



FORM A

In The Court of Additional District and Sessions Judge, Fast Track 1 st Court, Diamond Harbour, South 24 Parganas	
Present: Amitabha Das (Sessions Judge)(WB00926) Date of the Judgment: 18.03.2026	
Sessions Case Number : 201 of 2023	
Unique Case ID Number : WBSP100017892023 (CIS : 201/2023)	
Case No. ST 01(02)2024	
GR no. 745/2023	
(Details of FIR/Crime and Police Station)	
COMPLAINANT Nikhil Kumar Saha	STATE OF WEST BENGAL
REPRESENTED BY	NAME OF THE ADVOCATE Ld PP IN CHARGE : Bivash Chatterjee
ACCUSED	1. Rejaul Laskar @ Choto Matal
REPRESENTED BY	Advocate

FORM B

Date of Offense	05.03.2023 (20.15 hrs)
Date of FIR	110/2023, 06.03.2023 (00 : 25 hrs)
Date of Charge sheet	188/23 dt. 19.05.2023
Date of Framing of Charges	27.02.2024
Date of commencement of Evidence	06.06.2024
Date on which Judgment is reserved	NIL
Date of the Judgment	18.03.2026
Date of the Sentencing Order, if any	19.03.2026

**Accused details**

Rank of the Accused	Name of Accused	Date of arrest	Date of release on Bail	Offenses charged with	Whether acquitted or convicted	Sentence Imposed	Period of Detention Undergone During Trial for purpose of Section 428, Cr.P.C
1	Rejaul Laskar @ Choto Matal	06.03.2023	In Custody	307/326/387/201/120B/34 of IPC 25/27 Arms Act	Convicted	R.I for life and Fine of Rs 20,000/- for the offence under Section 307 of Indian Penal Code, in default to suffer S.I for 5 months, R.I for 10 years and fine of Rs 15,000/- for offence punishable under Section 326 of Indian Penal Code, in default to suffer S.I for 4 months, R.I for 5 years and fine of Rs 10,000/- for offence punishable under Section 387 of Indian Penal Code, in default to suffer S.I for 3 months, S.I for 5 months and fine of Rs 500/- for the offence punishable under Section 448 of Indian Penal Code, in default to suffer S.I for 1 month, S.I for 1 years and fine of Rs 3000/- for offence punishable under Section 25 of Arms Act, in default to suffer S.I for 1 month, R.I for 5 years and fine of Rs 10,000/- for offence punishable under Section 27 of Arms Act, in default to suffer S.I for 5 months.	Three years 12 days.

**FORM- C**List of the prosecution / defense / court witness

A. Prosecution

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
PW 1	Dr Pranab Kumar Mondal	Treating Doctor
PW2	Dr Kamaluddin Khan	Treating Doctor
PW 3	Dr Sidharth Rai	Sr. Scintific Officer F.S.L, Kolkata.
PW 4	Asmat Sanpui	Local Shop Owner
PW 5	Sushil Kumar Saha	Younger brother of the Victim
PW 6	Nikhil Kumar Saha	Treating Doctor
PW 7	Abul Marijan	Investigating Officer

B. Defense witnesses, if any

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, OTHER WITNESS)
DW1	NIL	NIL

Court witnesses, if any

RANK	NAME	NATURE OF EVIDENCE(EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
CW 1	NIL	NIL

List of prosecution/defense/court exhibits

A. Prosecution

Sl No.	EXHIBIT	NATURE OF DOCUMENT
1.	Exbt. P1/PW1	Requisition dated 24.03.2023. (With objection).
2	Exbt P2/PW1 (Collectively)	Medical papers (containing 58 pages)
3	Exbt P3/W2	Requisition of Medical injury (by I.O)



4	Exbt. P4/W2	Bed head Ticket.(05 pages).
5	Exbt. P5/W3 (Collectively)	Challan with requisition for F.S.L Report
6	Exbt. P6/W3	F.S.L Report
7	Exbt. P7/W4	Signature of P.W. 4 over S/List
8	Exbt. P8/W5	Entire statement of 164 of Cr.P.C.
9	Exbt. P8/1/W5	Signature of P.W. 5 over 164 Cr.P.C.
10	Exbt. P9/W5	Signature of P.W. 5 over S/List
11	Exbt. P10/W5	Entire certificate (signature of P.W. 5)
12	Exbt. P11/W5	Pen drive containing CCTV Footage
13	Exbt. P12/W5	Trade License
14	Exbt. P13/W6	Entire Written complain
15	Exbt. P14/W6	Entire 164 of Cr.P.C alongwith signature of P.W-6
16	Exbt P13/1/PW7	Endorsement over written complaint.
17	Exbt P15/PW7	Formal F.I.R.
18	Exbt P15/1/PW7	Endorsement of O.C. over formal F.I.R.
19	Exbt P16/PW7	Rough Sketch Map
20	Exbt P16/1/PW7	Index
21	Exbt P17/PW7	Admission (Statement u/S-161 of Cr.P.C. with objection)
22	Exbt P18/PW7	Two Photographs (with objection)
23	Exbt P7/1/PW7	Seizure List dated 06.03.2023.
24	Exbt P17/PW7	The Label over fire arms.
25	Exbt P7/1/PW7	Seizure List dated 12.03.2023.
26	Exbt P3/2/PW7	Entire Label.
27	Exbt P19/PW7	Seizure List.
28	Exbt P20/PW7 (Collectively)	Two Labels
29	Exbt P9/2/PW7	Signature of S.I. Motiur Islam Laskar.(with objection)
30	Exbt P11/2/PW7	Endorsement over envelop bearing CCTV Footage.
31	Exbt P21/PW7	Sanctioned Order of Supplementary Charge Sheet.



32	Exbt P22/PW7	Two Photographs from CCTV Footage(with objection)
33	Exbt P23/PW7	Certificate of CCTV Footage (with objection).

B. Defense

Sr.No.	Exhibit Number	Description
1	NIL	NIL

C. Court Exhibit

Sr.No.	Exhibit Number	Description
I	NIL	NIL

D. Material objects :

Sr.No.	Material Object Number	Description
1	NIL	NIL

JUDGMENT

1. In this case the criminal Law is set into motion with the filling of the Written complaint by Nikhil Kumar Saha the victim himself on 06.03.2023 at about 00.25 hrs. Formal FIR was subsequently lodged on the basis of such written Complaint having number Usthi P.S Case no. 110/2023 dt. 06.03.2023 against two accused persons namely Choto Matal@ Rejajul Laskar and the other named Happu.

ALLEGATIONS OF THE PROSECUTION :

2. The fact as alleged in the written complaint in brief is that the complainant has a grocery shop at Hatugunge Bazar under P.S.-Usthi under name and style 'Saha Mudi Stores'. As usual like previous days the complainant on 05.03.2023 at about 08:15 p.m. was closing the door of the shop, one miscreant whose name is Choto Matal @ Rejaul Laskar the son of Late Rashid Laskar resident of village Juary entered into the shop



along with an associate named Happu. Rejajul Laskar thereafter took out from his waist one fire arm and pointed towards the right side of the chest of the complainant. The complainant in order to save himself started jostling with the accused but the accused fired a bullet from his fire arm pointing towards the right side of the chest of the complainant. As a result the complainant fell on the ground in bleeding condition. Thereafter the accused started fleeing away from the shop and while doing so the accused threw a bomb in front of the shop. The complainant further stated in the complaint that the accused was involved in extortion of money and also demanded from the complainant which he earlier has refused as a result there was a prior enmity with the complainant and as a revenge of such enmity the accused person fired a bullet at the complainant. The complainant was admitted at Diamond Harbour Govt. Hospital, Male surgery ward, for treatment.

CHARGE SHEET AND COMMITTAL

3. During investigation, the investigating officer visited the PO, prepared rough sketch map with separate index, recorded the statements of available witnesses namely Ashok Kumar Purkait, Arup Saha, Swagata Saha, Sahin Paik and also the victim who was then admitted at the hospital, u/S 161 of CrPC, conducted raid, apprehended the accused person Choto Matal @ Rejajul Laskar, seized the offending weapons after preparing seizure list, also recorded the statements of the accused person, the wearing apparels of the accused were seized by preparing a seizure list, collected the medical documents of the victim after giving requisition to MSVP, Diamond Harbour Government Medical College and Hospital. The I.O also collected the CCTV Footage of the PO from one Sushil Kumar Saha and seized the same by preparing and also obtained certificate from him, the I.O also produced some witnesses namely Sushil Saha, Ganesh Saha, Samir Halder and Krishna Mondal who were acquainted with the incident before Ld. Magistrate Diamond Harbour for recording their statement U/s 164 Cr.pc etc. and had also sent the seized fire arm for FSL examination with due forwarding by Ld. ACJM, Diamond Harbour, thereafter also has



collected the FSL examination report finally on conclusion of the investigation on 19.05.2023 the 1st Charge sheet having no. 188/2023 was filed under Section 448/326/307/387/201/34 of Indian Penal Code (hereinafter referred to as the IPC), along with Sec 25/27/35 of The Arms Act, 1959, having Charge Sheet no. 188/2023, against three accused persons namely Choto Matal @ Rejajul Laskar, Emadul Sanpui @ Happu and Musiyer Sanpui @ Palan, and subsequently on 29.04.2025 on receipt of the certified copy of sanctioned order from D.M, South 24 Paragans the supplementary Charge Sheet having number 188A/2023 dt. 21.04.2025 was filed. Cognizance of the offense was thereafter taken by the Ld A.C.J.M, Diamond Harbor on 17.09.2007. The Accused Emadul Sanpui @ Happu had applied for anticipatory Bail u/S 438 of CrPC, before the Ld District and Sessions Judge, Alipore but the same was rejected. But the said accused person did not surrender before the Court of Ld A.C.J.M, Diamond Harbor. The other accused person Musiyer Sanpui @ Palan was also found to be untraceable. As such, Proclamations were issued against the said two accused persons abiding the provisions of S 82 of CrPC. The case was thereafter committed to the Court of the Ld Additional District Judge, Diamond Harbour on 10.07.2023, after exhausting the process u/S 207 of CrPC. The Ld Court, subsequently transferred the case to this Court for trial and disposal.

CHARGE :

4. This Court after hearing the Ld. P.P and the Ld. Counsel for the accused person and on perusal of the materials on record and the case diary, framed charge u/Sec. 448/326/307/387/201/34 of the I.P.C, along with Sec 25/27 of The Arms Act, 1959, against the sole accused person Choto Matal @ Rejajul Laskar on 27.02.2024. The contents of the charges under above Sections were read over and explained to



the accused person to which he pleaded not guilty and claimed to be tried.

POINTS FOR CONSIDERATION :

The factual matrix of the present case elicits the following points, obligatory for the Prosecution to prove, in order to bring home the charges labeled against the accused person.

- A. Whether the prosecution has been able to prove that the accused person had committed house-trespass?
- B. Whether the prosecution has been able to prove that the accused person was in possession of the fire arms which he has used to commit the offense as alleged, in contravention of provision of Arms Act?
- C. Whether the prosecution has been able to prove that the accused person has fired bullet upon the victim?
- D. Whether the prosecution has been able to prove the intention of the accused person to cause death of the victim?
- E. Whether the prosecution has been able to prove that the accused person had committed grievous hurt by dangerous weapons or means?

PROSECUTION WITNESSES :

In order to prove the case the prosecution has examined as many as 07 witnesses and has also Exhibited 33 number of documents marked as Exbt P1/W1 to Exbt P23/W7, and has also produced seized articles which are marked as Mat Exhibit 1 to 5.

In the present case, the prosecution has initiated the evidence by examining the treating doctors as the initial witnesses followed by Expert witness, independent witness, Eye witness, the victim and finally the Investigating Officer. Dr. Pranab Kumar Mondal, the Associate Professor General Surgeon at S.S.K.M. Hospital, Kolkata being one of the treating doctors



at SSKM Hospital, Kolkata, who on requisition by the I.O. handed over to the I.O the medical documents including opinion of the individual treating Doctors, was examined as PW1. PW 2 Dr. Kamaluddin Khan is the another treating Doctor posted who at the relevant time was posted as the R.M.O. General Surgery Department, Diamond Harbour Medical College and Hospital during his deposition he has exhibited the treatment records of the victim Nikhil Kumar Saha along with bed head ticket. PW 3 Dr. Siddharth Rai, Senior Scientific Officer, Ballistic Division, Forensic Science, Laboratory, Kolkata is the expert witness who has exhibited before this Court the F.S.L. report prepared by him relating to the fire arms seized in this case. Asmath Sanpui the owner of the Shop adjacent to the P.O. has claimed himself to have taken the victim to the Hospital after the alleged incident was examined by the Prosecution as PW4. Sushil Kumar Saha the brother of the victim and also the only eye witness of this case is examined as PW 5 and he during his evidence has claimed himself to have witnessed the alleged incident and he has handed over the C.C.T.V. footage to the I.O. The victim of this case Nikhil Kumar Saha has been examined as PW 6 and the Investigating Officer of this case, S.I. Abul Marijan, has been examined as PW7. He in his evidence has narrated the process and manner of his investigation and has exhibited several documents relied upon by the prosecution in the present case.

DEFENSE CASE :

From the trends of the cross-examination of prosecution witnesses and examination of the sole accused person u/s. 313 of Cr.P.C. It appears that innocence is the main defense in the instant case and that the fact as alleged by the complainant is false and fabricated. No defense evidence has been adduced from the side of the accused person.



On completion of the examination of the accused person u/S 313 of CrPC, the date was fixed for argument. Arguments of both the contesting sides were heard at length. Both the parties have filed their respective written notes of arguments.

ARGUMENT ON BEHALF OF THE PROSECUTION :

The Ld Special P.P appointed in this case has submitted that prosecution is able to prove the present case beyond the shadow of reasonable doubt. It has been submitted that crime generally consist of four stages i.e. the intention, motive, preparation and attempt & commission of the offense. From the evidence on record, it is evident that the accused had specific intention to commit the offense. It is also clear from the evidence of the prosecution witnesses that the accused had the habit of demanding money from the shop owners of the locality and as the victim has earlier refused to fulfill such demand the alleged incident was committed. So, the accused had clear intention and also the motive to commit the offense. The attention of this Court was also drawn towards the fact that the evidence of victim and the eye witness even the C.C.T.V. footage collected from the place of Incident crystalizes that the accused fired bullet at the victim with the intention to commit his murder. According to the Ld Advocate the offense committed is a preplanned crime as the accused already armed with deadly weapon like firearms and bombs entered into the shop of the victim. The Ld. Special P.P. also argued that the evidence on record clearly goes to suggest that the accused had a clear motive as he had the habit of extorting money as the victim and his brother has corroborated the same. Reliance in this regard has been put upon section -8 of the Indian Evidence Act which suggest that the fact which shows or constitutes a motive or preparation of any fact in issue are relevant fact. It has been argued that the CCTV footage collected and



subsequently seized by the I.O. after compliance of S 65B of Indian Evidence Act, clearly show the commission of offense by the accused person and also the fact that the said accused was wearing similar wearing apparels that has been seized in the present case. The Ld. Special P.P. during the course of argument has stated that there might be minor discrepancies in the evidence of the witnesses which should be ignored and cannot be held to be fatal for the prosecution case.

ARGUMENT FOR THE DEFENSE :

The Ld Advocate for the accused person seeking acquittal of the accused person Choto Matal @ Rejajul Laskar has submitted that the prosecution case suffers from glaring irregularities and contradictions and therefore cannot be held to have been proved beyond reasonable doubt. It has been submitted that it is the case of the prosecution that the bullet was fired from a very short distance of almost 3 feet but as per the evidence of the doctor (PW 1) there is a small entry wound on the right chest of the victim with tattoo around the entry wound. As per Dr Modi when the distance is shorter there will be larger entry hole of the bullet due to pressure of gases. Even as there was no exit wound created by the bullet it can be presumed that the velocity of the bullet was less and it can only be sustained when a bullet is fired from a long distance. It was also argued that as per the visuals of CCTV footage the bullet did not enter the body horizontally rather as per the version of the doctor (PW 2) the bullet penetrated the body at an angle of 45°. According to the Ld. Advocate the contention of the prosecution about the bullet injury is self-contradictory and therefore cannot be believed.

The Ld. Advocate further drawn the attention of the Court towards another contradiction that as per prosecution case the victim had suffered bullet injury and also facial burnt due to



bomb blast. Both PW 5 and PW 6 have stated about facial burnt of the victim due to bomb blast but there is no such evidence found from the CCTV footage about the bomb blast even the I.O. also failed to find any marks of explosion of the bombs at the P.O. According to the Ld. Advocate such discrepancy is a vital latches in the prosecution case.

It was also pointed out that the seizure of fire arms from the accused person is also doubtful as the fire arms has been alleged to have been seized in between 2.45 to 3.00 a.m. and as per the version of PW4 and PW6 the I.O. was present at that time at the Hospital. Even it is not believable that after the commission of the alleged offense the accused person was at home at 2.45 a.m. along with the fire arms. The Ld. Advocate for the accused also disputed the CCTV footage and the certificate issued u/s-65 B of Indian Evidence Act. It was submitted that PW5 who had issued the certificate do not have much knowledge about the CCTV cameras and how the CCTV footage are stored in the hard disk even it is not within his knowledge as to how the visuals from the said hard disk were copied to the pen-drive. Attention of this Court was drawn towards the evidence of PW5 wherein the witness stated that the hard disk was taken by the police. But the DVR as stated by the I.O. was never seized even the I.O. has admitted that he did not compare the footage with DVR. The Ld. Advocate also argued that the I.O. has taken the hard disk with him but did not seized the same rather the footage was copied to a pen-drive which can be helped to be secondary evidence. According to the Ld. Advocate the secondary evidence cannot be admitted in presence of the primary evidence. The Ld. Advocate for the defense also challenged the visuals of the CCTV footage on the ground that the contents of the footage has not been sent for Forensic Examination to ascertain facial recognition. The attention of this Court was also drawn towards



some major contradiction in between the written complaint, statements u/s-164 and u/s-161 of Cr.P.C. and also the CCTV footage. Even the discrepancies in the evidence of PW6 and PW5 relating to the fact after the alleged incident was also pointed out by the Ld. Advocate for the defense. The Ld. Advocate has therefore prayed for acquittal of the accused person.

DECISION WITH REASONS :

In the present case if all the points above are decided separately, in the light of the Oral and Documentary Evidence in its entirety, will cause unnecessary repetition of evidences making the whole judgment burdensome. Thus, for brevity, and for convenience of discussion and also for easy understanding, all the aforesaid five points are taken up together. The relevant evidences are discussed herein below with necessary categorization.

It is germane to note here that though the charge sheet has been filed against three accused persons namely Choto Matal @ Rejaul Laskar, Emadul Sanpui @ Happu and Musiyer Sanpui @ Palan but the trial has been conducted only against Choto Matal @ Rejaul Laskar as the other two accused persons have been filed for the present as they are still absconding.

Before entering into a comprehensive discussion on the merits of the instant case, it is needless to mention that the Prosecution has the paramount duty to prove the charges labeled against the accused beyond shadow of all reasonable doubts.

At the very outset it is noteworthy to mention that in this case the FIR lodged on the basis of the Written complaint has set the Criminal Law into motion. F.I.R. is not a substantial piece of evidence but can be used to corroborate or to



contradict its maker. This principle of law has been laid down by Hon'ble Apex Court in catena of judicial pronouncements.

On diligent review of the evidence on record and the facts narrated in the written complaint it is evident that it is the case of the prosecution that the complainant who happens to be the victim of this case used to run a grocery shop at Hatugunge Bazar under P.S.-Usthi under name and style 'Saha Mudi Stores'. On 05.03.2023 at about 08:15 p.m. when the complaint was closing the shop, the accused person named Choto Matal @ Rejaul Laskar entered into the shop along with another person named, Happu. Rejaul Laskar thereafter took out from his waist one fire arm and pointed towards the right side of the chest of the complainant. The complainant in order to save himself started jostling with the accused but the accused fired a bullet from his fire arm pointing towards the right side of the chest of the complainant. As a result, the complainant fell on to the ground in bleeding condition. Thereafter the accused started fleeing away from the said shop and while doing so he threw a bomb in front of the shop causing facial burnt of the victim. It is also the case that the accused was involved in extortion of money and he also demanded money from the complainant earlier which the complainant has turned down as a result there was a prior enmity in between the complainant and the accused person and as a revenge the accused person committed the alleged offense.

In the present facts and circumstances of the case let me now evaluate the evidences adduced by the prosecution in the instant case. The complainant herein has been examined as the PW6. He also is the victim in this case. PW6, undoubtedly is one of the most vital prosecution witnesses. The facts as stated by the said witness is quoted hereinbelow. *"I have a grocery shop inherited by me from my predecessor. The said shop is*



situated at Hatugunge Bazar under P.S. Usthi. I run the shop with the help of my brother Sushil Kumar Saha and two other shop employees. There are 4 C.C.T.V. cameras installed inside our shop and 4 C.C.T.V. cameras are installed at our godown out of which one is nonfunctional (with objection). The said cameras cover the cash area as there are two C.C.T.V. cameras near the cash. Two others C.C.T.V. cameras are installed at different places of the shop. No cameras are installed at the verandah of the shop or focusing towards the door. I know Choto Matal as he used to come to the bazar quite often and also used to come to my shop and demanded money from me forcefully. We could not go to lodge a complaint against him under fear. On 05.03.2023 at about 7.45 to 8.00 p.m. Choto Matal also known as Rejajul Laskar wearing red shirt entered our shop. At that time, I was preparing to close the shop in order to go home. At that time, I was alone at the shop, my brother and the other employees were at the courtyard of the shop. The accused demanded Rs. 5,000/- cash from me which I refused. The accused had the habit of extortion of money as he had done so in the past. A quarrel broke out between us as I refused to pay. The accused was standing about 3 hands away from me. He suddenly took out a pistol from his waist and after he missed once fired at me on my right chest. One of his associates was standing at the door. The bullet hit me on the right rib cage causing bleeding injury. The accused thereafter left the shop. I chased him near the door. I by folded hands asked him why he has fired at me. He then told me that he came to our shop in order to commit my murder. I caught hold of him by hand and thereafter fell on the ground. His associates namely, Hapu and Palan were also present. The accused took a bomb out of the bag from Hapu. As I was lying on the ground the accused threw the bomb pointing towards my leg and as it exploded it caused burnt (jhalshey) injury on my face and my looking glasses also got damaged. He also threatened to burn my shop with bomb. The accused persons thereafter left the place. My brother and other employees who were standing at a distance called the owner of neighbouring shop and took



me to the hospital they also accompanied us. I was taken to Diamond Harbour Govt. Hospital and after providing initial treatment I was referred to P.G. Hospital. At P.G. Hospital I was operated but the bullet could not be taken out of my chest as there was a possibility of life threat. I still suffer pain at my chest and cannot walk straight. The witness in open Court pointed towards his wound. While I was at Diamond Harbour Govt. Hospital lying on the bed I narrated the incident in presence of the second officer of Usthi P.S. My such narration was written by my sister's husband named, Ashoke Kumar Purkait as per my version. I know his handwriting. After the complaint was written down it was read over and explained to me and thereafter, I have put my signature over the complaint".

The prosecution has relied upon the CCTV Footage in this case which has been marked as Ext P11/W5. The complainant has stated that "there are 4 C.C.T.V. cameras installed inside our shop and 4 C.C.T.V. cameras are installed at our godown out of which one is nonfunctional. (with objection). The said cameras cover the cash area as there are two C.C.T.V. cameras near the cash. Two other C.C.T.V. cameras are installed at different places of the shop. No cameras are installed at the verandah of the shop or focusing towards the door.

The footage CH07 ending with 106.MP4 was shown to PW6 in open Court to which question was put as to who can be seen in the C.C.T.V. footage. It was stated by the witness that "in the footage he can be seen along with the employee named Sameer. The witness said that the accused wearing red shirt is seen to be entering into the shop. The witness further says that at 7.55.19 p.m. the accused started demanding money from me and there was a quarrel between us (tarkatarki). (with objection as the Ld. Counsel says that C.C.T.V. footage details cannot be taken as it is a corroboration of the earlier statement) The footage at 7.56.42 p.m. shows that the first shot was a miss as there could not be any fire. At 7.56.49 p.m. the accused fired at me. At 7.57.01 p.m. it seems that I chased the accused. At 7.58.29 p.m. I saw my face in



glass. Finally, I am seeing to be taking money out of the cash. The footage CH07 ending with 106.MP4 was shown to the witness in open Court to which the witness says that at 7.58.42 p.m. it is seen that I am bleeding from the wound". The said witness has also identified the accused person in open court as the person who has committed the alleged offense.

During his cross examination the witness is found to have stated that *"It is true that it cannot be seen in the CCTV footage that by seeing the pistol I was scared and shouted for help as no voice was recorded in the footage. Not a fact that at the time of incident I had the facility to record the audio in CCTV. I have stated to the I.O that my CCTV did not have audio recording facility. Not a fact that at the time of incident I had the facility to record the audio in CCTV. It is true that from CCTV footage it can be seen that I collected coins from my cash and placing in safe place. It is true that after the incident I put off the light in my shop by getting up on the counter. For roughly two second there was scuffling with accused outside my shop. I pleaded to accused for almost one second. Voluntarily said: the accused told me that the accused had come to commit my murder. Not a fact it is false that the accused told me that the accused had come to commit my murder. May be after two minutes I got up after I fell down due to scuffling. Not a fact that the time as stated by me earlier regarding the incident outside the shop are false in order to match the CCTV footage. It may be that I reentered the shop after scuffling within one minute 22 second approx. My brother entered into the shop after I entered the shop after scuffling in order to save me. I can show the same from Ch 1 from CCTV Footage. I have stated to the I.O that my CCTV did not have audio recording facility. Not a fact that at the time of incident I had the facility to record the audio in CCTV. It is true that from CCTV footage it can be seen that I collected coins from my cash and placing in safe place. It is true that after the incident I put off the light in my shop by getting up on the counter. For roughly two second there was scuffling with accused outside my shop. I pleaded to accused for almost*



one second. Voluntarily said: the accused told me that the accused had come to commit my murder. Not a fact it is false that the accused told me that the accused had come to commit my murder. May be after two minutes I got up after I fell down due to scuffling. Not a fact that the time as stated by me earlier regarding the incident outside the shop are false in order to match the CCTV footage. It may be that I reentered the shop after scuffling within one minute 22 second approx. My brother entered into the shop after I entered the shop after scuffling in order to save me. I can show the same from Ch 1 from CCTV Footage. Ch01_2023035195106 was played in open Court. The witness says that my brother is seen entering into the shop following me but thereafter left forthwith. The Complainant further stated that I have in my FIR stated that the accused touched the pistol on my right chest and in order save me I scuffled with the accused. Then the accused fired at me for which I fell on the ground in bleeding condition”.

The version of the complainant/victim as stated above, transpires that the victim has substantiated the fact that the accused Choto Matal@Rejaul had enter into his shop wearing a red coloured dress while he was closing his shop. The red coloured dress was exhibited by the prosecution as material evidence. The witness had identified the said dress to be the dress wore by the accused at the time of the alleged incident. The witness has further stated that after brief conversation, the accused shot him on the right side of his chest and thereafter, he chased the accused person and asked him why he had shot him. Thereafter the victim fell down on the ground and the said accused threw a bomb at his shop. Subsequently he was taken to hospital by local shop owner. The witness also narrated about the visuals recorded in the CCTV Footage installed at his shop. The witness also has spoken about the treatment he has undergone firstly at Diamond Harbour Govt Hospital and thereafter at P.G Hospital Kolkata, and that the bullet is still inside his body for which he still suffers from pain. It is manifest from the CCTV Footage as copied in the pendrive (Exbt P11/W5) that it substantiates the version of the Victim about the entry of the accused



person into the shop wearing a red coloured dress and after having a brief conversation with the victim who was standing at the Cash counter took out a fire arm from his waist and fired at the victim pointing towards the chest. It can also be seen from the said footage (*Ch01_2023035195106*) that the victim can be seen to be bleeding from the right side of his chest. The statement u/S 164 CrPC relating to the manner of incident is also mostly consistent with the version of the victim during his evidence except minor discrepancies which in my opinion is not fatal for the prosecution case.

The law relating to the admissibility of the Victim has been laid down by Hon'ble Apex Court in catena of Judicial pronouncements. In **Shivalingappa Kallayanappa Vs State of Karnataka, 1994 Supp (3) SCC 235**, Hon'ble Supreme Court has held that the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies, for the reason that his presence on the scene stands established in case it is proved that he suffered the injury during the said incident.

In **Brahma Swaroop Vs State of UP 2010(11) Scale 443**, it was observed that, Where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with a built-in guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone "Convincing evidence is required to discredit an injured witness".

In the present case the fact that the witness (PW6) has sustained injuries at the time and place of occurrence, lends support to his testimony, even the injured witness is subjected to lengthy cross-examination and nothing can be elicited to discard his testimony. Thus, in my considered opinion the evidence of Nikhil Kumar Saha (PW6) can well be relied upon.



The brother of the complainant, Sushil Kumar Saha who was alleged to have been present at the courtyard of the shop at the time of incident has been examined as PW5. He is the only eye witness of the alleged incident who has been examined in this case. During his examination in chief he has stated that *“I and my brother Nikhil Kumar Saha both run a grocery shop at Hatugunge Bazar. The said shop is having name and style Saha Mudi Store. I know Choto Matal as he used to come to my shop and demanded for the purpose of organizing sports and also used to threaten us that if the money is not paid as demanded he will commit our murder. (Defence raised objection). Then says, Choto Matal used to carry pistol and bombs and used to tell us if this is informed to any authority we will be murdered. The alleged incident took place on 05.03.2023. Today Choto Matal is present before the Court (Identified on dock). On the relevant date at about 8.00 p.m. when we were arranging the salable articles of our shop before closure I was accompanied by my two staffs namely, Krishnamohan and Gono Saha. My brother was at the cash at our shop. Choto Matal thereafter entered our shop and demanded a lumpsum amount of money. My brother could not fulfill the said demand as such Choto Matal took out a gun from his waist and fired a bullet at the ribs cage of my brother. At that time I was standing at the door of the shop and as he had gun in his hand so I could not enter the shop. Thereafter Choto Matal came out of the shop and my brother followed him, I then saw my brother to be bleeding from the right side of his chest. Choto Matal had two associates namely, Palan and Hapu standing outside the shop. After Choto Matal came out of the shop he took a bomb out of a bag from the hand of Hapu and threw the bomb towards the shop causing facial burn of my brother. We started shouting and Choto Matal and his associates left the place and thereafter the neighbours came to the shop by hearing our shouting. I thereafter called an adjoining shop owner Asmat Sanpui over phone and asked him to take my brother to the hospital. Asmat Sanpui came to our shop and took my brother to the Diamond Harbour Govt. hospital on his*



motor cycle”. He has also identified the accused person in open court as the person who has committed the alleged offense.

The said witness (PW5) was declared Hostile witness by the Prosecution and the liberty was given to the prosecution to cross examine the said witness. During cross examination of PW5 by the Prosecution the witness has stated that *“I have handed over the C.C.T.V. footage through a pen drive of the alleged incident dated 05.03.2023 to the police. It is true that after the pen drive was handed over to the police, the police prepared a document. This is the document over which I have put my signature. This is my signature over the S.L. dated 23.03.2023 let the signature be marked as Exhibit P9/W5. Relating to the preparation of the pen drive bearing the C.C.T.V. footage I have also given a certificate typed and signed by me. This is the said certificate bearing my signature. Let the entire certificate be marked as Exhibit P10/W5 (with objection). I prepared the certificate with the aid of a computer shop prepared at my instance. On the date of incident Choto Matal was wearing a red coloured shirt. The sealed envelope bearing the pen drive is opened in open Court. This is the said pen drive which I have handed over to the police bearing pen drive number SD CZ50-064G. Let the pen drive be marked as Exhibit P11/W5(with objection). This is the envelope bearing the pen drive. Let the envelope be marked as Exhibit P11/1/W5. Pen drive is played in open Court in presence of the contesting parties. The pen drive bears 5 video files (MP4) having names starting with CH01(one in number), CH02 (Two in number) and CH07 (Two in number). CH02 having extension number 20230305195106 was played. The said video is identified by the witness as the footage of his shop bearing date 05.03.2023 starting from 07.51.06 seconds. The witness says that the footage shows the brother of the witness to be standing on the table and a staff named Sameer is standing beside the table. The two persons were arranging the stocks of the shop. At about 07.54.49 p.m. the accused Choto Matal entered the shop and started conversation with my brother Nikhil Kumar Saha at about 07.55.20 p.m. onwards. The footage shows that at 07.56.40 p.m. the accused Choto*



Matal takes out pistol from back side of his waist. The witness further says that over the footage at about 07.56.48 p.m. the accused fires a shot at the chest of my brother Nikhil Kumar Saha. At 07.58.42 p.m. the footage shows my brother to be bleeding from his right side of the chest. At the footage at about 07.59.06 p.m. glasses were handed over to the victim. The victim is seen to have switched of the lights of his shop at about 08.00.24 p.m. The footage having number CH07 ending with 106 MP4 bearing the same incident from different angle. The witness voluntarily says on seeing the footage having number CH02 having extension number 20230305195106 shows that on entering Choto Matal started demanding money from my brother. I have seen the entire incident from the space between the doors of our shop. A question was put by the prosecution What is your impression about Choto Matal ?

Ans : I do not have good impression about Choto Matal as he used to demand money quite often and once assaulted me which I have stated in my statement u/s-164 of Cr.P.C.(objected to). The said witness was cross examined at length by Defense. An extract of such deposition is worth mentioning here. It has been stated that “ It is true that in the complaint my brother has stated that there was a scuffling in between the accused and my brother. Then says, the scuffling took place outside the shop. Not a fact that I have not stated either to the I.O. or before the Ld. Magistrate that the scuffling took place outside the shop. Not a fact that my brother in his complaint did not mention that at the time of scuffling the fire was shot at him by the accused. It is true that my brother had mentioned in his complaint that after he was shot on his right chest he fell down on the ground on bleeding condition. Then says, my brother fell down on the ground outside the shop. Not a fact that I have not stated either to the I.O. or before the Ld. Magistrate that my brother fell on the ground after he was shot outside the shop. It is true that I have stated in my statement u/s-164 of Cr.P.C. that “ Amar dada hat jor kore bolche amake guli marley keno. Ami ki korechi.”. When such words were spoken my brother was inside our shop. It is true that I have also stated to the Ld. Magistrate that “ Tarpur dokaner darjar



kache ese dari diye bandha ekta bomb dokaner bhetore marlo".It is true that at the C.C.T.V. footage it cannot be seen that my brother inside the shop was found to be saying by folding hands that why he has been shot. It is true that it also cannot be seen in the C.C.T.V. footage that bomb was exploded inside the shop. I have stated to the Ld. Magistrate that "bomb dokaner bhetare marlo/ dadar mukh tooth purey gelo". It is true that in the C.C.T.V. footage it cannot be seen that my brother had sustained burnt injury".

PW5 being the eye witness to the incident is a vital witness for the purpose of corroboration of the fact uttered by the Victim during his deposition. It can well be inferred from the version of the said witness that at the time of incident the witness was standing at the door of the shop and that he has seen the accused person to enter into the shop at the time when preparations were being made to close the shop for the day and he on entering into the shop demanded money from his elder brother standing at the cash and on refusal to pay the said accused took out a fire arm from his waist and fired at his brother on the right side of his chest causing bleeding injury. Thereafter Choto Matal(accused) came out of the shop he took a bomb out of a bag from the hand of Hapu and threw the bomb towards the shop causing facial burn of his brother. After the incident the neighbouring shop owner Asmat Sanpui came to the PO and he took the victim to the hospital. The version of the witness is well consistent with the case of the prosecution and also has parity with the version of the victim. It is worth adding here that the present witness is the brother of the injured/complainant and the facts narrated by him cannot be brushed aside only as because he is the close relative of the victim. In this regard it will be relevant to take recourse to the observation of Hon'ble Court in **Dalbir Kaur (Mst) v. State of Punjab (1976) 4 SCC 158**. In the said decision it was observed that "A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has caused, such a enmity against the accused person, to wish to implicate him falsely. Ordinarily, a close relative would be the last to



screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth”.

In the present case nothing of that sort has come before this court from which it can be held that the witness is a tainted witness and there is sufficient scope of enmity with the accused person. The version of the present witness therefore is relevant and can well be relied upon as a good piece of corroborative evidence.

The subsequent witness is the neighbouring shop owner Asmat Sanpui who has been alleged to have taken the victim to the hospital after the incident was examined by the prosecution as PW4. The said witness has also identified the accused person in open court as the person who has committed the alleged offense. The said witness like PW5 was allowed to be cross examined by the prosecution after he was declared a Hostile witness. It was stated by the said witness during his evidence that “on 05.03.2023, I was standing beside the road leading towards Kakdip. The shop of Nikhil Saha was about 300ft away from the place where I was standing. Nikhil Saha called me and told me that he was shot and he pleaded for help. I asked him to come to the road side. Thereafter my son Mijanur Sanpui caught hold of Nikhil Saha was suffering for pain and was screaming. Nikhil Saha told me that "Amar guli legeche, amar rokto beroche, amaye bachabar bebostha koro". Nikhil was taken by my vehicle to hospital. I have seen that Nikhil Saha was bleeding. I also got the blood stains on my body. On being asked he told me that Choto Matal Shot me and he was also accompanied by one person. Rejaul Laskar is also the name of Chotoi Matal. He is my neighbour. I have good relation with him. I know that he is in custody. It is true that his family members is also suffering due to the custody of Choto Matal. As choto Matal is in custody so I am also not feeling well being neighbour. My shop is about



100 ft away from the shop of the victim. It is true that at the PO there is a CCTV Camera installed. Subsequently CCTV Footage was collected by the I.O and I have heard that it is seen in the footage that Choto Matal Shot him. I came to know about the video of footage from brother and local shop owners. A question was put to the witness as to whether after the incident he along with the other local shop owners informed the authorities that due to the illegality of the Accused Choto Matal he should get the punishment. The said witness in his reply has admitted that they have sought for the punishment of Choto Matal "Amra Chechilam je tar Saja Hoe Bhul Koreche bole". He has also admitted that the firearm was seized in his presence from the custody of the accused person from his house and he has put his signature over the said Seizure List.

The victim and the eye witness have stated earlier that the neighbouring shop owner has taken the victim to the hospital. The PW4 has been found to have stated that his shop is about 300 ft away from the PO and while he was standing beside the road leading to Kakdip he was called by the victim who told the witness that he had sustained bullet injury as he was shot by Choto Matal and asked him to save his life. The witness thereafter took the victim to the hospital and stayed at the hospital at Diamond Harbour till the victim was taken to P.G Hospital Kolkata. The said witness also is found to have admitted that there was CCTV Cameras installed at the shop of the Victim and that he along with other shop owners have sought for punishment of the accused person for the wrong he has committed, before the authority.

The Learned Special Public prosecutor appointed in this case has submitted that the evidence of the three prime prosecution witnesses i.e the Victim(PW6), the eyewitness (PW5) and the neighbouring shop owner (PW4) have fully corroborated the alleged incident regarding the time, place of incident and in the manner in which the alleged incident was committed by the accused person, there are some minor discrepancies found in the version of the witnesses regarding the post incident stage. According to the Ld Advocate for the Prosecution the discrepancies as may be noted from the said evidences of the said witness are minor in nature



and are not at all fatal for the prosecution case. In support of his submission Learned Public Prosecutor cited the decision reported in **Inder Singh v. State (Delhi Admn.), (1978) 4 SCC 161**. It is clear from the said case that if a case has some flaws, inevitable because human beings are prone to err, it is argued that it is too imperfect. 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. In the present case, there are few contradictions or omission and that is bound to occur in any case or trial. But those contradictions or omission etc. in no way shake or disturb or challenge the basic fabric or the base or the core of the present prosecution case.

Having regard to the said observation of Hon'ble Apex Court, I am of the opinion that in the instant case the Ld Advocate for the Defence has pointed towards some contradictions about manner of assault in FIR, statement u/S 164 CrPC, statement u/S 161 CrPC, the CCTV footage and in the examination in chief of PW-5 & 6. PW- 5 has Stated in cross-examination that, "It is true that my brother in the complaint has stated that Hapu and Rejaul attacked my brother. Not a fact that, while my brother was inside our shop, Hapu and Rejaul attacked (charao) my brother. Then says, my brother was attacked (charao) outside the shop. Not a fact that I have not stated either to the I.O. or before the Ld. Magistrate that the said Hapu and Rejaul attacked my brother outside the shop. It is true that in the complaint my brother has stated that there was a scuffling in between the accused and my brother. Then says, the scuffling took place outside the shop. Not a fact that I have not stated either to the I.O. or before the Ld. Magistrate that the scuffling took place outside the shop. Not a fact that my brother in his complaint did not mention that at the time of scuffling, the fire was shot at him by the accused. It is true that my brother had mentioned in his complaint that after he was shot on his right chest he fell down on the ground on bleeding condition. Then says, my brother fell down on the ground outside the shop. Not a fact that I have not stated either to the I.O. or before the Ld. Magistrate that my brother fell on the ground after he



was shot outside the shop. It is true that I have stated in my statement u/s-164 of Cr.P.C.that "*Amar dada hat jor kore bolche amake guli marley keno. Ami ki korechi*". When such words were spoken my brother was inside our shop. It is true that I have also stated to the Ld. Magistrate that "*Tarpor dokaner darjar kache ese dari diye bandha ekta bomb dokaner bhetore marlo*". Whereas PW-6, the victim has stated in cross examination that, "I did not see pistol prior to the incident. I was scared by seeing the pistol. I tried to save myself when I saw the pistol in the hand of the accused. I did not try to prevent the accused. I shouted for help by seeing the pistol in the hand of the accused. I did not try to snatch the pistol from accused. I got scared after being shot. It is true that it cannot be seen in the CCTV footage that by seeing the pistol I was scared and shouted for help.

Before embarking upon the discussion, it will be pertinent to rely upon the observation of Hon'ble Apex Court in Bharwada Bhoginbhai Hirjibhai v. State of Gujarat reported in AIR 1983 SUPREME COURT 753. Hon'ble Supreme Court has held that:-

- (1) By and large a witness cannot be expected to possess a photographic memory and to recall the details of an incident. It is not as if a video tape is replayed on the mental screen.
- (2) Ordinarily it so happens that a witness is overtaken by events, The witness could not have anticipated the occurrence which so often has an element of surprise. The mental faculties therefore cannot be expected to be attuned to absorb the details.
- (3) The powers of observation differ from person to person. What one may notice, another may not. An object or movement might emboss its image on one person's mind, whereas it might go unnoticed on the part of another.
- (4) By and large people cannot accurately recall a conversation and reproduce the very words used by them or heard by them. They can only



recall the main purport of the conversation. It is unrealistic to expect a witness to be a human tape recorder.

(5) In regard to exact time of an incident, or the time duration of an occurrence, usually, people make their estimates by guesswork on the spur of the moment at the time of interrogation. And one cannot expect people to make very precise or reliable estimates in such matters. Again, it depends on the time-sense of individuals which varies from person to person.

(6) Ordinarily a witness cannot be expected to recall accurately the sequence of events which take place in rapid succession or in a short time span. A witness is liable to get confused, or mixed up when interrogated later on.

(7) A witness, though wholly truthful, is liable to be overawed by the Court atmosphere and the piercing cross-examination made by counsel and out of nervousness mix up facts, get confused regarding sequence of events, or fill up details from imagination on the spur of the moment. The sub-conscious mind of the witness sometimes so operates on account of the fear of looking foolish or being disbelieved though the witness is giving a truthful and honest account of the occurrence witnessed by him – perhaps it is a sort of a psychological defence mechanism activated on the spur of the moment.

Reliance in this regard may also be placed upon the decision of Hon'ble Supreme Court as reported in 2011 CRI.L.J. 2162. In the said decision Honourable Supreme Court was pleased to observe that :-

“In all criminal cases, normal discrepancies are bound to occur in the depositions of witnesses due to normal errors of observation, namely, errors of memory due to lapse of time or due to mental disposition such as shock and horror at the time of occurrence. Where the omissions amount to a contradiction, creating a serious doubt about the truthfulness of the witness and other witnesses also make material improvement while



deposing in the court, such evidence cannot be safe to rely upon. However, minor contradictions, inconsistencies, embellishments or improvements on trivial matters which do not affect the core of the prosecution case, should not be made a ground on which the evidence can be rejected in its entirety. The court has to form its opinion about the credibility of the witness and record a finding as to whether his deposition inspires confidence. “Exaggerations per se do not render the evidence brittle. But it can be one of the factors to test credibility of the prosecution version, when the entire evidence is put in a crucible for being tested on the touchstone of credibility.” Therefore, mere marginal variations in the statements of a witness cannot be dubbed as improvements as the same may be elaborations of the statement made by the witness earlier. The omissions which amount to contradictions in material particulars i.e. go to the root of the case/materially affect the trial or core of the prosecution’s case, render the testimony of the witness liable to be discredited”. [Vide: State Represented by Inspector of Police v. Saravanan & Anr., AIR 2009 SC 152; Arumugam v. State, AIR 2009 SC 331; Mahendra Pratap Singh v. State of Uttar Pradesh, (2009) 11 SCC 334; and Dr. Sunil Kumar Sambhudayal Gupta & Ors. v. State of Maharashtra, JT 2010 (12) SC 287].

In the present case the discrepancies as found in the version of the witnesses as noted above relates to the incident after the victim was shot by the accused person and do not relate to the time, date, Place and manner of the actual incident of firing bullet at the victim. Even, the evidence of PW5 and PW6 if carefully scrutinised it is found that the victim (PW6) has stated in his evidence that after the accused person left the shop he chased him near the door and then he by folded hands asked him why he has fired at him to which he told that he came to the shop in order to commit his murder. He thereafter caught hold of him by hand and then fell on the ground. There is no dispute that the victim who was at the cash counter of the shop, at the time of incident, chased the accused person while he was leaving after firing at the victim. This can also be seen from the CCTV Footage. As per the version of the victim he



caught hold of the accused and asked him why he has fired at him on the other hand PW5 who was at the door of the shop while deposing has stated that there was a scuffling. So, the two versions cannot be held to be contradictory rather it may be termed as minor differences. From the CCTV Footages it appears that after the victim was shot he followed the accused person while the accused person was seen leaving the place of incident. Moreover, whether the incident of scuffling took place at the door of the shop or just outside the shop also do not hold much relevancy which can be held to be fatal for the prosecution. It is pertinent to mention that in normal circumstances after such grave incident happens the victim and the person witnessing the incident often gets panicked and it becomes difficult for the persons to memorise the exact incident in the manner it has taken place, minor deviations therefore may be commonly found unless the versions to be deposed before the Court are scripted. Discrepancies which do not go to the root of the matter and shake the basic version of the witnesses about the incident, therefore cannot be annexed with undue importance. Moreso, when all the important probabilities echoes in favour of the version narrated by the victim.

Challenging the credibility of the said two witnesses i.e the complainant and the only eye witness of the incident the Ld. Advocate for the accused has further highlighted several discrepancies in the evidence of the complainant and his brother. It was pointed out that PW- 5 stated in his cross-examination that, "It is true that I have stated in my statement u/s-164 of Cr.P.C. that Amar dada *hat jor* kore bolche *amake guli* marley keno. *Ami ki* korechi." When such words were spoken my brother was inside our shop. It is true that I have also stated to the Ld. Magistrate that *Tarpur* dokaner darjar kache ese dari diye bandha ekta bomb dokaner bhetore marlo".It is true that at the C.C.T.V. footage it cannot be seen that my brother inside the shop was found to be saying by folding hands that why he has been shot. It is true that it also cannot be seen in the C.C.T.V. footage that bomb was exploded inside the shop". I have stated to the Ld. Magistrate that "bomb dokaner bhetare marlo/dadar *mukh* tookh purey gelo". It is true that in the



C.C.T.V. footage it cannot be seen that my brother had sustained burnt injury inside the shop when the bomb exploded". Whereas PW-6 stated in his examination in-chief is found to have stated that, "I chased him near the door I by folded hands asked him why he has fired at me. He then told me that he came to our shop in order to commit my murder. I caught hold of him by hand and thereafter fell on the ground. His associates namely, Hapu and Palan were also present. The accused took a bomb out of the bag from Hapu. As I was lying on the ground the accused threw the bomb pointing towards my leg". This evidence is not stated either in the FIR, the statement u/S 161 CrPC and Section 164 of CrPC.

It was also pointed out that PW-6 stated in cross-examination that for roughly two second there was scuffling with accused outside my shop. I pleaded to accused for almost one second. Voluntarily said: the accused told me that the accused had come to commit my murder. Not a fact it is false that the accused told me that the accused had come to commit my murder. May be after two minutes I got up after I fell down due to scuffling. Not a fact that the time as stated by me earlier regarding the incident outside the shop are false in order to match the CCTV footage. It may be that I re-entered the shop after scuffling within one minute 22 second approx. on the other hand PW-5 has stated in his cross-examination dated 03.01.2026 that "the place where the bomb exploded there was explosion mark at the courtyard. I have showed the place. where the bomb exploded to the police". The Investigating Officer of this case has been examined as PW-7. He has stated in cross-examination that, "It is true that in the FIR the complainant had alleged an incident of bomb blast and I would have collected evidences if I would have found any marks of explosion of bomb from the alleged place.

A doubt was raised by the Ld Advocate for the defense that as per the version of the victim and the visuals of CCTV Footage within one minute twenty two seconds a series of acts like, scuffling of the victim with the accused, pleading to the accused and falling on the ground had



taken place outside the shop(PO). It was also contended that the Ld. P.P. tried to make out a story of bomb blast outside the shop only to corroborate the bomb blast injury stated by the witnesses and the medical evidence.

On scanning the evidence on record and the medical documents marked Exbt P2/PW1 (Collectively) it appears that the witnesses including the victim has spoken about the bomb being exploded outside the shop by the accused under trial while leaving the PO but there was no such mark of explosion of bomb found by the I.O from the PO. Even there is no seizure of any remnants of bomb by the I.O. Moreover during the Evidence of the I.O it has been stated by the I.O that “It is true that from the statement of the witnesses recorded on 06.03.2023 and 23.03.2023 which include the version of Sushil Saha and Krishna Mondal employee of shop there are no mentioning about any explosion of bomb”. Even some discrepancies may also be noted in this regard as to the place where the bomb exploded whether it was inside the shop or outside the shop. Sufficient evidence is therefore lacking in this regard. In the present case if it is to be believed that there has been explosion of bomb as alleged there has to be substantial damage of article or the place. But neither there has been any seizure of damaged articles nor there has been any such mark of explosion of the bomb found by the I.O at the PO. I therefore do not find it justified to hold that the accused had exploded bomb while leaving the P.O.

The Ld Advocate for the accused person has also disputed the seized fire arms. It was argued by the Ld Advocate for the defense that from the Exhibit P-7/W4, it is evident that the seizure of the fire arms took place in between 2.45 to 3.00 hr and as per the version of PW- 4 & 6 during cross examination at that time the Investigating Officer was at the Hospital. The attention of the Court also was drawn towards the fact that PW- 4 Asmath Sanfui has admitted in the cross-examination that, "I was present at the hospital till 3.00 am. PW- 6 has stated in cross-examination that "the said police officer was present at the hospital



till the time when I was shifted to P.G. Hospital. PW- 7 stated in Cross examination that "went to the PO at about 1.05 hours on 6.03.2023 and at about 1.45hours I meet the victim at the hospital" Again the said witness stated that I was at hospital in between 1.05 hours to 1.45. It would be evident that from Google Map that the Diamond Harbour Hospital to Village Joaru is near about 11 kilometer ie the house of accused person and it is impossible for the I.O to be present at the house of the accused person almost at the same time at 2.45 hrs on the early morning of 06.03.2023. Even it is also not believable that the accused is alleged to be habitual offender, and if that be so then after committing such type of serious offense how can he be expected to be at his house waiting for the police officer along with offending weapon at his residence. Moreover, at about 2.45 hours seizure list was prepared and prior to the arrest, recovery of fire arms was made as it has been admitted by the I.O (PW7) that "it is true that prior to arresting the accused person the seizure of said fire arm was made". Admittedly the fire arms were sized prior to the arrest of the accused person, so the seizure does not come within the purview of U/S 27 of the Indian Evidence Act, ie leading to recovery and the said seizure may come within the purview of 100 CrPC i.e. general search and seizure in this case. It has also been contended that PW- 4 only seizure witness did not support the seizure.

It transpires from the evidence of I.O (PW7), that during his examination in chief that "After taking up the investigation I visited the PO and prepared the rough sketch map with index. These are the rough sketch map and index marked as Exhibit-P16/PW7 and Exhibit-P16/1/PW7. At the PO I examined the witnesses namely Ashok Kumar Purkait, Arup Saha, Swagata Saha and Sahin Paik. After getting the information that the victim is admitted at Diamond Harbour Hospital I went to the said Hospital and examined the victim and recorded his statement. There I conducted raid and detained the accused, recorded his statement and on the basis of the information given by the accused I recovered the fire arms. This is the said statement recorded by me of the accused wherein



the accused admitted that he has other similar fire arms which he had hidden and he can assist me in recovering the same. The admission of the accused person was marked as Exhibit-P17/PW7 (with objection). During the Cross examination the investigating officer has reiterated the said fact that “After being entrusted with the investigation of this case I went to the PO at 1:05 hours on 06.03.2023 and at about 1:45 hours I met the victim at the hospital. I cannot say whether after getting the information over phone about the incident I met the victim at the hospital where the complaint was written in my presence. I was at the hospital in between 1:05 hours to 1:45 hours. On my first visit to the PO at night on the same date of incident I prepared the hand sketch map and also recorded the statement of the witnesses. I went to the house of the accused at 2:05 hours on same night and thereafter left the said house after 3:30 hours”. Even PW4 also being the seizure witness and the person who identified to the I.O the house of the accused person has supported the version of the I.O about the seizure of the fire arms from the house of the accused person in his presence. It is evident that the I.O has been to the house of the accused person at about 2.05 hrs and recorded his statement. In his statement the accused person has admitted that he had hidden similar fire arms and he can assist in recovering the same. Even there is also a seizure witness of the said seizure of fire arms and he has stated that the fire arm was recovered in his presence as show by the accused person from his house. I therefore do not find any reason why the recovery of Fire arms will not fall under the provisions of S 27 of Indian Evidence Act.

Section 27 of the Evidence Act reads thus:-

How much of information received from accused may be proved-“provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered may be proved.”



In **State Of Himachal Pradesh vs Jeet Singh AIR 1999 SUPREME COURT 1293**, it has been held by the Hon'ble Court that "Both the aforesaid premise were not of any use to reject the evidence tendered by PW-24 Investigating Officer. It must have been during the interrogation of accused that he would have made the disclosures. It is not necessary that other witnesses should be present when the accused was interrogated by the Investigating Officer. On the contrary, investigating officers used to interrogate accused persons without the presence of others. So, the mere fact that any witness to the recovery did not overhear the disclosure statements of the accused is hardly sufficient to hold that no such disclosures were made by the accused".

In **Mohd. Arif V. State (NCT of Delhi) (2011) 13 SC 621** it was also held by Hon'ble Supreme Court that "the statements of A1 and A3 were not reduced to writing, that also will not prevent the applicability of Section 27 of the Evidence Act. Failure to record the disclosure statement is not fatal to the prosecution. What is important is that the investigating officer should credibly depose before Court regarding the fact discovered".

In the light of the discussion as made herein above I have no hesitation to accept the seizure of the fire arms as it has been recovered after recording the statement of the accused wherein, he has agreed to assist the I.O in recovering the fire arms that has been kept hidden by him. Moreso, when the accused was asked about the recovery of fire arm from his house to which the accused is found to have denied about the said fact without giving any satisfactory explanation.

It has further been argued that the seizure of empty cartage is also doubtful. It is evident from the examination in-chief of PW-3 ballistic expert that, the fire arms contained empty cartridge but PW-7 (Investigating Officer) during his cross examination has stated that "after the recovery of the fire arm I checked the weapon by my own. I did search for empty cartridge but could not find it as there is less possibility to find empty cartridge as it gets stuck in country made fire arms. I did not prepare any nil seizure list. The fire arms seized by me



did not bear any empty cartridge". It is strange enough that how the fire arms sent for FSL examination will have the empty cartridge attached to it. According to the Ld Advocate the Seizure of the fire arms therefore cannot be held to be sacrosanct.

The evidence of PW3 is worth mentioning in the instant case. PW3 has stated that "between 10.04.2023 to 28.04.2023, I was posted as Sr Scientific Officer, Balistic Div, Forensic Science Labotary, Kolkata. The witness has identified the requisition issued by the I.O. It is also clear from the version of the said witness that he being the ballistic expert has examined the fire arm bearing the label attached to it which bears the signature of the accused person and he has prepared the FSL Report marked as Ext P6/W3. From the report it appears that the empty cartridge was present inside the country made one shorter fire arm. It is therefore quite obvious that as the bullet case was stuck inside the fire arm so the said case could not be found by the I.O from the PO. Moreover, it is the forensic expert who has correctly retrieved the empty case as it was stuck inside the fire arm, during examination. I therefore differ from the contention of the Ld Advocate for the defense that the seizure of the fire arms is defective and that the FSL report as prepared relating to the said fire arm cannot be held to be sacrosanct.

It is argued by the Ld Advocated for the defense that in this case the CCTV footage being corroborating evidence cannot be safely relied upon as the certificate U/S 65B of Indian Evidence Act allegedly issued by the PW- 5 has not been made according to law. Even the CCTV footage was not sent to forensic laboratory to test its authenticity.

The attention of this court was drawn towards the evidence of PW- 5 who allegedly issued the certificate u/S 65B of Indian Evidence Act. In the cross examination he is found to have stated that, "I cannot say the specification of the C.C.T.V. cameras including the hard disk capacity. I cannot say for how many days the C.C.T.V. footages are stored in the hard disk of our shop. It is true that the C.C.T.V. cameras of our shop have eight channels. It is true that from the C.C.T.V. footage it is



evident from the screen that 7 channels are working and one channel might not be working. It is true that 7 cameras of our shop are working. I have given to the I.O. the footages from 4 C.C.T.V. cameras". I handed over the pen drive to the I.O. at our shop named Saha Mudi Store. At that time the shop employees were also present. I cannot say what the I.O. has written over the seizure list. It is true that I have put my signature on the left side of the seizure list different from where other witnesses have signed. When I signed the seizure list dated 23.03.2023 no other persons have signed the said S.L. in my presence.

According to the Ld Advocate facts stated by the witness suggest that the alleged seizure list was not prepared in same sitting. PW-5 further stated in Cross examination that, " In the hard disk of the C.C.T.V. cameras of our shop no other incident prior to the alleged incident is stored. I cannot copy the contents from the hard disk to a pen drive. The police asked me to copy the contents of the hard disk to the pen drive. The police did not tell me what footages to be copied as the police themselves took the footages from our hard disk to the pen drive. It is true that, the police collected and took the hard disk to the P.S. from our shop. The police did not ask me to put my signature over the hard disk. I cannot say after how many days from the alleged incident I gave the certificate (P10/W5.) I cannot say whether the certificate was issued on the same day when I handed over the pen drive to the I.O. I presently cannot say what is written over the said certificate. I do not know whether there was user I.D. or password of the C.C.T.V. cameras in the hard disk. It is true that the C.C.T.V. cameras of our shop record both audio and video footages". PW- 5 further stated in Cross examination that, "It is true that the envelope containing the pen drive do not have my signature neither there is any label attached to the envelope or with the pen drive".

It was argued further that PW-7 stated in Cross examination that, "I never seized any DVR". I did not compare the footage with the DVR". PW- 7 further stated in Cross examination that, "It is true that in the



statements recorded on 06.03.2023 no witnesses have mentioned about the presence of CCTV at the shop. In between 06.03.2023 & 23.03.2023 I did not visit the PO. Not a fact that on 06.03.2023 there was no CCTV cameras installed at PO. Over S/L (P9/W5) there is no mentioning the name of Sushil Kumar Saha in the witness list as we do not categorize the person producing the item as witness. It is true that over the pen-drive or over the envelop bearing the pen-drive there are no signature of Sushil Saha. I did not mention in the CD the CCTV cameras serial numbers but there are serial numbers in the DVR. It is true that I did not seize any audio footage apart from video footage. Not a fact that though I have kept the DVR with me but did not seize the same. As Sushil Saha himself copied the footage from DVR to the pen- drive so I did not examine any person. Whereas, PW-5 Sushil Saha stated in cross examination that, "I can't copy the contents from the hard disc to the pen-drive. According to the Ld Advocate the contradiction as found in the evidence of the witness clearly raises doubt as to the admissibility of the CCTV Footage as alleged to have been copied to the pen drive during investigation and the certificate issued u/S 65B of Evidence Act.

In this case, the prosecution is found to have greatly relied upon the CCTV Footage as a substantive piece of evidence to corroborate the version of the victim, apart from the version of the eye witness. It is therefore crucial to look into the admissibility of the CCTV Footage as evidence and the underlying principle of Law attached to it.

CCTV Footage is essentially an electronic record as it stores data in electronic form as the images recorded by CCTV camera are transformed to digital by DVR (Digital Video Recorder). If the DVR is presented to the Court it will be considered the primary evidence as per Section 62 of Indian Evidence Act, the provisions of section 65 B (4) of the Act will not apply. Nevertheless, if a huge proportion of devices are mounted and the data is collected on massive servers it is not necessary to put the whole set up before the Court. The only other choice in this situation is to transfer the files from the massive server to a C.D or Pen



drive and then present it to the Court. In the present case it has been argued by the Ld. Defense Counsel that as per the evidence of PW 5 the police took the DVR from the said witness but did not seized the same. According to the Ld. Advocate as the DVR is a primary piece of evidence the I.O. must have seized the said DVR and could have presented before the Court. But the I.O. has deviated from the settled principle of law by procuring the Pen drive as secondary evidence in spite of the presence of the primary evidence.

The provisions as to the Electronic Evidence has been infused into the Indian Evidence Act by way of amendment in the year 2000 by incorporating the provisions of S 65A and S 65B.

The Section 65A of Indian Evidence Act reads as Under :

65A. Special provisions as to evidence relating to electronic record. The contents of electronic records may be proved in accordance with the provisions of section 65B.

The Section 65B reads as Under :

65B. Admissibility of Electronic Records. (1)Notwithstanding anything contained in this Act, any records. information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer (hereinafter referred to as the computer output) shall be deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible.

(2) The conditions referred to in sub-section (1) in respect of a computer output shall be the following, namely:- (a) the computer output containing the information was produced by the computer during the period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over



that period by the person having lawful control over the use of the computer; (b) during the said period, information of the kind contained in the electronic record or of the kind from which the information so contained is derived was regularly fed into the computer in the ordinary course of the said activities; (c) throughout the material part of the said period, the computer was operating properly or, if not, then in respect of any period in which it was not operating properly or was out of operation during that part of the period, was not such as to affect the electronic record or the accuracy of its contents; and (d) the information contained in the electronic record reproduces or is derived from such information fed into the computer in the ordinary course of the said activities.

(3) Where over any period, the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in clause (a) of sub-section (2) was regularly performed by computers, whether- (a) by a combination of computers operating over that period; or (b) by different computers operating in succession over that period; or (c) by different combinations of computers operating in succession over that period; or (d) in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers. all the computers used for that purpose during that period shall be treated for the purposes of this section as constituting a single computer; and references in this section to a computer shall be construed accordingly.

(4) In any proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say,- (a) identifying the electronic record containing the statement and describing the manner in which it was produced; (b) giving such particulars of any device involved in the production of that electronic record as may be appropriate for the purpose of showing that the electronic record was produced by a computer; (c) dealing with any of the matters to which the conditions mentioned in sub-section (2) relate, and purporting to be signed by a person occupying a responsible



official position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this sub-section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

On plain reading of the afore mentioned provisions it is clear that no where it has been made mandatory for the Investigating Officer to seize the DVR in case of electronic record to produce before the Court as primary evidence rather in order to make the secondary evidence more secured the provision of sections 65 B of Indian Evidence Act has been laid down. It has been made optional for the Investigating Officer to procure and to seize the data present in the DVR into C.D. or Pen drive after obtaining mandatorily the certificate u/s-65 B of the Act in cases where the datas are stored on a massive server and it is difficult for the whole set up to be brought before the Court. In the case on hand 8 numbers of CCTV cameras, as stated by the witnesses, are installed at the shop and godown of the complainant. It is therefore difficult to produce the entire set up including the DVR before the Court for consideration. Moreover, for the sake of argument even if it is held that the DVR must have been produced before the Court it undoubtedly will make all the CCTV Cameras un-operational unless a new device is installed in its place. This view that the I.O. must have seized the DVR therefore do not seem to me as justified. The Data if copied to the Pen drive or CD is acceptable in Court if the same is procured following the guidelines laid down in S 65B of the Act. It is therefore of paramount importance for the Court to look into as to whether proper procedure has been followed while procuring such Data from the DVR into the Pendrive or the CD, and if is found that the law as laid down has been duly followed, there cannot be any impediment to rely upon such evidence. I therefore hold that as it was optional, so the I.O. has rightly procured the Data present in the DVR in the Pen drive after obtaining certificate as required u/S-65 B of Indian Evidence Act.



The Ld. Advocate for the defense has further challenged the admissibility of the CCTV footage on the ground that the certificate as required u/s-65 B of the Act has not been properly issued by the brother of the victim as it has been admitted by him in his evidence that he has no knowledge about the specification of the CCTV cameras and also cannot say for how many days the CCTV footages are stored in the hard disk. It has been stated further by the witness that he has handed over the Pen drive to the I.O. at his shop in presence of the other shop employees and he cannot say what is written over the seizure list. The said witness also has stated that when he has signed the seizure list dated 23.03.2023 no other person have signed the said S/L. The said witness has admitted that the police themselves have taken the footage from our hard disk to the Pen drive and he cannot copy the contents from the hard disk to the Pen drive. According to the Ld. Advocate the manner in which the seizure has been made is contrary to the provisions of law and therefore cannot be accepted as sacrosanct.

While considering the plea taken by the Ld. Defense Counsel as to whether the certificate issued by Sushil Kumar Saha (PW 5) is valid and reliable it is appropriate to look into the principle of Law as laid down by Hon'ble Apex Court relating to S 65B of Indian Evidence Act, in much celebrated Judgment as reported in **Arjun Panditrao Khotkar vs Kailash Kushanrao Gorantyal AIR 2020 SUPREME COURT 4908.**

At Para 21 it was held by Hon'ble Apex Court that "Section 65B(1) makes it clear that any information that is contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer shall be deemed to be a document, and shall be admissible in any proceedings without further proof of production of the original, as evidence of the contents of the original or of any facts stated therein of which direct evidence would be admissible.

22. Section 65B(2) then refers to the conditions that must be satisfied in respect of a computer output, and states that the test for being included



in conditions 65B(2(a)) to 65(2(d)) is that the computer be regularly used to store or process information for purposes of activities regularly carried on in the period in question. The conditions mentioned in sub-Section 2(a) to 2(d) must be satisfied cumulatively.

23. Under Sub-section (4), a certificate is to be produced that identifies the electronic record containing the statement and describes the manner in which it is produced, or gives particulars of the device involved in the production of the electronic record to show that the electronic record was produced by a computer, by either a person occupying a responsible official position in relation to the operation of the relevant device; or a person who is in the management of “relevant activities” – whichever is appropriate.

The very admissibility of such a document i.e. electronic record which is called as computer output, depends on the satisfaction of the four conditions under Section 65-B(2).

Following are the specified conditions under Section 65 B(2) of the Evidence Act:

(i) The electronic record containing the information should have been produced by the computer during the period over which the same was regularly used to store or process information for the purpose of any activity regularly carried on over that period by the person having lawful control over the use of that computer;

(ii) The information of the kind contained in electronic record or of the kind from which the information is derived was regularly fed into the computer in the ordinary course of the said activity;

(iii) During the material part of the said period, the computer was operating properly and that even if it was not operating properly for some time, the break or breaks had not affected either the record or the accuracy of its contents; and

(iv) The information contained in the record should be a reproduction or derivation from the information fed into the computer in the ordinary course of the said activity.



15. Under Section 65 B(4) of the Evidence Act, if it is desired to give a statement in any proceedings pertaining to an electronic record, it is permissible provided the following conditions are satisfied:

- (a) There must be a certificate which identifies the electronic record containing the statement;
- (b) The certificate must describe the manner in which the electronic record was produced;
- (c) The certificate must furnish the particulars of the device involved in the production of that record;
- (d) The certificate must deal with the applicable conditions mentioned under Section 65-B(2) of the Evidence Act; and
- (e) The certificate must be signed by a person occupying a responsible official position in relation to the operation of the relevant device.

16. It is further clarified that the person need only to state in the certificate that the same is to the best of his knowledge and belief. Most importantly, such a certificate must accompany the electronic record like computer printout, compact disc (CD), video compact disc (VCD), pen drive, etc., pertaining to which a statement is sought to be given in evidence, when the same is produced in evidence. All these safeguards are taken to ensure the source and authenticity, which are the two hallmarks pertaining to electronic record sought to be used as evidence. Electronic records being more susceptible to tampering, alteration, transposition, excision, etc. without such safeguards, the whole trial based on proof of electronic records can lead to travesty of justice.

From the aforementioned provisions as laid down by the Hon'ble Court it can be construed that Hon'ble Court has laid down certain guidelines to be mandatorily followed while issuing certificate u/s-65 B sub clause 4 of I. E. Act in order to make it acceptable before the Court. In the present case the Pen drive in dispute has been marked as Exhibit P11/W5 and the certificate u/S-65 B relating to the said Pen drive has been marked as Exhibit P10/W5. From the certificate issued it is clear that it bears the description of the electronic records and was in possession of the said person who issued the certificate it also bears the details of the Pen drive and the manner of procurement. The said certificate in my



opinion is in accordance with the guidelines of the Hon'ble Apex Court as mentioned above. It is worth mentioning that the details of the Pen drive and the DVR tally with the articles seized and I find nothing in the record that can controvert the details mentioned in the certificate. The said certificate also make it clear that with the assistance of the I.O. the data were downloaded and copied to the Pen drive from the DVR. I therefore do not find any reasonable doubt which can disqualify the CCTV footages as produced by the prosecution as defective. The certificate relating to the said Pen drive is therefore held to be valid and reliable.

The Ld Advocate for the Defence, further argued that the medical evidence does not support the prosecution case as according to the prosecution the victim was shot from a close distance of approximately 3 ft. whereas PW- 1 Dr. Pranab Km. Mondal has stated in cross examination that a small entry wound was found on the right side of the chest with tattoo around the entry wound. And PW-2 Dr. Kamaluddin Khan has stated that it is true that as the velocity of the bullet was less so after deflection the bullet did not exit the body. The Ld Advocate argued that as per Dr Modi where the range of firing bullet is shorter the entry wound on the body created due to entry of bullet is enlarged due to pressure of gases. But in the instant case as the entry wound found on the body of the victim was small as stated by the Doctor in no circumstances it can be believed that the injury caused to the victim was due to the close range firing of the accused person. A reasonable doubt therefore persists as to the injury sustained by the victim due to firing by the accused person.

I have carefully perused the evidences of the doctors examined in this case. PW1 has stated that "it is true that in case of close-range gunshot there will be deposition of black soot, blackening, singing and scorching of the entry wound accordingly I have mention tattooing around the wound in my report. If the velocity of the bullet is more there is a possibility of exit wound after deflection. PW2 is also found to have stated in similar lines to that of the earlier witness. It therefore is quiet probable



that as the victim had the bullet inside his body without any exit wound, so the velocity of the bullet was comparatively slower. Now the question that crops up is as seen in the CCTV Footage if the bullet was fired from very close range then why there was no exit wound over the body of the deceased. The reason in the instant case may be that the fire arm used in the present case is a country made one shotter fire arm. These are rudimentary weapons that fire at significantly lower velocities compared to standard, factory-produced firearms. Bullet travel through a gun barrel is characterized by increasing acceleration as the expanding gases push on it, but decreasing pressure in the barrel as the gas expands. Up to a point of diminishing pressure, the longer the barrel, the greater the acceleration of the bullet. Mechanical imperfections of the fire arms including barrel of the fire arm also cause substantial decrease in bullet speed. The entry wound caused by such bullets fired therefore may be smaller in size. I therefore differ from the contention of the Ld Defence Counsel in this regard relating to the size of the entry wound and the tattooing around the entry wound.

Relevantly, the decision of Honourable Supreme Court in Kapildeo Mandal & Ors. Vs. State of Bihar AIR 2008 SC 533 can be referred with necessary exception of relevant passage:

“11. It is now well settled by series of decisions of this Court that while appreciating variance between medical evidence and the ocular evidence, oral evidence of eyewitness has to get primacy as medical evidence is basically opinionative (see *Mange Vs State of Haryana* 1979)4 SCC349 (conviction based on sole testimony of eyewitness): *State of UP Vs Krishna Gopal and Anr.*,(1988) 4 SCC 302 (in Para 24); and *Ramananda Yadav Vs,. Prabhu Nath Jha and Ors.* (2003) 12 SCC 606 (in para 17). But when the court finds inconsistency in the evidence given by the eyewitnesses which is totally inconsistent to that given by the medical experts, the evidence is appreciated in different perspective by the courts.....” Here, of course, the case is not of total inconsistency, rather of some minor variation can be noted. Thus, the offence under section



307 IPC is proved against the accused persons beyond reasonable shadow of doubt.

Taking into account the evidence on record as deposed by the Doctors including the expert opinion of PW3 and the medical documents(Exbt-P2/W1), I have no hesitation to hold that the injury found on the body of the Victim was caused due to the bullet fired by the accused person from the fire arm as seized in this case (MAT Exbt-I).

CONCLUSION :

Before concluding, I would like to sum up the entire discussion. The charge sheet has been filed against three accused persons namely, Choto Matal @ Rejaul Laskar, Emadul Sanpui @ Happu and Musiyer Sanpui @ Palan. But the present trial is only against the accused Choto Matal @ Rejaul Laskar as the two other persons named in the charge sheet were found absconding and were declared proclaimed offenders. The said accused Rejaul Laskar @ Choto Matal is only facing the instant trial. Charge u/Sec. 448/326/307/387/201/34 of the I.P.C, along with Sec 25/27 of The Arms Act, 1959, was framed against him.

I. Section 448 of Indian Penal Code deals with the punishment for house-trespass.

The provisions as laid down in the aforementioned Section is that Whoever commits house-trespass shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

It is the prosecution case that the accused Rejaul Laskar @ Choto Matal entered into the shop of the Complainant/Victim at about 8.15 pm on 05.03.2023 at the time when the said shop was being closed by its owner and demanded money. PW5 and PW6 both have corroborated the said fact in their evidence. As per the definition of Criminal Trespass as defined u/S 441 of I.P.C, whoever, enters into or upon property in the possession of another with intent to commit an of-



fence or to intimidate, insult or annoy any person in possession of such property, or having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offense, can be termed as Criminal Trespass. From the facts and circumstances of the present case, it can well be inferred that the accused person has unauthorizedly entered into the shop at the time of its closure in order to commit an offense. The proof relating to it is sufficient to hold the accused Rejaul Laskar @ Choto Matal guilty of the alleged offence u/S 448 of I.P.C.

II. Section. 387 Putting person in fear of death or grievous hurt, in order to commit extortion :

The provisions as laid down in the aforementioned Section is that, whoever in order to the committing of extortion, puts or attempts to put any person in fear of death or of grievous hurt to that person or to any other, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

As alleged by the prosecution the accused person facing the trial had the habit of demanding money from the complainant for the purpose of organizing sports and also used to threaten the complainant and his brother that if the money is not paid they will be murdered. It has also been alleged that on the date of incident on 05.03.2023 at about 8.15 p.m. the said accused came into the shop of the complainant and demanded money and when the complainant refused to pay the demanded money the accused fired at him. PW 5 the brother of the complainant also being the eye witness of this case has stated in his evidence that the said accused is known to him as he used to demand money and used to threaten him to commit their murder. He further stated that at about 8.00 p.m. when he along with his two staffs were arranging salable articles before closure of the shop the accused enter into the shop and demanded a lump sum amount of money from his brother which he could not fulfilled as such he fired at his brother. Almost similar version has been stated by PW6 the victim himself who in his evidence has stated that on



05.03.2023 at about 7.45 to 8.00 p.m. the accused entered into his shop wearing a red coloured dress and after having a brief conversation with the Victim standing at the cash fired at him. He also has stated that the accused had the habit of extortion of money as he had done so in the past. The CCTV Footage (Exbt P11/W5) duly supported by Certificate u/S 65B of I.E Act (Exbt P10/W5) also revealed about the entry of the accused person into the shop wearing a red coloured dress (MAT Exbt-V). the CCTV Footage was devoid of any audio. But it can be seen the accused person to be talking to the victim for a short time and then firing at him. Even PW4 Asmat Sanpui owner of adjoining shop during his evidence has admitted that he along with others have asked the authority for punishment of the accused person for the wrong he has committed. The evidence as adduced clearly suggest that the purpose of the accused person for entering the shop was extorting money and for non fulfillment of such demand the accused person has committed the offense. Being satisfied with the evidence as discussed above the accused person namely Rejaul Laskar @ Choto Matal is convicted u/S-387 of Indian Penal Code.

III. Section. 326 Voluntarily causing grievous hurt by dangerous weapons or means :

The provision as laid down under this Section is that whoever, except in the case provided for by section 355, voluntarily causes grievous hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance, or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

IV. Section. 307 Attempt to Murder :

The present provision essentially demands that whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten



years, and shall also be liable to fine; and, if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life, or to such punishment as is hereinbefore mentioned.

The essential ingredients to attract Section 326 of I.P.C are : (1) voluntarily causing a hurt; (2) hurt caused must be a grievous hurt; and (3) the grievous hurt must have been caused by dangerous weapons or means.

Grievous Hurt has been defined in Section 320 of I.P.C.

"320 Grievous Hurt - The following kinds of hurt only are designated as "grievous"- First - Emasculation.

Secondly - Permanent privation of the sight of either eye.

Thirdly - Permanent privation of the hearing of either ear.

Fourthly - Privation of any member or joint. Fifthly - Destruction or permanent impairing of the powers of any members or joint.

Sixthly - Permanent disfiguration of the head or face. Seventhly - Fracture or dislocation of a bone or tooth. Eighthly - Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits."

On scanning the evidence, it is evident that the complainant who is also the victim of this case has spoken about the injury on the right side of his chest caused due to bullet fired by the accused Rejaul Laskar @ Choto Matal. It has been specifically stated by PW 6 the victim himself in his evidence that on 05.03.2023 at about 7.45 to 8.00 p.m. the said accused had entered into his shop and demanded Rs.5,000/- cash from him which he had refused. The accused was standing about 3 hands away from him and he suddenly took out a pistol from his waist and after he had missed once he fired for the second time on his right chest. The bullet hit him on the right rip cage causing bleeding injury. He thereafter chased the accused and near the door of the shop he caught hold of the accused and asked him with folded hands as to why he fired at him. In the evidence the said witness also had stated that at the time of evidence his brother was standing at the court yard of the shop. The said brother of the victim has been examined as PW5 by the prosecution. It was stated



by Sushil Kumar Saha (PW5) that on the relevant day on 05.03.2023 at about 8.00 p.m. the accused person namely Rejaul Laskar @ Choto Matal entered into their shop and demanded a lump sum money from the complainant and when his brother refused to pay the demanded amount the accused took out a gun from his waist and fired a bullet at the rib cage of his brother. There after Choto Matal came out of the shop and he saw bleeding injury on the right side of the chest of his brother. The version of PW5 therefore leaves no scope for any doubt about the gun shot injury caused by the accused persons upon the victim. There is clear corroboration of the fact alleged by the complainant by his brother. Even the CCTV footage of the P.O. (ExhibitP11/W5) reveals the similar incident that the accused Choto Matal entered into the shop wearing a red coloured dress and there after open fired at the complainant. The medical documents marked (Exhibit P2/W1) also shows the truthfulness of the version of the complainant as it reveals about the bullet injury sustained by Nikhil Kumar Saha on his right chest. Though no exit wound could be found as per the medical document but the bullet as fired by the accused person is found to have been stuck inside the body just beside the spinal cord. The expert evidence (PW3) shows that he has prepared the report after examining the fire arm (MAT Exhibit-I) seized from the accused person. It is worth mentioning that the complainant has also stated that after being shot he chased the accused and caught hold of him when the accused took a bomb and threw at the shop pointing towards the victim. It has already been discussed above that the evidence relating to explosion of bomb is insufficient and cannot be relied upon.

In the light of the discussion as held here in above it can be conclusively inferred that the accused had fired bullet pointing towards the accused causing the bleeding injury. The evidence of PW1 and PW2 who are the treating doctors have narrated about the gun shot injury sustained by the Victim. It has also been stated by PW1 that the patient is still having the bullet inside his body stuck near the Spinal Cord and any attempts made to take out the bullet may be fatal. Even the victim has also stated that he still suffers from pain and cannot walk straight. The



nature of injury caused the victim therefore attracts the provision of Section-326 of the Indian Penal Code.

While considering the provision of Section-307 of I.P.C it is essentially to be seen as to whether there were any intention and knowledge on the part of the accused person to commit murder of the victim. It has been found from the evidence of PW6 that the witness has stated that after being shot he followed the accused person and near the door of the shop he asked the accused why he fired at him to which the accused stated that he wanted to commit his murder. More over when a bullet is fired pointing towards a person such act automatically indicates towards the intention of the person to commit murder. The appellant is, thus, guilty of an act, the likely consequences of which including causing fatal injuries to the person being in a close circuit, are attributable to him. In the present case as the accused has already proved to have fired bullet at the victim Nikhil Kumar Saha pointing towards his chest, so there remains minimum doubt as to the intention of the accused to commit murder of the victim.

The accused person therefore is guilty of the offense punishable u/S-326/307 and is convicted u/S-326 and 307 of the Indian Penal Code.

V. According to section 25 (1a) of the Arms Act: Whoever manufacture, obtains, procures, sells, transfers, converts, repairs, tests or proves or exposes or offers for sale or transfer, or has in his possession for sale, transfer, conversion, repair, test or proof, any arms or ammunition in contravention of section 5, shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years, and shall also be liable to fine. (Before amendment of the Arms (Amendment) Act,2019.

According to 27 of the Arms Act Punishment for using arms, etc-1) whoever uses any arms or ammunition in contravention of section 5 shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to 7 years and shall also be liable to fine. 2) Whoever uses any prohibited arms or prohibited ammunition in



contravention of section 7 shall be punishable with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life and shall also be liable to fine 3) Whoever uses any prohibited arms or prohibited ammunition or does any act in contravention of section 7 and such use or act results in the death of any other person shall be punishable with imprisonment for life, or death and shall also be liable to fine.

It is to be seen in this regard as to whether the accused person can be held guilty under the above provisions. At the very outset it is to be mentioned that the I.O was accorded permission by D.M., South 24-Paraganas for proceeding with the investigation and filing the charge sheet under the provisions of Arms Act. The said sanction order has been marked as Exhibit P21/W7. As per the case of the prosecution, it is the accused person who was in possession of a fire arm along with cartridge and he open fired at the victim inside his shop. This fact has corroborated both by the victim (PW6) and the eye witness (PW 5). Even the CCTV footage (Exhibit P11/W5) also revealed that the accused was in possession of a fire arm which he took out from his waist and fired at the victim. The fire arm was recovered from the house of the accused and was subsequently seized by the I.O. and exhibited as MAT Exhibit-I in the present case. PW 4 is the resident of the village of the accused person and he identified the house of the accused to the I.O. The said witness in his evidence has stated that the fire arm was recovered and seized from the house of the accused in his presence. He has also identified his signature over the seizure list marked as Exhibit P7/W4 and he also has identified his signature over the label attached to the fire arm. The evidence as discussed above therefore leaves no scope for any doubt that the accused was in possession of one country made fire arm illegally without having any valid document and he had used the same for firing at the victim of this case. The accused therefore can be held liable for the offense committed u/S-25/27 of Arms Act and therefore is held guilty of the alleged offense. The accused person is therefore convicted u/S-25/27 of Arms Act.



In view of the foregoing reasons, the conscience of this Court is completely satisfied that the prosecution has been able to prove the case beyond the shadow of all reasonable doubt against the accused Rejaul Laskar @ Choto Matal regarding the commission of offence punishable under Section 448/387/326/307/34 IPC and under Section 25/27 Arms Act.

Hence, it is

ORDERED

that the accused person namely Rejaul Laskar @ Choto Matal is hereby convicted under Section 448/387/326/307/34 IPC. The said accused person is also convicted and under Section 25/27 Arms Act.

Let a copy of this judgement be given to the accused person free of cost immediately. A copy the judgment be also sent to the Secretary, DLSA, South 24 Parganas at Alipore for information and taking necessary action as per law.

Also send a copy of this judgement to the District Magistrate and Collector, South 24 Parganas at Alipore as per the provision of section 365 of CRPC.

The aforesaid convict is in custody and he will be heard on tomorrow, i.e. 19.03.2026 on the point of sentence as per the provision of section 235(2) Cr.PC. Accused person to be produced on 19.03.2026.

Dictated & Corrected by me:

Sd/-

Additional District & Sessions Judge,
Fast Track, Court – I,
Diamond Harbour.

Sd/-

Additional District & Sessions Judge,
Fast Track, Court – I,
Diamond Harbour.



Sessions Case Number : 201 of 2023

Unique Case ID Number : WBSP100017892023 (CIS : 201/2023)

Case No. ST 01(02)2024

ORDER ON SENTENCE

Dated : 19.03.2026

1. The abovenamed convict was convicted for offence punishable under Section 448/387/326/307/34 IPC. The said accused person is also convicted and under Section 25/27 Arms Act vide judgment dated 18.03.2026.

2. I have heard the submissions of Ld. Defence Counsel on the point of sentence. It has been contended that in the illustration of S 308 of I.P.C. it has been mentioned that A, on grave and sudden provocation, fires a pistol at Z, under such circumstances that if he there by caused death he would be guilty of culpable homicide not amounting to murder. A has committed the offence defined in this section. It was pointed out that due to the lack of Audio it could not be seen about the provocative circumstances under which the accused person was compelled to fire at the victim. At the time of passing sentence such mitigating factor must be taken into consideration, as the purpose of imposing punishment is also to give an opportunity to the accused person to rectify himself so that he can lead a better life in future. The Ld Defence Counsel in support of his contention has also relied upon the decision of Hon'ble Apex Court in "Jameel Vs State of U.P 2010(12) SCC 532".

3. It was held in para 24 which read as under :

"24. These are some factors which are required to be taken into consideration before awarding appropriate sentence to the accused. These factors are only illustrative in character and not exhaustive. Each case has to be seen from its special perspective. The relevant factors are as under:
a) Motive or previous enmity;



- b) Whether the incident had taken place on the spur of the moment;
- c) The intention/knowledge of the accused while inflicting the blow or injury;
- d) Whether the death ensued instantaneously or the victim died after several days;
- e) The gravity, dimension and nature of injury;
- f) The age and general health condition of the accused;
- g) Whether the injury was caused without pre- meditation in a sudden fight;
- h) The nature and size of weapon used for inflicting the injury and the force with which the blow was inflicted;
- i) The criminal background and adverse history of the accused;
- j) Whether the injury inflicted was not sufficient in the ordinary course of nature to cause death but the death was because of shock;
- k) Number of other criminal cases pending against the accused;
- l) Incident occurred within the family members or close relations;
- m) The conduct and behaviour of the accused after the incident. Whether the accused had taken the injured/the deceased to the hospital immediately to ensure that he/she gets proper medical treatment?

4. It was also submitted that the convict is young and has family consisting of wife and children. There is no previous criminal record of the accused person. A prayer for a lenient view is made by Ld. Defence Counsel in the light of the aforesaid circumstances stating that the same may be kept in consideration and a lenient view may be taken.



5. The State on the other hand has contended that having regard to the gravity of offence proved to have been committed by the convict, there is no scope for any leniency. It was pointed out that the imprisonment for life has been inserted into Section 326 of I.P.C and also u/S 307 of I.P.C purposefully by way of amendment as the legislatures felt the need to do so, considering the earlier period of imprisonment to be insufficient. He has also relied upon the observation of Hon'ble Supreme Court as reported in 'State of Punjab' -Vs Bira Singh 1995 SCC(CRI)1152 and 'State of Madhya Pradesh' Vs Surendra Singh AIR 2015 Supreme Court 398 wherein it was observed by Hon'ble Apex Court in 'State of Punjab' Vs Bira Singh that "the trial let off Bira Singh by giving him the benefit of probation of offenders Act. In our opinion, it was misguided leniency shown to Respondent no1 Bira Singh. Such leniency in the matter of sentence encourages a criminal and the society suffers. The Courts must strike a proper balance while awarding sentence. The trial Court should have imposed appropriate sentence.

6. In 'State of Madhya Pradesh' Vs Surendra Singh it was held by Hon'ble Court that undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law. It is the duty of every Court to award proper sentence having regard to the nature of offense and the manner in which it was executed or committed. The sentencing Court are expected to consider all relevant facts and circumstances bearing on the question of sentence and proceed to impose a sentence commensurate with the gravity of the offense. The Court must not only keep in view the rights of the victim of the crime but also the society at large while considering the imposition of appropriate punishment.

7. I have considered the rival submissions made on the point of sentence.

8. Considering the aforesaid submissions from both sides, the family circumstances of the convict, and perusing the case record, I consider it proper to award a substantive sentence upon the convict.



9. The object of sentence is not only to punish the accused for the condemnable act that he has committed but also to deter the criminal in achieving the avowed object to law by imposing appropriate sentence. To show mercy in the case of such a serious crime would be a travesty of justice and the plea for leniency is wholly misplaced. Undue sympathy to impose an 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.

10. In the present case the accused person has been held guilty for the offence u/S-387 of I.P.C. It is for the purpose of extortion the accused had entered into the shop and after having a brief conversation he fired at the victim pointing towards his chest. No evidence is found that there has been a grave provocation that compelled the accused to fire at the victim. I therefore differ from the submission of the Ld. Defence Counsel that there has been a grave provocation which instigated the accused to commit such offense. Rather the manner in which the offense has been committed clearly shows that the offense has been committed cold bloodedly with the intention to commit murder. This is a glaring example where bullet was fired at the victim pointing towards his chest and undoubtedly it indicates towards the intention to commit murder. The victim in this case has survived accidentally and in normal circumstances if a person gets shot at his chest he has almost no chance of survival. It is undoubtedly an appropriate case for an offense u/S-307 of IPC committed without any provocation or out of rage. Any type of leniency if shown to the accused in the present circumstances, in my opinion, will undermine the legislative intention in inserting the punishment of life imprisonment through amendment. The purpose of enacting the provision may also get vitiated. I therefore is inclined to impose substantial sentence as laid down in the provisions of law.

11. Having regard to the totality of circumstances and in the light of the discussion as made hereinabove, I think it prudent to pass the following Sentence.



The convict Rejaul Laskar @ Choto Matal is sentenced u/S 235(2) CrPC to suffer

1. Rigorous Imprisonment for life and Fine of Rs 20,000/- for the offence under Section 307 of Indian Penal Code, in default to suffer S.I for 5 months,
2. Rigorous Imprisonment for 10 years and fine of Rs 15,000/- for offence punishable under Section 326 of Indian Penal Code, in default to suffer S.I for 4 months,
3. Rigorous Imprisonment for 5 years and fine of Rs 10,000/- for offence punishable under Section 387 of Indian Penal Code, in default to suffer S.I for 3 months,
4. Simple Imprisonment for 5 months and fine of Rs 500/- for the offence punishable under Section 448 of Indian Penal Code, in default to suffer S.I for 1 month,
5. Simple Imprisonment for 1 years and fine of Rs 3000/- for offence punishable under Section 25 of Arms Act, in default to suffer S.I for 1 month,
6. Rigorous Imprisonment for 5 years and fine of Rs 10,000/- for offence punishable under Section 27 of Arms Act, in default to suffer S.I for 5 months.

Period of detention, already undergone, in connection with this case, will be set off as per the provision of S 428 of CrPC.

A copy of this judgment be handed over to the convict free of cost.

The convict is informed in open court in Bengali language about his right to prefer appeal against this judgment and that he has the right to avail legal aid for filing the said appeal by taking assistance of the District Legal Services Authority South-24 Parganas.



The Secretary DLSA South 24-Parganas is also directed to take proper steps so that the convict can file appeal from the J/C by taking legal aid, if required.

Dictated & Corrected by me:

Sd/-

Additional District & Sessions Judge,
Fast Track, Court – I,
Diamond Harbour.

Sd/-

Additional District & Sessions Judge,
Fast Track, Court – I,
Diamond Harbour.