



Sessions Case No: 75/2021 (GR 1662/2017)

State Vs. Anjulush Minj and Anup Minj

Presented on : 21-08-2021
Registered on : 21-08-2021
Decided on : 06-06-2026
Duration : 4 years, 9 months, 16 days

FORM A

IN THE COURT OF ADDITIONAL DISTRICT & SESSIONS JUDGE, FTC-II, ALIPURDUAR <i>Present: Pukar Pradhan, Addl. District & Sessions Judge, FTC-II, Alipurduar.</i> [06th June, 2026] [SC No.75/2021] [ST No.12/2022] (GR No.1662/2017) <u>CNR No. WBJP050008762021</u> <u>CIS no. 75/2021</u> (Details of FIR/Crime and Police Station)	
Complainant	Shova Topno
REPRESENTED BY	Ld. P.P. in-Charge Miss Namrata Pattadar
ACCUSED	A-1 Anjulush Minj A-2 Anup Minj
REPRESENTED BY	Mr. Babul Saha

FORM B

<i>Date of Offence</i>	04.09.2017
<i>Date of First Information Report</i>	04.09.2017
<i>Date of Charge sheet</i>	30.11.2017
<i>Date of Framing of Charge/Plea</i>	18.04.2022
<i>Date of Commencement of Evidence</i>	10.11.2022
<i>Date on which Judgment is reserved</i>	04.06.2026
<i>Date of Judgment</i>	06.06.2026
<i>Date of Sentencing Order, if any,</i>	06.06.2026

Accused Details:

Rank of Accused	Name of Accused	Date of arrest	Date of release on Bail	Offence charged with	Whether acquitted or convicted	Sentence imposed	Period of detention undergone during trial for the purpose of Section 428 Cr.PC
A-1	Anjulush Minj	05.09.2017	05.04.2019	302/307/34 of IPC	Convicted	Anjulush Minj is sentenced to simple imprisonment for the period of one (01) year and is also sentenced to pay of fine of Rs. 5,000/- in default of payment of fine he shall further undergo simple imprisonment of 02 months for the offence punishable under section 304 (Part-II) of IPC, similarly the convicts Anjulush Minj is further sentence to simple imprisonment for one month each for the offence punishable under section 323 of IPC.	1 years 7 months
A-2	Anup Minj	26.07.2021	18.08.2021	302/307/34 of IPC	Convicted	Anup Minj is sentenced to simple imprisonment for the period of one (01) year and is also sentenced to pay of fine of Rs. 5,000/- in default of payment of fine he shall further undergo simple imprisonment of 02 months for the offence punishable under section 304 (Part-II) of IPC, similarly the convicts Anup Minj is further sentence to simple imprisonment for one month each for the offence punishable under section 323 of IPC.	23 days



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Form C

List of Prosecution / Defense / Court Witness:

A. Prosecution Witness

Rank	Name	Nature of Evidence (Eye Witness, Police Witness, Expert Witness, Medical Witness, Panch Witness, Other Witness)
P.W.-01	Shova Topno	Complainant
P.W.-02	Rohan Lama	Eye witness
P.W.-03	Rahul Lama	Eye witness
P.W.-04	Onkar Lama @ Omkar	Eye witness
P.W.-05	Heman Lama @ Himat	Eye witness
P.W.-06	Krishna Gurung	Other witness
P.W.-07	Suresh Topno	Seizure witness
P.W.-08	Kanu Lama	Other witness
P.W.-09	Rockey Lama	Scribe
P.W.-10	Martin Topno	Other witness
P.W.-11	Ex Const. Bimal Chandra Roy	Police witness
P.W.-12	Dr. Raja Saha	Medical Officer
P.W.-13	SI Indranil Sen	Investigating Officer

List of Prosecution / Defense / Court Exhibits/Material Exhibits:

A. Prosecution:

Srl. No.	Exhibit Number	Description
1	Exhibit 1 (series)	Signatures of PW 2 on the statement recorded u/s 164 of Cr.P.C
2	Exhibit 2 and 2/1	Signatures of PW-3 on the statement recorded u/s 164 of Cr.P.C.
3	Exhibit 3 and 3/1	Signatures of PW-4 on the statement recorded u/s 164 of Cr.P.C.
4	Exhibit 4 and 4/1	Signatures of PW-5 on the statement recorded u/s 164 of Cr.P.C.
5	Exhibit P5/PW-7	Signature of PW-7 over seizure list dated 10.09.2017.
6	Exhibit P6/PW-9 and P6(1)/PW-9	Formal complaint and signature of the scribe on the Formal complaint.
7	Exhibit P7/PW-12 (with objection)	Postmortem Report
8	Exhibit P6(2)/PW-13	Endorsement on Formal complaint.
9	Exhibit P8/PW-13	Formal FIR
10	Exhibit P9/PW-13 (with objection)	Photocopy of Rough Sketch Map with index.
11	Exhibit P10/PW-13 (with objection)	Original injury report (Rohan Lama).
12	Exhibit P11/PW-13	Memo of Arrest.
13	Exhibit P12/PW-13	Seizure list dated 10.09.2017
14	Exhibit 13	Statement of witness Rohan Lama (PW-2) recorded u/s 164 of Cr.P.C



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15	Exhibit 14	Statement of witness Rahul Lama (PW-3) recorded u/s 164 of Cr.P.C
16	Exhibit 15	Statement of witness Omkar Lama (PW-4) recorded u/s 164 of Cr.P.C
17	Exhibit 16	Statement of witness Himat Lama (PW-5) recorded u/s 164 of Cr.P.C

* In view of the amendment made in the Calcutta High Court Criminal (Subordinate Courts) Rules, 1985 vide Notification No. 2301-G dated 14th July, 2022.
Form no. M-34



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**IN THE COURT OF ADDITIONAL DISTRICT & SESSIONS JUDGE,
FTC-II, ALIPURDUAR**

***Present : Sri Pukar Pradhan
Additional District & Sessions Judge
FTC-II, Alipurduar***

***[SC No.75/2021] [ST No.12/2022] (GR No.1662/2017)
CNR No. WBJP05-000876-2021
CIS no. 75/2021***

Arising out of Kalchini PS Case No.153/2017 dated 04.09.2017
u/s 302/307/34 of IPC being GR Case No. 1662/2017

STATE

Vs

1) Anjulush Minj (A-1)

2) Anup Minj (A-2)

.....Accused persons

For the Prosecution : **Miss Namrata Pattadar**

For the Defence : **Mr. Babul Saha**

Final Order : **Convicted**

Judgment delivered on : **6th day of June, 2026.**

J U D G M E N T

The brief fact of the case :

The factual matrix giving rise to this case is that on 04.09.2017 one Shova Topno, w/o- Late Matha Topno lodged a written complaint before the Officer-in-Charge of Kalchini Police station to the effect that on 03.09.2017 at about 07:30 pm her son, Amrit Topno @ Munda went away from his house with his friends, namely, Onkar Lama, Rahul Lama, Himen Lama and Rohan Lama to visit Karam Puja. It has also been alleged by the prosecution that on the same day at night at about 12.00 hrs the above named friends of Amrit came at their house and informed that her son is being murdered by Anjulush Minj, Rahul Minj at Line No. 3 and her son sustained injury on his upper part of his cheek. On being heard the



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news, the complainant went to the PO and found the dead body of her son.

Hence, she lodged the complaint before Kalchini PS. **Hence, this case.**

Upon the above written complaint **Kalchini PS Case No. 153 of 2017** dated **04.09.2017 u/s.302/307/34 of IPC** was started against accused persons and it was endorsed to PSI Indranil Sen of Kalchini PS for its investigation. Upon conclusion of the investigation the IO submitted **Charge Sheet being No. 169 of 2017** dated 30.11.2017 **u/s. 302/307/34 of IPC** against the accused persons.

Cognizance of the Charge-sheet was taken by the Ld. Addl. Chief Judicial Magistrate, Alipurduar. After exhausting all the prescribed procedures such as supplying copies of the documentary evidences relied upon by the investigating agency to the accused persons. Thereafter, Ld. Addl. Chief Judicial Magistrate, Alipurduar committed the case to the Learned Additional District & Sessions Judge, Alipurduar in compliance of provision laid down in **Section 209** of the Cr.PC on **19.08.2021**. Subsequently, it was transferred to this Court for Trial and it was accordingly numbered as Sessions Case No: **75 of 2021**.

Be it mention here that even though the charge-sheet was submitted against three accused persons but vide order dated 04.02.2019 one of the accused, namely, Rahul Minj was declared Juvenile in Conflict with Law. Therefore, the case was split up and the juvenile, Rahul Minj was sent to the Juvenile Justice Board at Jalpaiguri.

Later on charge was framed against two accused persons, namely Anjulush Minj and Anup Minj by my *predecessor-in-chair*, **u/s. 302/34 of IPC** against both the accused persons and the contents of the said charge were read over and explained to the accused persons to which they pleaded not guilty and claimed trial.

Hence, this trial.



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Evidence Adduced:-

To prove the prosecution case prosecution has been able to examine only **thirteen (13)** witnesses arrayed in charge sheet, as follows:-

Rank	Name	Nature of Evidence (Eye Witness, Police Witness, Expert Witness, Medical Witness, Panch Witness, Other Witness)
P.W.-01	Shova Topno	Complainant
P.W.-02	Rohan Lama	Eye witness
P.W.-03	Rahul Lama	Eye witness
P.W.-04	Onkar Lama @ Omkar	Eye witness
P.W.-05	Heman Lama @ Himal	Eye witness
P.W.-06	Krishna Gurung	Other witness
P.W-07	Suresh Topno	Seizure witness
P.W-08	Kanu Lama	Other witness
P.W-09	Rockey Lama	Scribe
P.W-10	Martin Topno	Other witness
P.W-11	Ex Const. Bimal Chandra Roy	Police witness
P.W-12	Dr. Raja Saha	Medical Officer
P.W-13	SI Indranil Sen	Investigating Officer

During the evidence of the prosecution witnesses, the following documents are marked as exhibits:-

Srl. No.	Exhibit Number	Description
1	Exhibit 1 (series)	Signatures of PW 2 on the statement recorded u/s 164 of Cr.P.C
2	Exhibit 2 and 2/1	Signatures of PW-3 on the statement recorded u/s 164 of Cr.P.C.
3	Exhibit 3 and 3/1	Signatures of PW-4 on the statement recorded u/s 164 of Cr.P.C.
4	Exhibit 4 and 4/1	Signatures of PW-5 on the statement recorded u/s 164 of Cr.P.C.
5	Exhibit P5/PW-7	Signature of PW-7 over seizure list dated 10.09.2017.
6	Exhibit P6/PW-9 and P6(1)/PW-9	Formal complaint and signature of the scribe on the Formal complaint.
7	Exhibit P7/PW-12 (with objection)	Postmortem Report
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9	Exhibit P8/PW-13	Formal FIR
10	Exhibit P9/PW-13 (with objection)	Photocopy of Rough Sketch Map with index.
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12	Exhibit P11/PW-13	Memo of Arrest.
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14	Exhibit 13	Statement of witness Rohan Lama (PW-2) recorded u/s 164 of Cr.P.C
15	Exhibit 14	Statement of witness Rahul Lama (PW-3) recorded u/s 164 of Cr.P.C
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17	Exhibit 16	Statement of witness Himat Lama (PW-5) recorded u/s 164 of Cr.P.C

Defence Case : -

After conclusion of prosecution evidence, the accused persons are examined **u/s. 313 of Cr.PC** and on being asked they declined to adduce any defence witness on their behalf. Upon perusal of the trend of cross-examination of the prosecution witnesses, the defence is of complete denial.

Points for Consideration: -

After exhausting the above procedures the case was posted for hearing of argument. After considering every possible facet in this case and considering the materials available the points for determination are arrayed as under:

- 1) *Whether the prosecution successfully proved the case beyond all reasonable doubt?*
- 2) *Whether the accused persons are liable to be punished under section **u/s. 302/34 of IPC?***

Appreciation of evidence and decision with reasons:

[Both the points are taken up together for discussion for the shake of the brevity and convenience as well as avoid repetition of sentence.]

The legal system fundamentally depends on evidence to ascertain facts, support, claims and ensure fair and equitable outcomes in judicial proceedings.

The prosecution brought forward the allegation of murder and attempted murder together with voluntarily causing grievous hurt with common object and intention.



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Particulars of the invoked provisions are required to be read and reread for better appreciation.

◆ **Section 302 of the IPC; Punishment for murder:** Whoever commits murder shall be punished with death, or imprisonment for life, and shall also be liable to fine.

◆ **Section 300 IPC** doesn't *per-se* define murder. It merely designates four categories of culpable homicide as murder and those are as follows:-

The ingredients of the provision are as follows

- a) *The accused did some act;*
- b) *Such act was done with intention or knowledge that hurt was likely to be caused to the victim by the act.*
- c) *With the intention of causing bodily injury, inflicted is sufficient in the ordinary course in nature to cause death.*
- (d) *With knowledge that the act is so imminently dangerous that it must in all probabilities cause death.*
- e) *For the last part of the offence the accused was under sentence of life imprisonment when he committed the offence.*

In a criminal trial the prosecution has shouldered the responsibility of proving the case beyond all reasonable doubt. As a matter of law and in terms of **Section 101 and 102 of Evidence Act**, the initial onus and the burden of proving the case is upon the prosecution.

In a criminal trial, it is the duty of the court to require the prosecution to prove every fact and its case affirmatively by sufficient and cogent evidence. Where the prosecution evidence falls short of proving the guilt of the offence with reason, certainty, it is the duty of the Court to acquit the accused straight away **[AIR 2011 SC 200]**.

In the case of **Inder Singh Vs. State (Delhi)** reported in **AIR in 1978 SC 1091**, Hon'ble justice Krishna Iyer. J laid down that "proof beyond reasonable doubt is a guideline, not a fetish and guilty man cannot get away with it because truth suffers some infirmity when projected through human processes."



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While discharging the same and in order to sustain the charge so framed against the accused, the prosecution so far been successfully examined **thirteen witnesses** in the instant case. In addition to that the prosecution also produced and proved sixteen documents inclusive of signature, the statement of the witnesses u/s 164 of Cr.P.C, etc.

I. Complainant

A. Shova Topno was examined as PW-1 in this case. She is the mother of the deceased Amrit Topno and the *de-facto* complainant. She stated in her deposition that *“on 03.09.2017 at about 07:30 pm my son, Amrit Topno @ Munda went away from house with his friends, namely, Onkar Lama, Rahul Lama, Himen Lama and Rohan Lama to visit Karam Puja. On the same night at 12:00 hrs his above named friends came to our house and informed that my son is being murdered by Anjulus Minj, Rahul Minj at Line No. 3. My son sustained injury on his upper part of cheek. On being heard the news, I went to the PO and saw the dead body of my son. Thereafter, I lodged a written complaint at Kalchini PS on the next following day. One Rocky Lama wrote my complaint as per instructions and read over to me and after that I put my LTI thereon.”*

The oral evidence of this witness remained pivotal and corroborative to other witnesses of the prosecution which came and deposed afterwards.

During her **cross-examination**, the witness deposed in affirmative and stated that her son Amrit Topno went to visit Karam Puja alongwith his friends, namely, Omkar Lama (PW-4), Rohan Lama (PW-2), Rahul Lama (PW-3) and Heman Lama (PW-5) at about 07.30 pm, as the programme was going on over the night and she also disclosed that subsequently, these four friends of Amrit Topno brought the dead body to her house. The witness also confirmed that the inquest report was prepared at her house and subsequently, the dead body was taken to hospital for its autopsy.

The defence never challenged this facts during her cross-examination. Therefore, the evidence of the *de-facto* complainant remained unchallenged.



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II. Eye Witnesses.

The evidence of the *de-facto* complainant got thorough corroboration from the following witnesses, who were the eye witnesses of the incident as well as these witnesses were the persons with whom the deceased was 'last seen together'.

B. Rohan Lama was examined as **PW-2**. He deposed that *"on 03.09.2017 in the evening myself, Amrit, Rahul, Omkar and Himal went to visit Karam Puja at Birsha Munda Ground. One shop of Rohan Minj, s/o Anjulush is at near Birsha Munda ground. One 'gondogol' was held in between ourselves in one side and accused Anjulush and Rahul on the other side at Birsha Munda Ground. During that gandogol accused Anjulush and Rahul assaulted us and murdered Amrit Munda by knife, who is one of our friend. I was medically treated at Alipurduar Hospital and I was admitted there."*

Therefore, the oral evidence of this witness remained impeccable and corroborative to the prosecution witness no. 1. Not only this, the witness further give statement before the Magistrate u/s 164 of Cr.P.C narrating the same fact. Therefore, the signature appearing at the statement so recorded by the Magistrate has been marked as **Exbt. 1 series**. Similarly, the statement recorded by Magistrate has been marked as **Exbt. 13** as a whole in terms of **Sec. 294** of Cr.P.C when it is not disputed by the defence.

The defence never challenged the exhibited documents. Rather it is during the cross-examination, the witness PW-2 further deposed that *"I narrated the incident before the Ld. Magistrate at the time of recording my statement u/s 164 of Cr.P.C."* Therefore, the witness corroborated his evidence in-chief during cross-examination also.

Ld. Advocate for the defence even though relied upon the fact that the witness failed to say the exact time of murder or incident, but at the same time, admitted that there was gandogol in front of the shop of Rahul Minj followed by the incident of marpit and murder. Thus, the cross-examination rendered the evidence more prominent and corroborative.



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C. Rahul Lama was examined as **PW-3**. He stated in his deposition that

“the incident took place on 03.09.2017 at about 12.00 am at night. On that night there was the programme of Birsha Munda Puja in our village, Chinchula, 3 No. Line. I along with Omkar, Heman Lama, Rohan Lama and Amrit Munda also went to that programme. In between the programme, we went to the sweet shop of Anjulush Minj, which was situated near the place where the programme was going on. The shop was open, so, all of us i.e myself, Omkar, Heman Lama, Rohan Lama and Amrit Munda went to that shop to eat sweets at about 10.30-11.00 pm. There was many people in the shop so we went beside the shop for urine. Anjulush Minj shouted at us why we were using the place for urine. We tried to justify that we are using the place which is not the part of your shop but he (Anjulush Minj) became agitated and assaulted me with lathi on my head, causing bleeding injury. On seeing me injured, my above named friends got scared and we planned to leave the place. Then Rahul Minj and Anup Minj both sons of Anjulush Minj came and attacked us with weapon like chaku. Rahul assaulted Amrit Munda with the said weapon on his stomach and he fell down. Leaving him behind, we tried to fled away but they assaulted me with said weapon on his back causing bleeding injury. Rahul Minj and Anup Minj also assaulted his friends Omkar, Heman Lama, Rohan Lama with the said weapon. However, we managed to flee away from the spot. Thereafter, we were taken to Latabari Hospital by other people, who was there to see programme. From Latabari we were referred to Alipurduar District Hospital at night. We were admitted there in the hospital for about one week and discharged.”

During his oral evidence, the signature appearing at the statement recorded by Magistrate u/s 164 of Cr.P.C are marked as **Exbt. 2 and 2/1 respectively**. The defence never challenged the statement nor he challenge the signatures during the cross-examination. Therefore, the statement so recorded u/s 164 Cr.P.C has been marked as **Exbt. 14**.

During his **cross-examination**, the defence tried to mingle the fact by putting various questions regarding the presence of other people, his discharge from the hospital but the witness remained affirmative.

D. Onkar Lama @ Omkar was examined as **PW-4**. He deposed that *“the incident took place on 03.09.2017 at about 12.00 am at night. On that night there was the programme of Karam Puja at Birsha Munda Maidan in our village, Chinchula, 3 No. Line. I along with Rahul Lama, Heman Lama, Rohan Lama and Amrit Munda also went to that programme. In*



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*between the programme, we went to the sweet shop of Anjulush Minj, which was situated about two minutes walk from the place where the programme was going on. We saw that the shop was crowded. So we went to nearby drain for passing urine. Then Anjulush Minj came and started at us in filthy language. We tried to convince him not to shout at us, then suddenly Anjulush Minj assaulted Rahul Lama with lathi on his head, causing cut and bleeding injury. Thereafter, two sons of Anjulush Minj namely Rahul Minj and Anup Minj came and suddenly stabbed Amrit Munda @ Topno with chaku, due to which he fell down on the earth. We tried to flee away from the spot. While we were fleeing away, I also received injury on the left side below chest of my body with said chaku but I did not see who assaulted me. I was bleeding and got unconscious. I found myself in Nimti hospital, from where I was referred to Alipurduar hospital and from there Siliguri Medical College and Hospital. I was admitted there about one week. I heard in the Nimti hospital that Amrit succumbed to the said injury. I was discharged from the hospital after one week and came to his house. After about 6-7 days I along with Heman Lama, Rohan Lama and Rahul Lama went to Kalchini PS and made our statement before police. Police produced me before the Magistrate, who recorded my statement and I put my signature.” Therefore the signature of the witness has been marked as **Exbt. 3 and 3/1 respectively**. In the same line his oral testimony so recorded by Magistrate has been marked **Exbt. 15** in terms of **Sec. 294 of Cr.P.C** as it was not challenged by the defence.*

The defence only put suggestive questions to the witness which were answered in negative. Rather the defence failed to challenge the exhibited documents or it's contents, rendering the documents to be admissible evidence. In the same line oral evidence of PW-2, PW-3 and PW-4 also remains corroborative to each other and it corroborated the version of complainant also.

E. Heman Lama @ Himal was examined as **PW-5**. He stated in his deposition that “the incident took place on 03.09.2017 at about 12.00 am at night. On that night there was the programme of Karam Puja at Chinchula, 3 No. Line. I along with Rahul Lama, Rohan Lama and Amrit Munda went to that programme. We went there at 08.00 pm. In between the programme, we went to the shop of Anjulush Minj at about 10.00-10.30 pm, which was situated about 200 meter from the place where the programme was going on. We saw that the shop was crowded. So we went to nearby drain for passing urine. Then Anjulush Minj came and started shouting at us in filthy language. We tried to convince him not to shout at us, then



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suddenly Anjulush Minj assaulted Rahul Lama with lathi on his head, causing cut and bleeding injury. Thereafter, two sons of Anjulush Minj namely, Rahul Minj and Anup Minj came and suddenly stabbed Amrit Munda @ Topno on his stomach with chaku, due to which I fell down on earth. We tried to flee away from the spot. While we were fleeing away, I also received injury on the back left side of my body with said chaku but I did not see who assaulted me. Many people had gathered there.” During his evidence, the signature appearing at 164 of Cr.P.C statement marked as **Exbt. 4 and 4/1 respectively**. The defence failed to challenge the statement so made by the witness before the Magistrate and the witness during cross-examination further deposed that *“I stated everything to the Magistrate whatever I deposed in my chief today”*. Therefore, the statement so recorded by the Magistrate was marked as **Exbt. 16 as a whole**.

Rather it is the during the cross-examination, the defence admitted that the accused persons assaulted the victim. The witness deposed that *“I saw Rahul Minj stabbed Amrit Munda at first from the front side”*.

Thus the evidence of these eyewitnesses remained a corner stone of this case. The evidence of eyewitnesses like PW-2, Rohan Lama, PW-3, Rahul Lama, PW-4, Omkar @ Onkar Lama and PW-5, Heman Lama @ Himal also remained corroborative, compact, impeccable and pristine.

The evidences of these eyewitnesses remained a powerful tool at the hands of prosecution. The evidences if carefully read together with the complaint and the evidence of PW-1 (mother of the deceased), it creates a explicit narrative leaving little room for alternative explanation. The evidence is convincing and impactful as direct evidence.

In this regard, the quality of evidence so produced by the prosecution remained impeccable and wholly reliable. As a matter of fact, **Section 134 of Evidence Act** emphasis upon a quality of evidence not the quantity of the evidence.



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III. Formal witness

F. Krishna Gurung was deposed as **PW-6**. She deposed that he was returning from attending a programme of Karam Puja and on his way, he found Amrit Munda on road asking for a lift as such he took him as a pillion rider in his scooter and dropped him at his house. After half-an-hour he heard from the family members of the house of Amrit Munda that he had succumbed to his injury.

G. Suresh Topno was examined as **PW-7**. He stated in his deposition that the incident took place in the September 2017. There was a Karam Puja and Rahul @ Amrit went to attend the Karam Puja but in the night he was murdered at the place where the puja was taking place. The complaint was written by one Rocky Lama as per the dictation of his 'boudi'. Thereafter, police asked him to sign a document, hence he signed a document. He has proved his signature on the seizure list dated 10.09.2017, marked as **Exbt. P5/PW-7**. Subsequently, the seizure list has been proved by the witness PW-13 i.e the I/O.

H. Kanu Lama was examined as **PW-8**. He deposed that the incident took place in the year 2017. He heard in the morning that there was a quarrel between the deceased and the accused persons namely, Anjulush Minj and Anup Minj.

I. Martin Topno deposed as **PW-10** but his evidence is of no help to the prosecution or to the defence.

Ld. Advocate for the defence challenged the admissibility and evidentiary value of **PW-6 to PW-8** being hearsay.

It is true that the oral evidence must be direct in terms of **Sec. 60 of Evidence Act**. However, these evidences cannot be discarded as a whole when the oral testimony of these witnesses speaks volume about the facts which are forming the part of same transaction and those evidences can come under the ambit of **Sec. 6 of Evidence Act** too.



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While dealing with the admissibility of hearsay evidence, the judgment of Hon'ble Apex Court in the case of **Balaram Prasad Agrawal vs. State of Bihar reported in AIR 1997 SC 1830** will be pivotal. Similarly, if the evidence of these witnesses is read together with the evidence of eye-witnesses then these witnesses also stated certain facts which are relevant to this case.

IV. Scribe

J. Rockey Lama was examined as **PW-9**. He deposed that in the year 2017 he was asked by OC Kalchini Lakpa Lama to assist the complainant in writing the complaint. Hence, he has written the complaint as per the instruction. This is the said written complaint written by him and this is his certificate as the scribe. After writing the complaint, he read over the complaint to the complainant and on being satisfied she put her LTI in his presence. He proved the formal complaint which was marked as **Exbt. P6/PW9** and his signature as **Exbt. P6(1)/PW-9**.

During his cross-examination, he stated that the then Panchayet member Naveen Kumar Thapa asked him to go to the PS for writing the complaint, he was present at the PS at the relevant time. When he reached the PS there were about 60 - 70 people already gathered at the PS. After reaching the PS he had talked with the then OC Lakpa Lama and the Panchayet member. As per instruction of OC Lakpa Lama and the Panchayet member he has written down the complaint. He has no personal knowledge about the alleged incident. Therefore, Ld. Advocate relied heavily upon his cross-examination and contended that as per the instruction of the police, the complaint was written which is totally mischievous and misleading.

It is establish principal of Law that the complaint is not an encyclopedia of all the facts and circumstances of the case. Rather the primary object of the complaint is to set the criminal law into motion and it is a piece of evidence which



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could be used for corroborating the case of prosecution. [AIR 2012 SC 2488 in the case of **Jitendra Kumar Vs. State of Haryana** relied.]

A formal complaint is not a substantive piece of evidence. It's only use is to contradict or corroborate the matter thereof. In the instant case, by producing the *de-facto* complainant as well as the scribe, prosecution proved in both way that the complaint which was written by PW-9 was lodged at the behest of complainant, PW-1.

V. Inquest/Postmortem

K. Ex Const. Bimal Chandra Roy is examined as **PW-11**. He stated that on 03.09.2017 he was posted at Kalchini PS as constable. On that day, he accompanied with SI Indranil Sen to Chinchula TG regarding the unnatural death of Amrit Topno @ Munda. Subsequently, he took the dead body to Alipurduar hospital for postmortem as per the instruction of his officer.

L. Dr. Raja Saha is examined as **PW-12**, who had done postmortem examination of the dead body of Amrit Munda @ Topno. He stated in his deposition that on 04.09.2017 the dead body of Amrit Munda @ Topno was brought before the hospital and on examination, he found the physical stature was stout, body was decomposed and there was external injuries over abdominal wall, lateral umbilical that was measuring 5cm long oblique penetrating inside abdominal cavity with viscera protruding out of wound with evidences of hemorrhage. The dead body was identified by C-250 Bimal Ch. Roy of Kalchini PS. Therefore, the witness proved the postmortem report (photocopy) which was marked as **Exbt. P7/PW-12 (with objection)**. He further deposed that the death was due to effect of injuries over intestine and abdominal aorta with hemorrhage/shock and probably causing instantaneous death.

In his **cross-examination**, he admitted that the PM report so produced by the prosecution is a photocopy only. Therefore, Ld. Advocate for the defence



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vehemently argued that it is the duty of the prosecution to prove the death by producing the original postmortem report and the doctor never suggested or opined that the death was homicidal in nature. Ld. Defence further argued that in absence of such conclusion regarding the nature of death, the court cannot arrive to a finding of causing death of the deceased by the accused persons.

Ld. Public Prosecutor on the other hand, emphasized upon the fact that the medical officer, Dr. Raja Saha deposed as PW-12 and proved the fact that he conducted autopsy over the dead body of Amrit Munda @ Topno at Alipurduar hospital. The dead body was identified by PW-11 and after such autopsy, he prepared a report of which a photocopy is produced before the court and he identified the same. Therefore, there is no impediment to arrive at conclusion about the death of Amrit Munda @ Topno.

Ld. Advocate for the defence further tried to mingle the prosecution case and tried to bring forward the fact that such injuries can be sustained if somebody falls on sharp object. Similarly, the doctor PW-12 opined that there is no such observation in his report to show that the injury was antimortem in nature or postmortem in nature or it was homicidal.

The prosecution's fundamental duty in a murder case is to prove that homicidal death occurred. While a postmortem report is the most direct way to prove this. However, the law does not mandate its production as the only method. The legal principal of *corpus-delicti* the body of crime establishes that an offence was committed but Hon'ble Apex Court has time and again reiterated that the recovery of a dead body or a postmortem report is not necessary to prove for murder. In the instant case, the testimony of PW-1 to PW-5 proved the death of Amrit Munda with an impeccable evidence. Rather these witnesses are also the eye-witnesses of the case. Therefore, the ocular evidence of the prosecution evidence remains thorough, corroborative and conclusive. Hon'ble Apex Court in



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the case of ***Harendra Nath Mandal vs. State of Bihar, Sevaka Permal vs. State of Tamil Nadu and Murti vs. State of Tamil Nadu***, dealt with similar issue and emphasize upon the fact that a postmortem report is a vital evidence but it's absence does not automatically defeat the prosecution case. A postmortem report is a vital document but it is a substantive evidence only.

In this regard the observation of the Hon'ble Apex Court in the judgment reported in **AIR 2002 1965 Krishna Mochi V. State of Bihar, (2002) 6 SCC 81** the three judge bench of Hon'ble Apex Court has been pleased to observe that *"some discrepancies is bound to be there in each every case which should not weigh with the Court so long it does not materially affected the prosecution's case. In case discrepancies pointed out are in the realm of pebbles, the Court to tread upon it, but if same are bolder the Court should not make an attempt to jump over the same"*.

VI. Investigating Officer

M. SI Indranil Sen was examined as **PW-13**. He stated in his deposition that on 03.09.2017, he was posted at Kalchini PS as PSI of Police. On that day, Sova Topno lodged a written complaint before the Officer-in-Charge, SI Lakpa Lama of Kalchini PS and after receiving the complaint, SI Lakpa Lama started a specific case being Kalchini PS case no. 153/2017, dated 04.09.2017 u/s 302/307/34 of IPC against Anjulush Minj and others. The case was endorsed to the witness, PW-13 for investigation. He proved the endorsement of SI Lakpa Lama over the Formal complaint, marked as **Exbt.P6(2)/PW-13**. He also proved the Formal FIR, marked as **Exbt. P8/PW-13**. This evidence remains relevant in terms of **Sec. 47 of Evidence Act**.

During investigation, he visited the place of occurrence and examined the witnesses u/s 161 of Cr.P.C. He drew up the rough sketch map of the PO along with index and proved the photocopy of the same, marked as **Exbt. P9/PW13 (with objection)**. He also found that the accused caused injuries to five of the victims and among them one of the victim was found dead on the spot. He sent



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the injured victims to the hospital for their medical treatment and sent the dead body at the police morgue at Alipurduar hospital. Thereafter, he sent all the four injured victims before the Ld. Magistrate for recording their statements u/s 164 of Cr.P.C and also have collected the injury reports of those victims. However, the photocopy of the injury reports, marked as '**x**' for **identification**. Even though, these documents remained unexhibited but it enlightened the court that witness Omkar Lama (PW-4), witness Hemal Lama (PW-5) and Rahul Lama (PW-3) were deposing correctly about their injury while deposing as prosecution witness.

On the other hand, the original injury report of victim, Rohan Lama (PW-2) is proved and marked as **Exbt. P10/PW-13 (with objection)**. This injury report **also suggest that** there were other victims too who sustained injury at the hands of the accused persons as well as it is proved that the oral testimony of PW-2 is a true account of affair.

The witness PW-13 further deposed that he also arrested the accused, Anjulush Minj and Rahul Minj (juvenile) under the memo or arrest. He has proved the memo of arrest, marked as **Exbt. P11/PW-13**. He took the accused in police remand. During remand, he recorded their leading statement and on the basis of their leading statement, he recovered the offending weapon as per shown by the accused persons. He seized the offending weapon under a seizure list dated 10.09.2017 and proved the same, which is marked as **Exbt. P12/PW-13**. Thereafter, upon conclusion of investigation and having consultation with his superior, he submitted charge-sheet against the accused persons vide CS no. 169/2017 dated 30.11.2017, u/s 302/307 of IPC. He also identified the accused persons on dock.

Ld. Advocate for the defence further tried to bring a gap in the prosecution case by challenging the timing of lodging of FIR or non-seizure of wearing



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apparels of deceased and non-mentioning of date or place of time at the rough sketch map etc.

Therefore, it is contended that non-production of seized weapon before the court nor its examination in a forensic lab as well as non-production of original postmortem report rendered the prosecution case doubtful and such doubt should always in favour of the accused persons. On the other hand, Ld. Public Prosecutor contended that these discrepancies are due to improper investigations and such lapses in investigation should not be treated as major discrepancies thereby according benefit to the defence.

In this regard, Hon'ble Apex Court in a judgment reported in **2025 INSC 28 in the case of Edakkandi Dineshan vs. State of Kerala**, hon'ble court observed that faulty investigation is no ground for acquittal. The entire story of the prosecution eye-witnesses cannot be discarded only on the ground that the original postmortem report is not produced or that the doctor failed to observe the nature of death. It is the duty of the court to separate the grain from the chaff.

Hon'ble Apex Court in the case of **Sheelam Ramesh Vs. State of Andhra Pradesh reported in AIR 2000 SC 718**. It is observed that having examined all the eye witnesses even if others persons near by, not examine, the evidence of eye witness can not be discarded, Court are concerned with the quality of evidence in a criminal trial. Similarly, the evidence of eye witnesses can not disbelief on the ground that the original injury report or the postmortem report or the offending weapon is not produced. Not only that a number of eye witnesses also sustained injuries and their ocular evidence remained impeccable, pristine, corroborative and trustworthy. Therefore, the fact forthcoming from the oral evidences of eye witnesses supported by other natural witnesses remained relevant and the prosecution also proved the motive and *actus-reus*.



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In the case **Shivaji Sahabrao Bobade Vs. State of Maharashtra** reported in **AIR 1973 SC 2622**. When scanning the evidence of the various witnesses the Court has to inform itself that variances on the fringes, discrepancies in details, contradictions in narrations and embellishments in inessential parts cannot militate against the veracity of the core of the testimony provided there is the impress of truth and conformity to probability in the substantial fabric of testimony delivered.

Similarly, four Judge Bench of Hon'ble Apex Court in the case of **Masalti Vs. State of Uttar Pradesh**, Hon'ble Court at **Para No. 16** it is observed that "it is, no doubt, the quality of the evidence that matters and not the number of witnesses who give such evidence."

In the case of **Inder Singh Vs. State (Delhi)** reported in **AIR in 1978 SC 1091**, Hon'ble justice Krishna Iyer. J laid down that *"proof beyond reasonable doubt is a guideline, not a fetish and guilty man cannot get away with it because truth suffers some infirmity when projected through human processes."*

Hon'ble Apex Court in the judgment reported in **2025 INSC 28**, Hon'ble Court observed that *"crime creates a sense of societal fear and it affects adversely the societal conscience. It is inequitable and unjust if such a situation is allowed to perpetuate and continue in the society. In every civilized society, the purpose of criminal administrative system is to protect individual dignity and to restore societal stability and order and to create faith and cohesion in the society. The courts in the discharge of their duties are tasked with balancing of interests of the accused on one hand and the state/society on the other."*

The postlude

In view of the discussion made herein above, on basis of evidence on record, in the light of the pronouncement of Hon'ble Apex Court in various judgment as quoted herein above and for the reasons mentioned herein above, the prosecution successfully discharged its onus and burden of proof and successfully proved the case by producing cogent and reliable evidence. However, it fall short to prove the intent premeditation and knowledge that the



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act will in all probability cause death or that act was imminently dangerous and would probability cause death that is the direct knowledge. It is necessary that the prosecution must establish premeditation and knowledge in order to bring home the charge under **section 302 IPC** if it does not fall under Exceptions (1 to 5) as provided under section 300 of IPC.

In the instant case the oral evidence of the prosecution witnesses remained consistent, corroborative and impeccable but it falls under **Exception 4 of Section 300 of IPC.**

Therefore, this Court have no hesitation to hold that the accused persons have committed the offence punishable **under section 304 (Part-II)/323/34 of IPC.** Accordingly, they are found guilty of the offence of culpable homicidal not amounting to murder with a knowledge.

Hence, it is

O R D E R E D

That the accused **Anjulush Minj and Anup Minj** are found guilty of committing the offence **under section 304 (Part-II)/323/34 of IPC** and they are hereby convicted in terms **Section 235 (2) of Cr.PC** in view of **Section 222 of Cr.PC.**

Let the convicts namely, **Anjulush Minj and Anup Minj** are taken into custody after canceling their bail bonds with direction to produce them at 01:00 p.m on hearing on the point of the sentence.

Dictated and corrected by me;

sd/-

Additional District and Sessions Judge,
Fast Track 02nd Court,
Alipurduar

sd/-

Additional District and Sessions' Judge
Fast Track 02nd Court,
Alipurduar



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Later : 01:00 p.m. [Sentencing part]

The convicts namely, **Anjulush Minj and Anup Minj** are produced for hearing on the point of sentence.

On being asked convicts **Anjulush Minj and Anup Minj** claim their innocence and submitted that they were not present at the place of occurrence nor they inflicted any injury to the victim. Convict **Anup Minj** and convict **Anjulush Minj** are the sole bread winner of their family and their family will be deprived of their right when they are confined. It is contended by convict, **Anup Minj** that he has a minor child at his home and his wife who have no income at all. It is also submitted that both the convicts are if convicted and sentenced then there will be no one to look after their families. The facts also remains that the convicts are from very poor financial background. Hence, prays for mercy.

Having considered the submission of the convicts as well as considering the nature of the offence and the convicts are more than **70 years** of old (Anjulush Minj) and **44 years old** (Anup Minj), hence, they are not release on probation by virtue of **Section 360 of Cr.P.C. or Section 4 of Probation of Offenders Act.**

However, from the record it is seen that the convicts **Anjulush Minj** was in judicial custody for the period 1 year and 7 months and accused **Anup Minj** was in judicial custody for the period 23 days only.

As a Court of Law a message to the society has to be given that one cannot take law in their own hands and the culprits shall not be spared in any manner as well as a punishment has to be given for their respective misdeeds, as no one is above the law.

Upon considering all the above aspects, the submission made by the convicts and considering the nature of crime so committed by them, accordingly



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convicts **Anjulush Minj and Anup Minj** are sentenced to **simple imprisonment for the period of one (01) year each** and are also **sentenced to pay of fine of Rs. 5,000/- each** in default of payment of fine they shall further undergo **simple imprisonment of 02 months each** for the offence punishable under section **304 (Part-II) of IPC**, similarly the convicts **Anjulush Minj and Anup Minj** are further sentence to **simple imprisonment for one month each for the offence punishable under section 323 of IPC.**

Both the sentences shall run concurrently.

Accordingly, the period of incarceration already undergone by the convicts Anjulush Minj and Anup Minj be set off against the period of sentence of imprisonment so imposed hereinabove in terms of **Section 428 of Cr. PC** and the convicts be released on completion of sentence.

As a matter of fact, a precious life has been lost due to the conduct of the above name convicts, hence this court finds it suitable to recommend for payment of compensation of **Rs.2,00,000/- (Two Lakh)** to the family of the deceased (Amrit Topno @ Munda). Thus, let the copy of this order be placed before **The Secretary, DLSA, Alipurduar** for ascertaining/payment of adequate compensation under Victim Compensation Scheme.

Let the copy of this judgment be given free of cost to the convicts.

Let the copy of this order be transmitted to **The Superintendent, Alipurduar District Correctional Home** for its compliance.

The judgment and final order are pronounced in the open Court in presence of the learned public prosecutor, the convicts and the learned defence counsel and given under my hand and seal of the Court today.

Seized articles if any, be deposited off in terms of section 457 of Cr.PC.



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Let a copy of this judgment be also transmitted to **The District Magistrate, Alipurduar (via email)** in terms of **section 365 of Cr.PC** for its kind information and to facilitate execution the process.

Let a copy of this judgment be transmitted to **The Ld. Secretary, DLSA, Alipurduar (via email)** in compliance to the direction of the Division Bench of Hon'ble High Court of Calcutta in a judgment reported in 2013 (3) CHN (Cal) 704 (DB) for the information.

The convicts are also made aware of their legal rights in Bengali and Hindi, so that they can prefer an appeal against this judgment free of cost by taking help of DLSA, Alipurduar.

The case thus stands disposed off.

Let the case record be consigned to the District record room following all the established norms and modalities.

DA is hereby directed to make necessary entries in the register and CIS at once.

Dictated and corrected by me;

sd/-

sd/-

Additional District and Sessions Judge,
Fast Track 02nd Court,
Alipurduar

Additional District and Sessions' Judge
Fast Track 02nd Court,
Alipurduar