The description of **Exhibit marked ‘D’** is : ‘one piece of partially broken old wooden batam measuring about eight inches (in length) approx. having iron nails inserted at one end and having brownish stains at places’.

In the opinion of the examining doctor, ‘.....the said seized exhibits, in all probability was the weapon of offence causing the injuries as noted in the PM report No. 325 dated 06. 02. 2023 of the deceased Ayush Julka aged about 26 years, male,’.

The opinion of a post-mortem doctor about the relevancy of a weapon of offence is **expert evidence relevant under Section 45 of Indian Evidence Act**. The post-mortem doctor was examined on dock as PW-14 who stated during her cross-examination that she has mentioned in the post-mortem report the specific type of abrasion as abraded contusion which is one type of pressure abrasion.

Pressure abrasions is caused by the crushing or compression of the superficial layers of the epidermis (skin) over a prolonged duration rather than by friction or scraping.

The direct impact or linear pressure caused by a stick or wooden bar or wooden batam crushes the superficial skin layers causing abraded contusion.

The relevancy of expert evidence is that in a case of murder, the doctor examines if the alleged weapon could cause the injuries found on the victim. **However, the doctors' opinion should support the ocular evidence on record.**

I have already discussed that there are at least two eye witnesses in this case. Both the eye witnesses have deposed regarding hitting the victim with a wooden batam by one of the accused persons.

Exhibit-11 reveals that the weapon of offence is not only two pieces of wooden batams but the wooden batams are further qualified by nails engraved on them.

The role of a post-mortem doctor is to examine whether the injuries match the weapon's characteristics.

A stick or wooden batam (wooden bar) produces both abrasions and contusions simultaneously, as the stick or wooden batam acts as a blunt force weapon causing surface denudation and underlying tissue damage.

Thus, the opinion of the post-mortem doctor strengthens the prosecution case proving the ocular evidence with expert evidence regarding the murder weapon.

DISCOVERY OF THE WEAPON OF OFFENCE :-

The discovery of the weapon of offence constitutes a significant circumstance in the chain of evidence relied upon by the prosecution. The weapon allegedly used in the commission of the offence was recovered from a place within the exclusive knowledge and control of the accused. Such recovery, if established in accordance with law, assumes evidentiary significance as a relevant fact.. The Court is therefore required to examine, with due care and circumspection, whether the alleged discovery has been proved through cogent and reliable evidence, whether the statutory requirements have been duly complied with, and whether the recovery inspires confidence so as to lend assurance to the prosecution case.

PW-12 and PW-13 are the seizure witnesses in whose presence the murder weapon i.e. the wooden batams were recovered.

PW-12 stated in his evidence that on 08. 02. 2023 at about 12.30 to 1 p.m. when he was returning from Entally market after collecting money along with one of his worker, namely, Rajib Mahato, he saw a crowd gathering at the Dental Hospital near Moulali. Out of curiosity, he along with Rajib Mahato went there and on query, came to know that a person accused of murder was arrested by the police of Muchiparra police station. He further stated that he saw the accused who handed over two

wooden batams to the police which were kept in a stall just in front of the Dental Hospital. He further deposed that when the seizure list was prepared, he saw the name of the accused was Alope Chakraborty and size of the seized batams were mentioned as 23 inch and 8 inch. He proved his signature on the seizure list which were marked as Exhibit-P8.

This witness identified the two wooden batams recovered by the police on 08. 02. 2023 from accused Alope Chakraborty which were marked as **Mat Exhibit-MO-X/PW-12** and **Mat Exhibit-MO-XI/PW-12**.

This witness also proved his signatures on the labels which were marked as **Mat Exhibit-MO-X/1** and **Mat Exhibit-MO-XI/1** respectively.

Similarly, PW-13 stated in his evidence that on 08. 02. 2023 at about 12.30 to 1 p.m. he and Raju Shah were going towards Moulali and found a crowd gathered in front of Dental Hospital beside NRS Medical College & Hospital. He further deposed that the accused Alope Chakraborty took out two wooden batams which were kept under two stalls and handed over to police. He further deposed that beside the gate of Dental Hospital, there are several shops and these two shops/stalls are also situated at that place. He proved his signature on the seizure list which was marked as **Exhibit-P9**. He also stated that he can identify the accused Alope

Chakraborty and accordingly he identified the accused person, namely, Alope Chakraborty before the Court.

When two broken pieces of wooden batams were tendered to the witness, he identified both the pieces and also proved his signatures on the two labels which were marked as **MO-X/2** and **MO-XI/2** respectively.

Upon perusal of **Exhibit-P24** it appears that the State Forensic Science Laboratory Doctor has opined that **Exhibit-C and Exhibit-D were part of the same object.** These two exhibits were two broken wooden pieces which have been identified by PW-12 and PW-13 as the two batams recovered by police in their presence.

During his cross-examination, this witness stated that he cannot say since how much time prior to his reaching the spot, the police had arrived.

By dint of putting the question 'since how much time prior to his reaching the spot', the presence of the seizure witness at the place of seizure is admitted. Thus, **from the crux of evidence during cross-examination, the presence of the witness is proved beyond doubt.**

During cross-examination, this witness was confronted with the question regarding who were the owners of the two stalls from beneath which the two wooden batams were

recovered. To this, the witness had replied in the negative regarding ownership of the two stalls.

By putting the question as to 'who were the owners of the two stalls from beneath which the two wooden batams were recovered', the place of recovery of the weapon of offence is admitted.

It also proves on admission that recovery was made from beneath the two stalls. Upon perusal of the rough sketch map **(Exhibit-P5)** and the final map **(Exhibit-P6)**, I find that there are several shops situated adjacent to the footpath, which has been identified as the place of occurrence. The said maps clearly depict the existence of commercial establishments abutting the footpath, thereby lending support to the prosecution case regarding the location from where the weapon of offence was allegedly recovered.

Further, upon perusal of the photographs marked as **Mat Exhibits-M1, M2, M3 and M6**, I find that there are several stalls erected on the footpath in front of 115 AJC Bose Road. **The photographs furnish a clear visual representation of the place of occurrence and corroborate the existence of the stalls beneath which the prosecution alleges that the weapon of offence was concealed.**

When cross-examined regarding the ownership of the stalls, this witness candidly stated that he cannot say who were

the owners of the two stalls from beneath which the two wooden batams were recovered. In my considered view, this answer does not in any manner undermine the prosecution case. On the contrary, this evidence of PW-13 proves, by way of admission, that the two wooden batams were recovered from beneath two stalls, as consistently stated in the prosecution case. His inability to identify the owners of the stalls is wholly immaterial to the factum of recovery and does not detract from the evidentiary value of his testimony regarding the place from which the weapon of offence was recovered.

The evidence of PW-13 with regard to the place of recovery of the weapon of offence is further corroborated by the documentary evidence placed on behalf of the prosecution, namely, the rough sketch map (**Exhibit-P5**), the final map (**Exhibit-P6**), and the photographs marked as **Mat Exhibits-M1, M2, M3 and M6**. All these exhibits, when read conjointly, present a consistent and coherent account of the location of recovery and reinforce the prosecution version in material particulars.

Thus, far from creating any dent in the prosecution case, the cross-examination of PW-13 only strengthens the prosecution case regarding the recovery of the murder weapon, namely, the two pieces of wooden batams recovered from underneath two stalls situated on the footpath in front of the

Dental Hospital. The defence has been unable to elicit any material contradiction or inconsistency so as to cast a reasonable doubt upon the place or manner of such recovery.

■ **HOSTILE WITNESS :-**

The evidence of a hostile witness has always occupied a significant place in criminal jurisprudence. A witness does not become wholly unreliable merely because he resiles from his previous statement or exhibits reluctance in supporting the case of the party who has called him. A hostile witness is one who either gives evidence adverse to the interest of the party calling him or demonstrates an unwillingness to speak the truth by suppressing material facts or by deliberately departing from his previous statement.

Section 154 of the Indian Evidence Act, 1872 confers discretion upon the Court to permit the party calling such witness to put questions in the nature of cross-examination. The object of this provision is to enable the truth to be elicited from a witness who has exhibited hostility or has chosen to suppress material facts. However, the declaration of a witness as hostile does not render his entire testimony effaced from the record, nor does it compel the Court to reject his evidence in toto.

The legal position on this aspect is no longer *res integra*. In **Sat Paul v. Delhi Administration (1976) 1 SCC 727** the Hon'ble Supreme Court held that the evidence of a hostile witness is not to be rejected as a matter of course and that the portion of his testimony which is otherwise found to be credible and trustworthy may safely be relied upon. **The Court observed that merely because a witness has been permitted to be cross-examined by the party calling him, his evidence does not become wholly inadmissible.**

Again, in **Koli Lakhmanbhai Chanabhai v. State of Gujarat (1999) 8 SCC 624** the Hon'ble Supreme Court reiterated that the evidence of a hostile witness is not washed off the record altogether and that the **Court may rely upon those portions of his testimony which find corroboration from other reliable evidence.**

The same principle was reaffirmed in **Bhagwan Singh v. State of Haryana (1976) 1 SCC 389** wherein it was held that the testimony of a hostile witness is not altogether rejected and that such part of the evidence as inspires confidence can always be accepted by the Court.

Likewise, in **Ramesh Harijan v. State of Uttar Pradesh (2012) 5 SCC 777** the Hon'ble Supreme Court observed that the evidence of a hostile witness remains admissible and can be relied upon to the extent that it supports the prosecution

version and is corroborated by other evidence available on record.

Thus, the settled position of law is that **hostility of a witness affects only the weight of his evidence and not its admissibility**. The Court is under a duty to separate the grain from the chaff and to accept those portions of the testimony which are found to be truthful and reject only those parts which do not inspire confidence. As the maxim goes, ***falsus in uno, falsus in omnibus*** is not a rule applicable in India. The Court is not obliged to discard the entire testimony merely because one part thereof is found to be false.

In the present case, PW-11, who is the vendor running a 'Bhujia Shop' opposite 115, AJC Bose Road, turned hostile by stating that he did not know anything about the incident. His denial, however, does not conclude the matter, for the Court is required to scrutinize his entire testimony in the backdrop of the other evidence available on record.

Significantly, PW-11 admitted and proved his signature on the seizure list, which has been marked as **Exhibit-P7/1**. He further identified and proved his signatures on the labels marked as **Mat Exhibit-MO-VIII/2 and Mat Exhibit-MO-IX/2**. Thus, notwithstanding his hostility regarding the occurrence itself, he unequivocally admitted the documents bearing his signatures.

During his cross-examination by the prosecution, PW-11 voluntarily stated that the police had obtained his left thumb impression (LTI) on blank papers. This assertion, however, does not withstand judicial scrutiny. **Upon careful examination of the seizure list as well as the labels, I find that none of these documents contains any left thumb impression of PW-11.** On the contrary, all the documents bear his signatures, which he himself has identified and proved before the Court.

This contradiction assumes significance. If indeed blank papers had been obtained bearing his left thumb impression, the documents ought to have reflected such thumb impressions. **Instead, the record unmistakably reveals his signatures.** His voluntary assertion, therefore, stands contradicted by the documentary evidence itself. Documentary evidence, by its very nature, often speaks louder than subsequent oral denials. As has often been observed, **documents are silent witnesses whose testimony cannot easily be shaken.**

It is well settled that a seizure witness is essentially a witness to the recovery or seizure effected during investigation. If such witness subsequently turns hostile by alleging that his signatures were obtained on blank papers, the Court is not expected to mechanically discard the seizure. The evidence relating to recovery must be appreciated in its entirety and tested against the surrounding circumstances, the testimony of

the Investigating Officer, other seizure witnesses and the documentary record.

In the present case, apart from PW-11, the prosecution has examined another seizure witness to the seizure list dated 06.02.2023, namely PW-10. This witness is also the person who informed the police by dialling '100' after noticing the dead body of the victim Ayush Julka lying at the place of occurrence. PW-10 has fully supported the prosecution case regarding the seizure effected on that date.

From the evidence of PW-10, coupled with the admission of his signatures by PW-11 on the seizure list and the labels, the seizure of (i) blood collected in dry cotton and (ii) the control sample collected in dry cotton stands duly proved. The prosecution has thus succeeded in establishing the seizure by reliable and independent evidence notwithstanding the partial hostility exhibited by PW-11.

It is also pertinent to note that PW-11 has not denied his presence at the time of seizure by disputing his signatures. **Rather, he has admitted the signatures and merely attempted to explain them away by making an assertion which stands demonstrably falsified by the documents themselves. Such conduct, instead of weakening the prosecution case, adversely affects the credibility of the witness himself.**

The law does not permit a witness, after admitting his signatures on contemporaneous official documents, to casually disown the transaction by advancing an explanation which is inherently inconsistent with the documentary record. Courts are required to evaluate evidence on the touchstone of probability, consistency and intrinsic reliability. In the present case, the documentary evidence substantially outweighs the subsequent oral denial made by PW-11.

Accordingly, I find that the testimony of PW-11, to the extent that he has attempted to resile from the prosecution case, does not create any dent in the otherwise cogent and convincing evidence adduced by the prosecution. His hostility neither demolishes the prosecution case nor casts any reasonable doubt upon the seizure effected during investigation.

Consequently, I hold that the seizure dated 06.02.2023 has been duly proved by the prosecution through the testimony of PW-10, the Investigating Officer and the contemporaneous documentary evidence. The seizure, therefore, remains intact and continues to constitute a reliable incriminating circumstance corroborating the prosecution case in material particulars.

■ **THE INJURY REPORT & POST-MORTEM REPORT**

An injury report records the injuries found on a living person while a post-mortem report records findings after death and usually includes the cause and manner of death.

An injury report is usually prepared in case of assault or accident-related legal cases where the victim survives.

Post-mortem reports are used in suspected unnatural death such as homicide, suicide, accident or unexplained death.

A **Brought Dead Report** is the medico-legal note prepared by the examining doctor when a person is brought to the hospital already dead or is declared dead on arrival.

Contents of a Brought Dead Reports :-

A Brought Dead Report contains:

- The time of arrival and time of examination.
- Confirmation that there were no signs of life.
- Basic identification details of the deceased.
- A note that the victim was 'Brought Dead' or 'Dead on Arrival'.

In such a case, **first the doctor should confirm death by checking pulse, respiration, heart sounds, pupils, reflexes**

and related signs. The doctor should then inform the police and shift the body to mortuary. **The Brought Dead Report is the initial hospital record made at declaration of death while the post-mortem report is the detailed autopsy report done later to find the cause of death.**

It is the prosecution case that the body of Ayush Julka was removed from the place of occurrence by one Basudeb Chowdhury, SI of Muchipara Police Station and taken to NRS Medical College & Hospital for medical examination where the **attending doctor declared the patient as 'Brought Dead'.**

The said attending doctor who prepared the injury report/Brought Dead Report was examined as PW-15, who proved the injury report/Brought Dead Report which was marked as Exhibit-P-13.

The injury report marked as Exhibit-P-13 is in essence a 'Brought Dead Report' since the victim was already dead when he was first examined by the doctor when he was brought to NRS Medical College & Hospital.

I perused **Exhibit-P-13.**

It appears therefrom that on examination, the attending doctor found evidence of 'Profuse fresh bleeding from the nose and mouth without evidence of any external injury over the head and face'.

It is pertinent to mention here that PW-3, one of the eye witnesses has deposed that he saw that the victim's face was full of blood.

PW-10, who was the first to inform police on '100 Dial' stated in his evidence that police collected blood from the dead body and packed and sealed in his presence.

The mention in the injury report regarding the evidence of 'profuse fresh bleeding' is thus corroborated by the evidence of PW-3 and PW-10.

After declaration by the attending doctor that the patient is brought dead, the body was sent to NRS Morgue for post-mortem 'To detect the actual cause of death'.

In a police case conducting a post-mortem or autopsy is mandatory when the death is suspicious, violent, unexplained or unnatural as it is essential to determine the cause of death and collect forensic evidence for the investigation.

Under Section 176 of the Criminal Procedure Code, when a death occurs under suspicious circumstances, the autopsy must be carried out to ascertain the cause of death. The Medical Officer's duty is to conduct a full examination whenever nothing is known about the cause of death or whenever there is possibility of the post-mortem throwing light on it.

The autopsy surgeon, namely, Dr. Moly Banerjee was examined as PW-14 who proved the post-mortem report as well as opinion in respect of the seized exhibits which were marked as **Exhibit-P10 and P11** respectively.

I perused **Exhibit-P10**.

It appears therefrom that in the opinion of the Medical Officer ***“Death was due to the effects of the ante-mortem injuries as noted above, homicidal in nature”***.

The Medical Officer, while conducting post-mortem has observed and noted the injuries in details which were found in the body of the deceased/victim.

At the time of argument, Ld. Advocate on behalf of the accused persons argued that although PW-15 who prepared the injury report has mentioned about evidence of profuse fresh bleeding from the nose and mouth, yet no such mention is found in **Exhibit-P10**. Ld. Advocate also argued that although the post-mortem report (**Exhibit-P10**) disclose a number of external injuries, yet Exhibit-P13 does not disclose such external injuries.

It is pertinent to mention here that **Exhibit-P13** which is the **injury report/Brought Dead Report** clearly discloses **confirmation of death of the victim by doctor by checking, pulse, heart sounds, respiration, pupils, blood pressure**

and other reflexes. The attending doctor has duly sent the body to NRS Morgue for post-mortem **‘To detect the actual cause of death’.**

Ld. Public Prosecutor on behalf of State submitted that it is common practice of doctors while examining a ‘Brought dead’ patient, to send the body immediately for post-mortem without mentioning all injuries found on the body of the deceased.

I find from Exhibit-P13 that the attending doctor (PW-15) has duly examined the patient and confirmed death and thereafter sent the body for post-mortem. Since, Exhibit-P13 is a ‘Brought Dead Report’ hence, there is no need of disclosing the details of injuries found on the body of the victim. He has also mentioned the death, place and time of receipt of injury and date and time of examination of the victim/patient. **The attending doctor has thus complied with the requirements of a ‘Brought Dead Report’.**

Injury reports/inquest document what the witness/doctor first observed. Post-mortem reports on the other hand, document only what the medical examiner finds during internal examination. Bleeding from nose/mouth can occur at the scene from injuries while the person was still alive. If the bleeding stopped or dried, the post-mortem doctor will not document fresh bleeding.

The extent and intent of injuries as mentioned in the post-mortem report show the detailed examination by the medical doctor and her findings regarding the cause of death of the victim thus making the post-mortem report as more dependable and acceptable.

In ***Pappu Tiwari Vs. State of Jharkhand (2022) Lawweb***, the Supreme Court held that ***“As far as the injuries in the inquest report not being noticed in the post-mortem report are concerned, there can be no doubt that the medical doctor knows exactly what medical injuries are and ordinarily in case of inconsistency, the medical report of the doctor should prevail”***. The Hon’ble Apex Court further observed that the inquest report in a criminal case is not a substantive evidence since its purpose is only to find out the apparent cause of death of a person who has died under suspicious circumstances. Accordingly, the Hon’ble Apex Court held that differences between inquest report and post-mortem report, even if such differences are major, will not be fatal to the prosecution case.

During cross-examination, autopsy surgeon (PW-14) stated that it is fact that if there is only injury No. 7, no death can be caused. She also opined that no single external injury from number 1 to 33 can cause death of a person.

However, it is clearly mentioned in the post-mortem report that death was due to the effects of ante-mortem injuries i.e. all the injuries as mentioned in the post-mortem report have in combined manner caused death of the victim. This means that the deceased died from injuries sustained before his death and these injuries are the direct cause of his death. In other words, the injuries mentioned in the post-mortem report were severe enough to cause death. This supports the homicidal charges rather than suicidal or accidental death.

Upon perusal of FSL report (Exhibit-P25) which was proved by PW-19, it appears that "The presence of any toxic substance could not be detected in the contents of exhibit marked 'A' at this stage of Forensic Toxicological Examination".

Thus, from the evidence of PW-19 as well as from Exhibit-P25, **any fact of cause of death due to poisoning can be safely ruled out.**

From the Serological Analysis Report marked as **Exhibit-P28 and Exhibit-P26** It appears that human blood of blood group 'B' was detected in exhibit-'A' (blood stained cotton with control) and exhibit-'G' (three quarter pant cuttings with control).

This proves that human blood was detected in the wearing apparel of the victim Ayush Julka.

Having said and discussed all these, I am compelled to hold that the first attending doctor who declared the patient/victim as 'brought dead' and prepared the 'Brought Dead Report' has complied with all the requirements in case of a 'brought dead' patient and sent the body for post-mortem examination. The autopsy surgeon who prepared the post-mortem report thoroughly examined the patient's body and prepared a detailed examination report as to the cause of his death. **Hence, I find no discrepancies in the two reports as regards the status of the victim on arrival in the hospital. The injury report/Brought Dead Report is thus in tune with the post-mortem report.**

■ **THE TIME OF DEATH**

The criminal law was set into motion when PW-10 found the body of the victim lying in an unconscious state and immediately informed the police by making a call to the '100 Dial' emergency service. Upon receipt of the said information, the police promptly arrived at the place of occurrence and shifted the victim to NRS Medical College & Hospital for medical treatment. However, upon examination, the attending doctor declared the patient as "Brought Dead".

PW-1 and PW-3, being the eye witnesses to the occurrence, have consistently stated that they had seen the

assailants assaulting the victim at about 1.30 a.m. in the night. Their evidence places the occurrence of the assault at or around the said time and forms the foundation of the prosecution case with regard to the time of the incident.

PW-10, on the other hand, stated that at about 1.00 a.m. to 1.30 a.m. on 06.02.2023 he found the victim lying in an unconscious state near the Dental Hospital, Sealdah. The evidence of PW-10 assumes significance inasmuch as he was the first independent person to notice the victim after the occurrence and to inform the police without any delay.

In order to establish the information furnished by PW-10 to the police over telephone, the prosecution produced the complete call log relating to the '100 Dial' emergency service, described as the '**Event Call Report**', which was admitted into evidence and marked as **Exhibit-P21** Collectively.

I have carefully perused **Exhibit-P21** Collectively. The phone number from which the call was made to the police, as identified by PW-10 during his deposition, is the number ending with the digits "39". Upon examination of **Exhibit-P21** Collectively, I find that a call was indeed made from the said number commencing at 01:26:04 hours on 06.02.2023 and remained connected till 01:38:44 hours on the same date. The documentary record, therefore, conclusively establishes that

information regarding the victim was conveyed to the police immediately after the occurrence.

Thus, the timings stated by PW-1 and PW-3 regarding the assault and the timing spoken to by PW-10 regarding his discovery of the victim are substantially consistent with each other. **The slight variation, if any, is insignificant and is only natural, having regard to the fact that the witnesses were deposing from memory about an incident that occurred during the late hours of the night.**

It is also to be noted that PW-10 is a van rickshaw puller and cannot reasonably be expected to state the exact time at which he informed the police. Nevertheless, he has consistently stated that he found the victim and informed the police between 1.00 a.m. and 1.30 a.m. This version stands substantially corroborated by the call records contained in Exhibit-P21 Collectively, which reveal that the emergency call was initiated at 01:26:04 hours. Consequently, the evidence of PW-10 receives complete assurance from the contemporaneous documentary record.

EXPERT OPINION

From **Exhibit-P11**, which contains the post-mortem report, it appears that in the opinion of the doctor, "Death of the deceased was between 3 to 6 hours of last meal or 2-3 hours to 24 hours of the receipt of body into the mortuary." This medical

opinion provides two possible parameters for estimating the time of death.

It further appears from **Exhibit-P10** that the body of the deceased was received at the Dead House of NRS Medical College & Hospital at 1.45 p.m. on 06.02.2023. The said document is relevant for appreciating the second parameter mentioned in the post-mortem report regarding the probable time of death with reference to the receipt of the body into the mortuary.

The prosecution case is that the victim was found lying in an unconscious state by PW-10 between 1.00 a.m. and 1.30 a.m. on 06.02.2023. **Exhibit-P21** Collectively establishes that PW-10 contacted the '100 Dial' emergency service at about 1.26 a.m. Thereafter, the victim was removed to NRS Medical College & Hospital, where, as reflected from Exhibit-P13, the attending doctor declared him "Brought Dead" at about 3.00 a.m. on 06.02.2023.

These circumstances fit harmoniously with the opinion of the post-mortem doctor that the death had occurred within the period of 2 to 3 hours to 24 hours prior to the receipt of the body into the mortuary. The documentary evidence relating to the movement of the body and the medical opinion, therefore, stand in complete harmony with the oral evidence adduced by the prosecution witnesses.

It also appears from **Exhibit-P10** that the stomach of the deceased contained partly digested food. According to the prosecution case, the victim was assaulted at about 1.00 a.m. to 1.30 a.m. on the night of 06.02.2023. If PW-10 found the victim lying in an unconscious state at about 1.30 a.m., then, calculating backwards from the opinion of the post-mortem doctor that death occurred between 3 to 6 hours after the last meal, the deceased may reasonably be inferred to have consumed food sometime during the evening of 05.02.2023. Such an inference is entirely consistent with the medical evidence recorded in the post-mortem report. It necessarily follows that the death of the victim occurred within 3 to 6 hours of his last meal.

Thus, the oral evidence of the prosecution witnesses finds substantial corroboration from the medical evidence regarding the probable time of death. **The testimony of PW-1, PW-3 and PW-10, the contemporaneous '100 Dial' call records, the hospital records and the findings recorded in the post-mortem report constitute a consistent and uninterrupted chain of evidence with respect to the time of the occurrence and the death of the victim.**

In both the time frames indicated by the post-mortem doctor, namely, between 3 to 6 hours of the last meal and between 2 to 3 hours to 24 hours prior to the receipt of the

body into the mortuary, the oral evidence of the witnesses and the documentary evidence placed on record lead to one consistent conclusion, namely, that the death of the victim occurred approximately at the time when PW-10 found him lying in an unconscious state near the place of occurrence. The medical evidence, therefore, lends complete assurance to the prosecution version regarding the time of the occurrence and the consequent death of the victim.

THE INJURIES

An injury is any harm, whatever illegally caused to any person in body, mind, reputation or property {Section 2(14) BNS}.

Medically, a wound or injury is a break of the natural continuity of any of the tissues of the living body.

Having discussed about the evidence of eye witnesses regarding the fact of assault of the victim by the four assailants/accused persons, now let me throw some light into the findings of the post-mortem report regarding the injuries sustained by the victim and whether such injuries corroborate with the weapon of offence used and other form of assault.

INJURIES FOUND IN THE POST-MORTEM REPORT

It appears from the post-mortem report (Exhibit-P10) that there are findings of around thirty three injuries and on dissection, nine numbers of internal injuries have been listed by the post-mortem doctor.

EXTERNAL INJURIES ::-

The external injuries found are abrasions, abraded contusion and laceration.

- ***Abrasions - An abrasion is a destruction, discontinuity or disruption of the superficial layers of the epidermis only.***

Medico-legal importance of abrasions - According to K. S. Narayan Reddy's 'Forensic Medicine and Toxicology', abrasions are usually seen in assaults. (1) they give an idea about the site of impact and direction of the force and (2) they may be the only external science of a serious internal injury.

INTERNAL INJURIES ::-

Several internal injuries like thoracic bruises, rib fracture and laceration of lungs are found from the post-mortem report. The abrasions are fresh and non-scabbed. The bruises are red in colour.

Bruises on sternum, lacerations of spleen and contusion in kidney are also mentioned as injuries in the post-mortem report.

ANALYSIS OF INJURIES :-

- **Contusions (Bruises) - *A contusions is an effusion or extravasation of blood into the tissues, due to rupture of blood vessels (veins, venules and arterioles) caused by a blunt object such as fist, stone, stick, bar, foot, boot, hammer, wooden handle etc.***

Situation : The bruise is usually situated in the corium and subcutaneous tissues, above the deep fascia, often in the fat layer.

A bruise is usually round but it may indicate the nature of the weapon especially when death occurs soon after infliction of injury. A blow with a rod, a stick produces two parallel linear hemorrhages.

As per Medical Jurisprudence, an abraded contusion (also called a contused abrasion) is caused by blunt force applied at an oblique angle, which simultaneously crushes underlying tissues (causing a contusion/bruise) and scrapes the skin surface (causing an abrasion).

MECHANISM :-

- Contusion Component - blunt force ruptures capillaries beneath the skin causing blood extravasation
- Abrasion Component - the same force scrapes/denudates the superficial epidermis
- Combined Effect - when abrasion and contusion occurred together from a single blunt impact, it forms an abraded contusion.

An abraded contusion indicates the type of weapon used. It shows use of blunt weapons such as iron rod, lathi/stick, cricket bat, wooden bar, hockey stick etc.

Upon scanning the post-mortem report, I find that there are parallel bruises and contusions as well as abraded contusions found on the body of the victim. These injuries are a clear indication that the victim was assaulted by blunt weapon, being the wooden batam in this case along with assault by fists, blows and kicks.

➤ **Lacerations : *Lacerations are tears or splits of skin, mucous membranes, muscle or internal organs produced by application of force by blunt object to a broad area of the body.***

The **lacerating agent** is either a projecting point or edge, or a completely blunt object pulled obliquely against the tension of the skin until it tears.

A **single blow with a blunt weapon** may produce more than one lacerated wound.

Upon analysis of the external injuries, an abrasion can be caused by the raw surface of weapon, a laceration can be caused if a rough weapon is hit over the body and an abraded contusion can be caused by using of weapon with more force.

Thus, the external injuries found on the body of the victim suggests use of a blunt weapon which is in this case a wooden batam (wooden bar).

ANALYSIS OF INTERNAL INJURIES :-

The post-mortem report (**Exhibit-P10**) shows a number of internal injuries caused to the body of the victim.

The internal injuries on dissection found are :- (1) *Extravasation of blood 3" x 2½" diffused over left fronto-parietal region and 3" x 2" diffused over right parieto-temporal region of scalp, (2) Subdural haemorrhage with blood clots diffused over both cerebral hemispheres; (3) Extravasation of blood with blood clots 16" x 6" diffused over posterior surface of chest wall with fracture dislocation of 1st to 5th ribs of right*

side and 1st to 3rd ribs of left side of posterior angles with extravasation of blood in and around with laceration of the underlying pleurae and lobes of the lungs at the sites of fractured ends of the ribs; (4) Extravasation of blood 3" x 3" diffused over the postero-lateral aspect of manubrium sterni and 3" x 2" diffused in the first intercostal space of right side, (5) Extravasation of blood diffused over the trachea-oesophageal region and surfaces at places, (6) One LW 2" x 1" x substance of costal surface of spleen, (7) One LW 2½" x 1½" x substance over highest part of left cupola of the diaphragm, (8) One contusion 1½" x 1" diffused over and around the inferior pole of left kidney and (9) Multiple contusions of varying sizes diffused over the mesentery at places, with a fair amount of fluid and clotted blood in the peritoneal cavity. All the injuries showing evidence of vital reactions. The abrasions are fresh and non-scabbed. The bruises are red in colour.

- In forensic pathology, **‘extravasation of blood’** refers to the leakage of blood from ruptured vessels into the surrounding tissues. In internal injuries from a murder case, this is also called contusion (internally) or bruise (under the skin) and is **a critical finding that indicates blunt force trauma occurred while the victim was alive.**

Extravasation of blood requires circulating blood, it occurs only when the heart is still beating, **proving the injury was ante-mortem in nature.**

The presence of extravasated blood in internal tissues is a medico-legal proof of violent injury. Diffuse extravasation extending to deeper muscular planes confirms multiple large bruises.

- **Subdural haemorrhage** with blood clots diffused over both cerebral hemispheres means bleeding in the space between the dura mater and arachnoid mater surrounding the brain. This is a **critical forensic finding that indicates blunt head trauma and is a medico-legal proof of homicidal death.**
- **Scalp hematoma** occurs due to injury from blunt heavy force.

The internal injuries also indicate **fracture of ribs, thoracic bruises with laceration of the underlying pleurae and lobes of the lungs at the sites of fractured ends of the ribs.**

The combination of lung lacerations, rib fractures and thoracic bruises **indicates severe blunt force trauma to the chest. The thoracic bruises can be caused by assault with kicks, punches, stamping with foot as well as blunt**

weapon blows such as a bat or a batam. The rib fractures are also caused by kicks or stamps by foot. The broken rib fragments tear lung surface causing lacerations.

The mention of fresh and non-scabbed abrasions in the **post-mortem report confirms that the injuries were fresh and ante-mortem.** The mention in the post-mortem report that the bruises are red in colour indicates fresh injuries. This also confirms that the victim died soon after being assaulted. **This goes on to prove that death was homicidal in nature.**

Bruises on sternum, lacerations of spleen and contusion in kidney indicate severe blunt force trauma to the chest and abdomen. This injury pattern is consistent with fast blow with blunt objects such as bat, batam, baton or fists, blows to chest and abdomen.

All the above discussed injuries are an indication of terrible beating to the victim by the assailants. The post-mortem report reveals the description of the **victim as 'thin built, poorly nourished, medium complexioned body....'**. I have already discussed the nature of the injuries as found from the post-mortem report and their analysis. **Given the fact that the victim was 'thin built' and 'poorly nourished', it is most likely that assault by fists, blows and kicks as well as assault by a wooden batam with nails embedded in it have**

easily resulted in injuries to the body of the victim resulting in his death.

These injuries and their causes are direct evidence that death resulted due to severe assault upon the victim with fists, blows, kicks and by bat or baton or batam and that death of the victim was homicidal in nature and that the victim died soon after inflicting of such injuries given the fact of his being 'thin built' and 'poorly nourished'.

■ **THE MOTIVE**

Motive described the impulse, reason or desire that induced the accused persons to act. However, a motive alone cannot convict – other evidence (intent, ***actus reus***, eye witnesses or forensic prove) is required to prove murder.

Motive is circumstantial evidence – it raises the probability that an accused committed the crime but does not by itself established the specific act.

It must be kept in mind that motive is an important link in a purely circumstantial case, but it is not an essential ingredient of murder. If eye witnesses or other direct evidence is convincing, motive matters little.

The Hon'ble Apex Court has held time and again that motive is relevant under Section 8 of the Indian Evidence Act but lack of motive by itself does not require acquittal.

A short thumb rule is that : no motive weakens a weak circumstantial case, but it does not defeat a strong one.

Motive is much less important when trustworthy eye witness evidence exists. If the case has strong direct evidence or a complete circumstantial chain, the conviction can stand even without proven motive. So, the Supreme Court's consisted approach is : **motive is relevant, but not indispensable.**

Ld. Advocate on behalf of the accused persons argued that the prosecution has failed to prove the motive behind commission of the crime.

Section 8 of Indian Evidence Act deals with relevance with motive, preparation, previous conduct and subsequent conduct. Motive is the moving power which impels action for definite result i.e. motive incites a person to do an act. Where an offence is committed or attempted, preparation is proof of motive. The conduct of a person before or after the transaction is also very relevant as circumstantial evidence.

In the present case, there is direct evidence of eye witnesses namely, PW-1 and PW-3 who have witnessed the four accused persons assaulting the victim with fists, blows, kicks and with wooden batam.

Ld. Public Prosecutor relied upon case law reported in **2024 (1) Crimes 47 (SC)** where the Hon'ble Apex Court held that ***to bring a case within Section 34, it is not necessary to prove prior conspiracy or premeditation.***

The Hon'ble Apex Court further held that ***when evidence of eye witnesses is of sterling quality, adverse inference need not be drawn.***

I rely upon this case law.

Motive is nothing but one link in the chain of the events as established in the prosecution case.

I have already discussed in the foregoing paragraphs that from the oral evidence as well as from the documentary evidence it has been well established that the four accused persons assaulted the victim Ayush Julka on the fateful night with fists, blows and kicks and with wooden batam which led to the death of the victim due to the injuries sustained as a result of such assault.

Thus, the prosecution has been successful in inspiring the confidence of the Court as to the commission of the offence by

bringing on record ocular testimony as well as documentary evidence corroborating such ocular testimony. In such a case, the prosecution is not required to establish motive. **Hence, motive is not a *sine-qua-non* in establishing the charge against the accused persons.**

In 2025 INSC 499/2025 SCO LR6(4) (19) decided by the Hon'ble Apex Court by its judgment dated 17th April, 2025, the Hon'ble Supreme Court held that "*Absence of proof of motive by the prosecution where there is presence of circumstantial evidence will not be fatal to the prosecution case and will not result in acquittal. Thus the Apex Court held that motive is not imperative where there is other circumstantial evidence pointing to the guilt of the accused.*"

I rely upon this case law.

In cases of credible eye witnesses, motive loses its significance. In ***Shivaji Sahabrao Bobade Vs. State of***

Maharashtra, 1973 AIR 2622 The Hon'ble Supreme Court established that motive is primarily an emotion prompting a crime, but the law does not bind the prosecution to prove it if the offence is otherwise clear.

The Hon'ble Supreme Court has in several cases upheld convictions in murder cases despite missing motives thus reinforcing that total absence of motive is of no consequence if the circumstances convincingly establishing guilt.

THE UNBROKEN CHAIN OF EVENTS

An 'unbroken chain of events' means a sequence of actions or occurrences that are continuously connected, with no interruption or gap between one event or the next. It means the prosecution's evidence connects the accused to the crime step by step, with no missing link or reasonable alternative explanation. The chain should be strong enough that, taken together, the circumstances lead to the same conclusion, that is, the accused committed the murder.

The prosecution case, as unfolded through the evidence of the defacto-complainant (PW-1), commences with the events preceding the occurrence. PW-1 and the victim, Ayush Julka, were close friends. The victim used the motorcycle of the defacto-complainant bearing Registration No. WB-08-9354 for

providing Rapido service. As per their daily arrangement, Ayush Julka used to collect the motorcycle from the house of the defacto-complainant at about 10.00 a.m. and return the same at about 10.00 p.m.

On 05.02.2023, Ayush Julka took the motorcycle from the house of the defacto-complainant at about 10.00 a.m. and, on the same day, returned it at about 10.30 p.m. in front of the 'Pay & Use Toilet' at Santosh Mitra Square. Thereafter, the victim remained with the defacto-complainant for approximately one hour. During their conversation, Ayush Julka informed the defacto-complainant that he would come to his house after about one hour to have dinner.

However, when Ayush Julka failed to arrive at the house of the defacto-complainant as promised, the defacto-complainant became anxious and went in search of him. He first searched for him near the 'Pay & Use Toilet' at Santosh Mitra Square but did not find him there. Thereafter, he proceeded towards the place where Ayush Julka ordinarily resided, namely, on the footpath adjacent to 115 AJC Bose Road.

According to PW-1, when he reached 115 AJC Bose Road at about 1.30 a.m., he witnessed four persons assaulting Ayush Julka indiscriminately with fists, blows and kicks, while one of the assailants was striking him with a wooden batam measuring about three feet in length. Upon witnessing the assault, he

immediately intervened with the intention of rescuing his friend. However, the assailants ordered him to leave the place. Being frightened by the aggressive conduct of the assailants and apprehending danger to his own safety, he fled from the place of occurrence and proceeded towards Sealdah Koley Market in search of some friends who could assist him in rescuing the victim. Finding nobody available at such late hours of the night, he returned to the same place at 115 AJC Bose Road. Upon his return, he learnt from the local people that the police had already arrived and had taken Ayush Julka away. He thereafter returned home. On the following day, i.e., on 06.02.2023 at about 1.00 p.m., he came to know that Ayush Julka had succumbed to the injuries sustained during the assault. Being mentally disturbed upon hearing the said news, he returned home, reduced the entire incident into writing and thereafter went to Muchipara Police Station where he lodged the written complaint.

The prosecution case with regard to the occurrence further receives support from the testimony of PW-3. PW-3 is a student who deposed that after midnight he had gone to Taj Biryani Centre near Moulali to purchase biryani. While returning home at about 1.30 a.m., and upon reaching near the Dental Hospital, he witnessed three to four persons assaulting

one individual. He further stated that all the four assailants were known to him.

Undoubtedly, PW-3 is an eye witness to the occurrence. At the same time, he may also be described as a chance witness, inasmuch as his presence at the place of occurrence was not expected but was purely incidental. **However, it is well settled that the testimony of a chance witness cannot be discarded merely because his presence at the place of occurrence was accidental.** If such witness furnishes a natural, probable and convincing explanation for his presence at the place of occurrence, and if his testimony inspires confidence, there is no legal impediment in placing reliance upon the same.

In the present case, PW-3 has furnished a clear, natural and wholly believable explanation for his presence near the place of occurrence. His evidence discloses that he had gone to purchase food after midnight and was returning home when he happened to witness the incident. Nothing material has been elicited during his cross-examination to render such explanation improbable or unbelievable. More importantly, all the four assailants were admittedly known to PW-3, thereby eliminating any possibility of mistaken identity.

The testimony of PW-3, therefore, constitutes an independent piece of ocular evidence which substantially

corroborates the version of the defacto-complainant with regard to the occurrence. **The corroboration furnished by an independent chance witness, who had no apparent reason to falsely implicate the accused persons, considerably strengthens the prosecution case and lends assurance to the truthfulness of the testimony of PW-1.**

From the formal FIR marked as **Exhibit-P17**, it appears that the written complaint was lodged at about 18:30 hours on 06.02.2023.

Learned Defence Counsel has, however, argued that the conduct of the defacto-complainant is wholly unnatural. It has been contended that although PW-1 allegedly witnessed the assault, he neither informed the police immediately nor approached the police station, which was situated in close proximity to the place of occurrence. Instead, he went in search of his friends. It has further been argued that the prosecution has failed to establish a complete chain of events leading to the commission of the offence and, consequently, has failed to prove the guilt of the accused persons beyond reasonable doubt.

The aforesaid submission of the defence deserves careful consideration. The answer to the said contention, however, is found in the evidence of PW-1 himself. PW-1 has categorically stated in his examination-in-chief that when he attempted to intervene and rescue the victim, the assailants ordered him to

leave the place. He has further deposed that being frightened by their conduct, he fled towards Sealdah Koley Market in search of some friends who could accompany him back to the place of occurrence. Since he could not find anyone at that late hour, he returned to 115 AJC Bose Road.

In my considered opinion, the conduct of PW-1 cannot be characterised as unnatural or improbable. On the contrary, it reflects a normal and instinctive human reaction to an alarming and life-threatening situation. It must be borne in mind that the occurrence took place in the dead of night. The evidence on record establishes that four assailants were jointly assaulting a single individual and at least one of them was armed with a wooden batam. Faced with such a situation, it is only natural for an unarmed individual to fear that any attempt at resistance might expose him to a similar assault.

Human behaviour in moments of sudden violence cannot be measured by any rigid or uniform standard. Different individuals react differently when confronted with grave danger. While some may attempt to intervene, others may retreat out of fear for their own safety. Such a reaction cannot, by itself, render the testimony of a witness doubtful or unreliable. **The instinct of self-preservation is a natural**

human response and cannot be ignored while appreciating evidence.

The evidence of PW-1 clearly establishes that he did not abandon the victim out of indifference. Rather, he fled from the place with the intention of securing assistance from others so that he could return with sufficient support to rescue his friend from the hands of the four assailants. His subsequent return to the place of occurrence, despite having failed to locate any friends, further demonstrates his genuine concern for the victim. Ultimately, upon learning that the police had already shifted the victim to the hospital, he returned home.

Thus, the conduct of PW-1 is wholly consistent with ordinary human behaviour expected from a person who, while being alone in the dead of night, unexpectedly witnesses four persons brutally assaulting a single individual. In such circumstances, it cannot reasonably be expected that he would single-handedly confront the assailants or raise an alarm when there was no one in the vicinity to render assistance. **The evidence of PW-1 unmistakably indicates that he was petrified by the incident and acted under the influence of fear and shock.** His immediate reaction of running in search of help, rather than confronting the assailants or proceeding directly to the police station, cannot be regarded as unnatural or inconsistent with normal human conduct. Consequently, the

criticism advanced by the defence regarding the conduct of PW-1 is devoid of merit and does not create any dent in the prosecution case.

Ld. Public Prosecutor relied upon case law ***Leela Ram Vs. State of Haryana (1999) 9 SCC 525*** wherein the Hon'ble Apex Court observed :

“It is indeed necessary to note that one hardly comes across a witness whose evidence does not contain some exaggeration or embellishment - sometimes there could even be a deliberate attempt to offer embellishment and sometimes in their over anxiety they may give a slightly exaggerated account. The court can sift the chaff from the grain and find out the truth from the testimony of the witnesses. Total repulsion of the evidence is unnecessary. The evidence is to be considered from the point of view of trustworthiness. If this element is satisfied, it ought to

***inspire confidence in the mind of
the court to accept the stated
evidence though not however in
the absence of the same.”***

I rely upon this case law.

The further case of the prosecution is that the dead body of the victim, Ayush Julka, was taken to NRS Medical College & Hospital by the police, who arrived at the place of occurrence upon receiving a call made to the '100 Dial' service by PW-10.

PW-10 deposed that, while returning home in his van at about 1.00 a.m. to 1.30 a.m., he noticed the dead body of the victim lying near Dental Hospital, Sealdah. Thereupon, he immediately informed the police by dialling '100' from his mobile phone.

The said call made by PW-10 stands duly proved by the Event Call Report, which has been marked as **Exhibit-21** Collectively.

This piece of evidence adduced on behalf of the prosecution inspires confidence, as the oral testimony of PW-10 finds due corroboration from the documentary evidence on record. Hence, no doubt can be cast in the mind of the Court

regarding the act done and the role played by PW-10 in the entire prosecution case.

Thus, I find that the prosecution has successfully woven the entire chain of events, commencing from the point when the victim was last seen by the defacto-complainant and culminating in the recovery of the dead body of the victim by the police, who thereafter removed the same to NRS Medical College & Hospital, where the victim was declared 'Brought Dead'.

EPILOGUE

Before drawing the curtain on the adjudication of the present case, it would be apposite to weave together the strands of oral and documentary evidence so as to examine whether they converge into one seamless tapestry establishing the guilt of the accused persons beyond reasonable doubt.

At the very outset, one aspect deserves particular emphasis. It is a matter of common experience that eyewitnesses to a murder are seldom available. As has often been observed, in cases involving violent crime, the presence of even a single credible eyewitness is considered a luxury for the prosecution. Murder is generally committed under the cloak of

darkness, away from the gaze of the public, leaving the Court to reconstruct the events from circumstantial fragments. In the present case, however, the prosecution has produced not merely one, but two eyewitnesses who witnessed the assault upon the victim, besides another witness who found the victim lying motionless at the place of occurrence shortly thereafter. **Their testimonies, when tested on the anvil of cross-examination and found to be reliable, lend formidable strength to the prosecution case.**

The evidence of the eyewitnesses, namely PW-1 and PW-3, inspires confidence. They are independent witnesses, unrelated to each other either by blood or by any other relationship, and there is nothing on record to suggest that they had any reason to falsely implicate the accused persons. It is a settled principle of criminal jurisprudence that **quality of evidence always prevails over quantity**, and where the testimony of eyewitnesses is found to be cogent, consistent and trustworthy, the Court can safely place reliance upon the same.

The crucial test, however, is whether the ocular evidence stands corroborated by the medical and scientific evidence. As the oft-quoted maxim goes, ***"Men may lie, but circumstances do not."*** In the present case, the oral evidence not only withstands scrutiny but also marches in perfect harmony with the documentary and scientific evidence.

The prosecution has successfully established the sequence of events which unfolded on the fateful night. PW-1, being a friend of the victim, went in search of him at the place where the victim ordinarily resided on the footpath, as the victim had failed to keep his promise of visiting the house of PW-1. Upon reaching near 115, AJC Bose Road, PW-1 witnessed his friend being brutally assaulted by four persons, one of whom, namely Alope Chakraborty, was already known to him. PW-1 specifically identified all the four accused persons during the Test Identification Parade conducted at Presidency Correctional Home and thereafter identified them once again before the Court. He categorically pointed out that the accused person wearing spectacles was the individual who assaulted Ayush Julka with a wooden batam. As already discussed hereinabove, the evidence establishes that the accused person wearing spectacles is Amitava Saha. PW-1 also identified Alope Chakraborty before the Court by stating that he was wearing a red T-shirt on the date of his deposition.

Such detailed and unwavering identification leaves little room for doubt regarding the identity of the accused persons. **The prosecution has thus successfully established that the very persons standing trial before this Court are the persons who participated in the commission of the offence.**

The testimony of PW-1 finds substantial corroboration from the evidence of PW-3. PW-3 deposed that he knew all the four assailants by name and disclosed their names before the Court. He too specifically stated that he witnessed Amitava Saha assaulting the victim with a wooden batam and identified him before the Court as the assailant wielding that weapon. The consistency between the depositions of PW-1 and PW-3 is striking. **They corroborate each other on every material particular, thereby reinforcing the intrinsic credibility of their evidence.**

The time of occurrence has also been consistently stated by both eyewitnesses to be about 1.30 a.m. Their version receives further sanctity and assurance from the forensic evidence on record. **Thus, the scientific evidence serves as a silent yet eloquent witness, affirming the prosecution narrative.**

The injuries sustained by the victim have been conclusively proved through the post-mortem report. The medical evidence establishes that the injuries were caused by repeated kicks, blows and assault with a wooden batam, and that such injuries were sufficient in the ordinary course of nature to cause death. **The cause of death, therefore, stands fully corroborated by the ocular testimony.**

It may, at first blush, appear unusual that death could result from kicks, blows and assault with a wooden batam. However, a careful scrutiny of the post-mortem report reveals that the victim was described as **"thin built"** and **"poorly nourished."** Such physical frailty rendered him considerably vulnerable to the assault inflicted upon him. It is, therefore, neither improbable nor unnatural that the cumulative effect of the injuries proved fatal, resulting in his death soon after the assault.

Moreover, the evidence discloses that the wooden batam was embedded with nails at both ends, thereby transforming what might otherwise appear to be an ordinary wooden object into a dangerous weapon capable of inflicting grievous injuries. **The expert evidence has unequivocally established that the wooden batam seized during investigation was the very weapon of offence.**

Thus, every material piece of oral evidence finds faithful reflection in the documentary evidence. The medical evidence corroborates the eyewitness account; the forensic reports corroborate the medical evidence; the seizure of the weapon corroborates both; and the identification of the accused persons completes the mosaic. **Each individual circumstance, viewed in isolation, may appear as a single thread, but when**

woven together, they form an unbroken fabric pointing unmistakably towards the guilt of the accused persons.

The prosecution has, therefore, succeeded in establishing that the death of the victim was caused by the injuries found upon his body and that **those injuries were inflicted by these four accused persons, namely, Alope Chakraborty, Ajay Das, Jayanta Bhuia and Amitava Saha @ Jamai, during the intervening night of 05.02.2023 and 06.02.2023.**

Learned Public Prosecutor, during the course of his arguments, drew the attention of the Court to the order dated 18.03.2025 passed by the Hon'ble High Court in CRM (DB) No. 775 of 2025 while rejecting the bail application, wherein it was observed that, *"If convicted, the petitioner will face mandatory life sentence."* Learned Public Prosecutor further submitted that the said observation was made after examination of fifteen prosecution witnesses.

However, I am of the considered opinion that the aforesaid observation was made by the Hon'ble High Court while exercising jurisdiction in a bail proceeding. Such observations cannot substitute the independent duty cast upon the trial Court to appreciate the evidence adduced before it. **Accordingly, I have examined the entire evidence, both oral and documentary, independently and objectively,**

without allowing myself to be influenced by the observations made in the said order.

The prosecution evidence resembles a chain forged link by link, where every link derives its strength from the one preceding it and lends strength to the one succeeding it. No link is missing; no circumstance remains unexplained. The eyewitnesses establish the presence of the accused persons and the victim at the place of occurrence at the relevant point of time. The post-mortem report explains the nature and cause of death. The forensic laboratory reports scientifically reinforce the prosecution case. The recoveries effected during investigation, coupled with the conduct of the witnesses, complete an uninterrupted sequence of events. Like pieces of a jigsaw puzzle falling into place, each circumstance fits precisely with the next, leaving no gap through which any reasonable doubt may enter.

As observed by the Hon'ble Supreme Court, ***"Suspicion, however grave, cannot take the place of proof; but where proof is complete, conjecture must yield to certainty."*** In the present case, the prosecution has travelled far beyond the realm of suspicion. **It has succeeded in proving its case by cogent, convincing and trustworthy evidence, establishing a chain so complete that it excludes every hypothesis except the guilt of the accused persons.**

Consequently, I have no hesitation in holding that the prosecution has proved its case beyond all reasonable doubt. The scales of justice, when balanced against the evidence on record, unmistakably tilt in favour of the prosecution.

Having considered the entire facts and circumstances of the case, and upon an anxious and careful appreciation of the oral, documentary, medical and scientific evidence on record, I am of the considered view that the prosecution has successfully proved the **charge under Section 302 read with Section 34 of the Indian Penal Code against the accused persons, namely, (1) Alope Chakraborty, (2) Ajay Das, (3) Jayanta Bhuia and (4) Amitava Saha @ Jamai**, beyond all reasonable doubt. They are, accordingly, held guilty and stand convicted for the said offence.

Hence, it is,

O R D E R E D

That the four accused persons, namely, **(1) Alope Chakraborty, (2) Ajay Das, (3) Jayanta Bhuia and (4) Amitava Saha @ Jamai** are found guilty for commission of offences punishable under Section 302/34 of Indian Penal Code and accordingly, the four accused persons are convicted under Section 235(2) CrPC.

The convicts are in Judicial Custody.

The convicts are required to be heard on the point of passing sentence and accordingly they are provided time to make their submissions on the next date.

Fixing **08. 07. 2026** for hearing on the point of sentence and passing judgment of sentence.

Convicts be remanded to Judicial Custody.

Dictated & Corrected by me.

Shrutirupa Ghosh (Majee)
Addl. Dist. & Sessions Judge
(WB-00821)
2nd Fast Track Court
City Sessions Court,
Bichar Bhawan, Calcutta
07. 07. 2026

Shrutirupa Ghosh (Majee)
Addl. Dist. & Sessions Judge
(WB-00821)
2nd Fast Track Court
City Sessions Court,
Bichar Bhawan, Calcutta
07. 07. 2026

**IN THE COURT OF THE ADDITIONAL DISTRICT & SESSIONS' JUDGE
2ND FAST TRACK COURT, CITY SESSIONS COURT,
BICHAR BHAVAN, CALCUTTA.**

-:- Present -:-

Smt.Shrutirupa Ghosh (Majee)

Additional District & Sessions Judge.

2nd Fast Track Court, Bichar Bhavan. Calcutta.

J. O. Code No. WB-00821

Sessions Case No. - 31 of 2023

Sessions Trial No. 01 (July) of 2023

CNR No. WBCS01-000484 of 2023

Order dated 08. 07. 2026 :-

Today is fixed for production of the convicts, namely, (1) Aloke Chakraborty, (2) Ajay Das, (3) Jayanta Bhuiya and (4) Amitava Saha @ Jamaia and hearing on point of sentence.

The four convicts, namely, (1) Aloke Chakraborty, (2) Ajay Das, (3) Jayanta Bhuia and (4) Amitava Saha @ Jamai are produced from Judicial custody in person and placed on dock.

It is now 12.30 p.m.

Record is taken up for hearing on the point of passing sentence to be imposed upon the convicts.

Before hearing the convicts on the point of sentence, I explained to the understanding of the convicts that maximum sentence for the commission of offence under Section 302/34 Indian Penal Code may be imposed upon them.

Convict, namely Alope Chakraborty submitted that he is the sole earning member of the family and has to look after his family members at home.

Convicts Ajay Das and Jayanta Bhuia submitted that they have a family and aged parents at home to look after.

Convict Amitabha Saha @ Jamai submitted that he has a sick child at home and needs to earn for his treatment and livelihood of all the family members.

Heard the submissions of Ld. Advocates on behalf of convicts, who submitted to pass lesser punishment upon the convicts.

Heard Ld. Public Prosecutors who submitted that passing of proper sentence is the solemn duty of the Court considering the heinous nature of the crime. Ld. Public Prosecutors further submitted that passing of appropriate punishment upon the convicts would give a right message to the society.

Ld. Public Prosecutors relied upon case law reported in **Kashiram Vs. State of M.P. (2009) CrLJ 1530, Bantu Vs. State of UP (2008) SCC Para-113**. Ld. Public Prosecutor thus prayed for imposing highest punishment upon the convicts.

Section 302 Indian Penal Code states “*Whoever commits murder shall be punished with death or imprisonment for life and shall also be liable to fine*”.

It is the settled principle of law that passing of proper sentence is amalgamation of several factors such as nature of the offence, age of the convicts, their perspective of life, background of upbringing and chances of being corrected and other disability at that time to serve as deterrent in respect of such type of offence.

Having regard to the heinous nature of the offence, I do not find any reason to take recourse of law as envisaged under Section 325 CrPC or under Section 360 CrPC.

All the four convicts have families to look after as disclosed by them.

Convicts (1) Alope Chakraborty, (2) Ajay Das, (3) Jayanta Bhuiya and (4) Amitava Saha @ Jamai had committed the offence of murder in a very cool head and planned manner. The

nature of committing the murder and the circumstances they tried to hide the weapon of offence and evidence of their crime was treacherous.

The convicts (1) Aloke Chakraborty, (2) Ajay Das, (3) Jayanta Bhuiya and (4) Amitava Saha @ Jamai committed murder of the victim Ayush Julka who used to reside on the footpath, in the late hours of night when the streets are empty.

Therefore, the convicts do not deserve any leniency in consideration of imposing sentence.

Now, the question before this Court is whether this case is coming within the purview of “Rarest of Rare” cases.

The Doctrine of “Rarest of Rare” case was established in the case of **Bacchan Vs. State of Punjab (1980) 2 SCC 684**. Death penalty can only be imposed on “Rarest of Rare” cases where an alternative option is excluded.

Later in case of **Macchi Singh Vs. State of Punjab AIR 1983 SC 1957**, the Court tried to lay down criteria for assessing whether a crime falls into the category of “Rarest of Rare” case. In the case of **Santosh Kumar Bariyar Vs. State of Maharashtra (2009) 6 SCC 498**, the Hon’ble Apex Court ruled that **“Life imprisonment is the rule and death punishment is an exception”**.

Having regard to the nature of the offence and its gravity and the guidelines framed by the judgments of the Hon'ble Courts, I hold that the passing of death sentence upon the present convicts does not arise as it is not falling within the framework of "Rarest of Rare" cases.

I take into consideration the nature and gravity of the offence, manner of commission of offence, age and sex of the convicts, character of the convicts, impact of the offence on social order and public interest, proportionality between crime and punishment, penalty provided for the offences in determining the quantum of sentence to be awarded to the convicts.

Undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law and society could not long endure under such serious threats. It is the duty of every Court to award proper sentence having regard to the nature of the offence and manner of commission or execution **[Union of India Vs. Devendranath Rai (2006) 2 SCC 243]**.

Hence, it is,

O R D E R E D

That the four convicts namely, **(1) Alope Chakraborty, (2) Ajay Das, (3) Jayanta Bhuia and (4) Amitava Saha @ Jamai** are sentenced to suffer Rigorous Imprisonment for Life each and to pay fine of Rs.20,000/- (Rupees Twenty Thousand) only, each, in default of payment of fine, to suffer Rigorous Imprisonment for 01 (One) year each for the commission of offence punishable under Section 302/34 Indian Penal Code.

All sentences shall run concurrently.

Period of detention of the convicts in Judicial Custody during the period of Investigation and trial shall be set off from the term of sentences awarded as per provision of Section 428 CrPC.

The seized alamats be disposed of as per provision of Section 452 CrPC, after expiry of period of Appeal.

The four convicts are hereby apprised and duly communicated to their understanding of their right of preferring appeal taking recourse to Legal Aid.

Let a copy of this judgment be supplied to the four convicts free of cost under Section 363(1) CrPC, at once.

Let a copy of this judgment be sent to Secretary DLSA, Kolkata and another copy to Commissioner of Police, Kolkata at once for information.

Let the sentenced convicts be sent to the concerned Correctional Home with separate Warrant of Commitment On A Sentence of Imprisonment issued from this Court and accordingly transmit a copy of this order to the Superintendent of the Correctional Home.

Let the judgment and order be uploaded in Case Information System (CIS) of this Court.

BC-I is directed to comply at once and report.

Dictated &Corrected by me.

Shrutirupa Ghosh (Majee)
Addl. Dist. & Sessions Judge
(WB-00821)
2nd Fast Track Court
City Sessions Court,
Bichar Bhawan, Calcutta
08. 07. 2026

Shrutirupa Ghosh (Majee)
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