

**(2019) 06 CAL CK 0044**

**In the Calcutta High Court**

**Case No :** Criminal Appeal (CRA) No. 139, 159 Of 2007

Ashim Sarkar & Anr And Others

APPELLANT

Vs

State Of West Bengal And Others

RESPONDENT

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**Date of Decision :** 28-06-2019

**Acts Referred:**

Indian Penal Code, 1860 — Section 148, 149, 302, 307, 326  
Arms Act, 1959 — Section 25, 27  
Evidence Act, 1872 — Section 9(b)  
Code Of Criminal Procedure 1973 — Section 161, 311, 313

**Citation :** (2019) 06 CAL CK 0044

**Hon'ble Judges :** Md. Mumtaz Khan, J;Tirthankar Ghosh, J

**Bench :** Division Bench

**Advocate :** Milon Mukherjee, Debasish Roy, Jaydeep Biswas, Soumyadeep Das,  
Md. Ashraf Ali, Sabnam Laskar, Ranabir Roy Chowdhury, Narayan Prasad Agarwal

**Final Decision :** Dismissed

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## **Judgement**

Tirthankar Ghosh, J

The two appeals CRA 139 of 2007 and CRA 159 of 2007 have been preferred against the judgement and order of conviction dated 7.2.2007 and

sentence dated 9.2.2007 passed by the learned Additional District & Sessions Judge, 12th Court, Alipore, 24 Parganas South, in Sessions Trial

No.01(04) 2004 arising out of S.C No.95 (01) 2004 in connection with B.G.R. Case No.2582/2001 corresponding to Sonarpur P.S. Case No.174/2001

dated 7.8.2001, wherein, the learned Trial Court was pleased to convict the appellants under Section 148 of the Indian Penal Code, Section 307 read

with Section 149 of the Indian Penal Code, and Section 302 read with Section 149 of the Indian Penal Code and sentenced them to suffer rigorous

imprisonment for two years and pay fine of Rs. 1000/- (One Thousand) i.d. to

suffer rigorous imprisonment for two months for offence punishable under Section 148 of the Indian Penal Code; further sentenced them to suffer rigorous imprisonment for seven years and to pay fine of Rs. 1500/- (One Thousand Five Hundred) i.d. to suffer rigorous imprisonment for six months for offence punishable under Section 307 read with Section 149 of the Indian Penal Code; further sentenced them to suffer imprisonment for life and to pay fine of Rs. 2000/- (Two Thousand) i.d. to suffer rigorous imprisonment for six months for the offence punishable under Section 302 read with Section 149 of the Indian Penal Code.

The prosecution case was initiated on the basis of a written complaint filed by one Dulal Sanpui (PW-2) with the officer-in-charge Sonarpur Police

Station to the effect that on 6.8.2001 at about 7 pm when he was sitting at a bench in front of Kathpol Trinamool Congress Party office, he saw that

Ashim Sarkar, Gour Mandal, Naru Saha, Bibhas and another four persons coming from Sonarpur side and entering inside Kathpol Trinamool Congress

Party office. He further alleged that Jyotish Sardar and Netai Naskar (PW-1) sustained bullet injuries on being fired by the aforesaid persons who

thereafter continuously went on hurling bombs and firing from their revolver, the local residents as a result scattered in all directions out of panic and

the miscreants proceeded towards Sonarpur and on the way they shot Nirranjan Sardar and also stabbed him with a dagger. The miscreants thereafter

fled away through the crossing of Padma Madhu by hurling bombs.

On the basis of the aforesaid complaint, Sonarpur P.S. case no.174 dated 7.8.2001 was registered for investigation under Sections

148/149/326/307/302 of the Indian Penal Code and Sections 25/27 of the Arms Act and Section 9 (b) of I. E. Act. The case was endorsed to PW 12

for investigation. Thereafter, the investigating officer (PW-12) on completion of investigation submitted charge-sheet under Sections

148/149/326/307/302 of the Indian Penal Code on 30.9.2002.

On 26.4.2004 charges were framed against the appellants under Section 148 of the Indian Penal Code, Section 307 read with Section 149 of the

Indian Penal Code and Section 302 read with Section 149 of the Indian Penal Code. The charges so framed were read over, to the appellants to

which, they pleaded not guilty and claimed to be tried.

The criminal appeal being CRA 139 of 2007 was preferred by Ashim Sarkar and

Provash Sarkar. During pendency of the appeal appellant Provash

Sarkar expired and accordingly appeal abated against him and proceeded against the rest.

The Prosecution in order to prove its case relied upon 12 witnesses and number of documents. The witnesses who appeared in support of the

prosecution case are PW-1 injured witness, PW-2 defacto complainant, PW-3 police constable, PW-4 son of the deceased Niranjana Sardar, PW-5

villager, PW-6 Post-mortem doctor, PW-7 eye witness, PW-8 ASI of Police who recorded the FIR, PW-9 scribe, PW-10 eye-witness, PW-11 Doctor

who treated PW-1 and PW-12 Investigating officer of the case.

The defence case is one of innocence and false implication because of political rivalry.

The learned Judge after conclusion of prosecution evidence examined the appellants under Section 313 of the Code of Criminal Procedure and after

hearing the arguments arrived at a finding of guilt, thereby convicting the appellants by judgement and order dated 7.2.2007 and 9.2.2007 and

sentencing them, as aforesaid.

Mr. Milon Mukherjee, learned Senior Counsel appearing for the appellant Basudev Mondal in CRA 159/2007 submitted that the appellant has been

falsely implicated in this case out of political vendetta. He substantiated his submission by drawing attention of the Court to the written complaint

which was initially filed with the police authorities, wherein the appellant was not named and emphasized that the charge framed was defective. He

added that in the sketch map although saloon of Kartick Pramanick and building material shop of Samar Mondal was shown, they were not examined

by the investigating officer of the case, the injured Netai Naskar (PW-1) although he was admitted in the hospital for a considerable period of time yet

he did not name the appellant Basudev Mondal, there were embellishments in the statement of the witnesses/eye-witnesses and there were major

contradiction with reference to their previous statements in writing. He challenged the truthfulness and trustworthiness of PW-1 and PW-2 and

questioned the credibility of PW-6 and PW-10, he submitted the witness PW-10 not being named in the charge-sheet as a witness was surprisingly

examined in support of the prosecution case. Lastly he concluded that taking into account the prosecution evidence as a whole there is no scope to

convict the appellant Basudev Mondal and the learned Trial Court has relied upon conjectures and surmises to arrive at the finding of guilt.

Mr. Asraf Ali, learned Advocate appearing for the appellant in CRA 139/2007 submitted that he would adopt the arguments of Mr. Milon Mukherjee,

learned Senior Advocate appearing on behalf of the appellant, Basudev Mondal, he further added that appreciation of multiple FIRs, implication due to

political rivalry, non-seizure of blood stained wearing apparels etc., trustworthiness of prosecution witnesses, sketch map, doubt about place of

occurrence and suppression of facts to save the real culprit, would weigh in favour of acquittal of the appellant.

Mr. Ranabir Roy Chowdhury, learned Counsel appearing for the State refuted the submissions of the counsel for the appellants, supported the

judgement of the court below and submitted that the prosecution has fully proved the guilt by consistent oral evidence, documentary evidence and

medical evidence on record. The ring of truth attached to the prosecution version after conclusion of evidence unerringly point towards the guilt of the

appellants and so there is no illegality in the judgement and order of conviction and sentence passed by the learned Trial Court.

Having due regard to the submissions made by the learned Advocates appearing for the respecting parties, we think the evidence as presented in the

Trial Court should be scrutinised.

PW-1, Netai Naskar is a resident of village Jagadishpur, he deposed that on 6.8.2001 at about 19.20 hours an incident occurred near Sitala More

under P.S. Sonarpur, at that time he along with Jyotish Sardar and Sankar Mondal were present inside the Trinamool Congress Party Office. He

noticed that Basudev Mondal, Ashim Sarkar and Provash Sarkar along with 5/6 others were entering the party office, accused Basudev Mondal and

Ashim Sarkar had revolver with them while Provash Sarkar had a Pipe gun with him and other 5/6 persons had bombs and deadly weapons in their

hand. Basudev Mondal fired at Jyotish Sardar. Ashim Sarkar fired towards him which caused bullet injury on the right side of his face i.e. just by the

side of his right ear. He became senseless and regained senses at S.S.K.M. Hospital. He came to know from Sankar Mondal and Tapas Sardar that

Niranjan Sardar was stabbed and was also shot by opening fire, which resulted in his death. He identified the accused Basudev Mondal, Ashim Sarkar

and Provash Sarkar. He was treated at Medical College and Hospital, Calcutta after being released from S.S.K.M Hospital. In cross-examination he

gave description of the party office and the nearby shops located therein, he stated that he did not speak with his brother at the hospital and after 8 to

10 days of the occurrence police approached him. He further deposed that he had stated to the police that Sankar Mondal was inside the Party office

and 5/6 persons were standing outside the party office room with bombs and deadly weapons. He reiterated that the accused Basudev Mondal fired at

Jyotish Sardar. He further stated that he was examined by the police authorities at S.S.K.M. Hospital and denied the suggestion on behalf of the

accused person that no occurrence had taken place.

PW-2, Dulal Sanpui is a resident of Jagadishpur, P.S. Sonarpur. He deposed that on 6.8.2001 at about 7.30 p.m. an incident occurred inside the TMC

Party office at Sitala More under Sonarpur P.S., when he was sitting in a wooden bench in front of the saloon which is adjacently south of the TMC

party office. At that time Netai Naskar, Jyotish Sardar, Sankar Mondal were present inside the party office. Accused Basudev Mondal, Ashim

Sarkar, Provash Sarkar entered the party office and thereafter he heard two sounds of firing. After hearing the sound he fled away and took a sit at

the tea stall of Netai Mondal. While he was sitting at the tea stall he saw that Niranjana Sardar was stabbed with a bhojoli by Provash Sarkar and

Ashim Sarkar fired at Niranjana Sardar. He identified the accused Basudev Mondal, Provash Sarkar and Ashim Sarkar in Court. He stated that he had

submitted written complaint at Sonarpur Police Station in respect of the aforesaid incident and put his LTI therein. The written complaint according to

him was written by Krishna Mastermasai as per his instruction and the contents were read over and explained to him. He stated that Niranjana Sardar

was lying under the lamp post at Sitala More. He deposed that after two hours he came back to Party office and found the dead body of Jyotish

Sardar and that Netai Naskar was lying in an injured condition. In cross-examination he stated that the party office is situated at a distance which

takes 25 minutes from his house. He denied that at the time of drafting the written complaint Netai Naskar, Niranjana Sardar or Jyotish Sardar were

present before him, however he stated that at the time of drafting the complaint Krishna Master, secretary and president of the party office and other

members were present. He stated that he had inserted the date 7.8.2001 in the written complaint. He deposed that he did not refer in the written

complaint that Gour Mondal, Naru Saha, Bibhas Saha, Subho, Bikash and 4/5 others by forming an unlawful assembly entered into the party office

after coming from Sonarpur side. He stated that he along with Jyotish, Netai, Niranjan, Dulal, Meghnath Naskar, Meghnath Mondal, Tapas Sardar,

Susanta Naskar, Manik Sardar, Joydeb Mondal are either secretary, members or president of the TMC party office of the local area. He stated that

he had no opportunity to know reason of the visit of the accused persons at the party office and they did not raise any alarm before entering the party

office. According to him there was a huge gathering at the place of occurrence and due to firing and hurling bombs, the local shop owners closed their

shops. He denied the suggestion that no occurrence had taken place on the alleged date and time.

PW-3, Anath Mondal is a Constable of police attached to Canning Police Station. On 7.8.2001 he was posted at Sonarpur Police Station and on that

date at about 7.15 hours, he took the dead body of Jyotish Sardar from Life Line Nursing Home to Mominpur Police morgue under a challan. He

identified the carbon copy of the challan which has marked as Exhibit-1. He also identified the dead body of Jyotish Sardar before the autopsy surgeon

on 7.8.2001.

PW-4, Tapas Sardar, resident of Gashiara, P.S. Sonarpur. He is son of late Niranjan Sardar. His evidence relating to the occurrence is hearsay and

the same was derived from Dulal Sanpui (PW-2) and Sankar Mondal (PW-10). He came to know that Sankar Mondal, Netai Naskar and Jyotish

Sardar were inside the party office on 6.8.2001 at about 19.00/19.30 hours. He came to know from Sankar Mondal that Basudev Mondal, Ashim

Sarkar and Provash Sarkar had entered the party office. He further came to know that Jyotish Sardar also died after sustaining bullet injury and Netai

Naskar sustained injury on the right side of his face near the ear and fell down on the ground. He was further informed that accused Ashim Sarkar

fired aiming at Niranjan Sardar and the accused Provash Sarkar stabbed Niranjan Sardar with bhojali near Sitala More. He visited the party office

after arrival of R.A.F at about 22.30 hours. He was witness to the inquest report which was prepared in his presence in respect of the deceased

Jyotish Sardar at Life Line Nursing Home. He identified his signature on the carbon copy of the inquest report which was marked as Exhibit-2. He

also identified his signature in the inquest report which was written by one doctor of M.R. Bangur Hospital in respect of Nirranjan Sardar, which was

marked as Exhibit-3. He identified the accused Basudev Mondal, Ashim Sarkar and Provash Sarkar in Court. In cross-examination he stated that he

lodged verbal complaint with the police, further on 28.8.2001 his statement was recorded by the police officer. He denied of having stated to the police

that several time meetings were held at the party office and one week before the date of occurrence there was a reconciliation meeting at party office

presided over by Jyotish Sardar, Netai Naskar, Nirranjan Sardar over the dispute of accused Ashim Sarkar, Provash Sarkar and the son of Ashim

Sarkar. He acknowledged that he did not tell the investigating officer that he derived his knowledge of the occurrence from Sankar Mondal. He also

stated that he had told the police there was a dispute between Ashim Sarkar and his wife. He stated that he saw the dead body of his father but he

was not allowed by the gathering to touch his body. He further stated that after departure of R.A.F. he noticed the cycle, the chappal of his father, the

wrist watch and fountain pen at the place of occurrence. He denied that he identified the accused Basudev Mondal after seeing him in dock.

PW-5, Susant Naskar is a resident of Nona Jagadispur, P.S. Sonarpur. He has been declared hostile.

PW-6, Dr. Parag Baran Paul, an Assistant Professor, Department of Forensic State Medicine, Bankura Sammilany Medical College & Hospital,

Bankura. On 7.8.2001 he was attached to Alipore Police morgue as ACMOH, Medicolegal. On 7.8.2001 he conducted the post-mortem on the dead

body of Jyotish Sardar at about 2 p.m. and on the same date at about 3.30 p.m. he conducted post-mortem on the dead body of Nirranjan Sardar.

In respect of Jyotish Sardar, he observed the following injuries:

i. Wound of entry: One perforating gunshot injury of size  $\frac{1}{2}$  x  $\frac{1}{2}$  more or less oval in shape with reddish margin, with abrasion  $\frac{1}{2}$  surrounding it, with tattooing over  $\frac{3}{2}$  X  $2\frac{1}{2}$  area surrounding it.

ii. Wound of exit: one exit wound of gunshot of size  $1\frac{1}{2}$  x  $1\frac{1}{2}$  more or less circular in shape, with evidence of protrusion of fat and profuse bleeding from it.

iii. Direction of the entire wound: upwards, forwards and left to right.

He identified the carbon copy of the post-mortem prepared and signed by him and the same was marked as Exhibit-4. He opined that the presence of tattooing in the dead body of Jyotish Sardar indicated fire was opened from a near range.

In respect of Niranjana Sardar he observed the following injuries:

i. a. Wound of entry: one wound of entrance of gunshot of size 1/2"x1/2" more or less oval in shape with reddish margins with abrasion 0.2" surrounding it.

ii. b. Wound of entry: one wound of entrance of gunshot of size 1/2"x1/2" more or less oval in shape with reddish margins with abrasion 0.2" surrounding it.

iii. Wound of exit: Exit wound of gunshot of size 1"x1" more or less circular in shape with no evidence of abrasion around.

iv. Direction of the entire wound: Depicted in injury nos.2 & 3, upwards, forwards and left to right.

iv. a. One lacerated wound 2"x2" x muscle over the anterior aspect of left wrist joint.

b. One lacerated wound 1" x 1/2" muscle over the anterior aspect of right forearm 3" above the right wrist.

He identified the carbon copy of the post-mortem which was prepared and signed by him and the same was marked as Exhibit-

5. He opined that gunshot was made from a distant range (at a distance of more than 6 ft. from the deceased). In cross-examination he stated that

due to profuse bleeding of the patient Jyotish Sardar and Netai Naskar, he expected the place where the gunshot injuries were made would be stained

with blood. He denied the defence suggestion that he did not cause any post-mortem on the dead body properly. He stated that the type of bullet and

type of firearm used can be opined by a ballistic expert.

PW-7, Joydeb Mondal, is a resident of Nona Jagadisapur, P.S. Sonarpur. He identified Basudev Mondal, Provash Sarkar, Ashim Sarkar in Court. He

deposed that at about 7.20 p.m. on 6.8.2001 he was returning to his house in a bicycle through Narayanpur Road, New Radha Nagar Van stand, when

he found that the accused Basudev Mondal, Provash Sarkar, Ashim Sarkar and 3/4 unknown persons were returning, carrying pipeguns and with

bombs in their hands. The accused hurled bombs towards him when he left his bicycle and ran towards a bush near the party office. On entering the party office he found Netai Naskar and Joytish Sardar profusely bleeding. Public assembled there and removed Joytish Sardar and Netai Naskar in a van rickshaw to Life Line Nursing Home. In cross-examination he denied the suggestion of not seeing the body of Netai Naskar and Jyotish Sardar lying in the party office with profuse bleeding. He admitted the fact that Indrajit Sarker son of accused Provash Sarkar had a long standing land dispute with Provash Sarkar and Ashim Sarkar and there was settlement meeting for the dispute of Indrajit in one hand and the accused Provash Sarkar and Ashim Sarkar on the other hand. He admitted that the relation between the CPIM and TMC party are at logger heads. He further stated that he took up Netai Naskar in a rickshaw for taking him to Life Line Nursing Home and denied taking Jyotish Sardar, he described the wearing apparels of Jyotish Sardar and Netai Naskar which they were wearing when they were lying at the floor of the party office. He deposed that he had informed the inmates of Jyotish Sardar's family regarding his death and he also informed inmates of Netai Naskar's family regarding his removal to S.S.K.M. Hospital. He denied the suggestion disclosing the name of accused Basudev Mondal at the instance of the police and also the fact that he had not been to any hospital.

PW-8, Buddhadeb Chakraborty, ASI of Police, was attached to Sonarpur Police Station on 7.8.2001. He filled up the formal FIR and signed the same on receipt of the written complaint from Dulal Sanpui and started Sonarpur P.S. case no.174 dated 7.8.2001, he identified the formal FIR and the same was marked as Exhibit-6. In cross-examination he stated that the endorsement of the written complaint was written and signed by the O.C., Sonarpur P.S., S.I. Pradip Kumar Roy, he identified the hand writing and signature which was marked as Exhibit-7. He also identified the endorsement on the written complaint which was marked as exhibit-7/1.

Â PW-9, Santu Mondal, resident of Saheber Abad, P.S. Sonarpur. He stated on instruction of Dulal Sanpui he wrote the written complaint on 7.8.2001 and after writing, the same was read over and explained to Dulal Sanpui, he thereafter put his LTI on the written complaint. He signed the written complaint as scribe, he identified the same which was marked as Exhibit-7/2, he

stated that he is also known as Krishna Master in the locality and he was not examined by the police in connection with this case. In cross-examination he stated that the written complaint was prepared at about 7/7.30 a.m., sitting near Sonarpur police station and after writing Dulal Sanpui submitted the same to Sonarpur Police Station.

PW-10, Shankar Mondal, resident of Nona Jagadishpur, P.S. Sonarpur. On 6.8.2001 at about 7/7.30 p.m. he was inside the party office and saw

accused Basudev Mondal, Ashim Sarkar and Provash Sarkar enter into the said party office and the accused Basudev Mondal fired at Jyotish Sardar,

when he and Netai Naskar tried to flee away. He stated that there are two exits of the party office, one in the North and other in the West. When he

and Netai Naskar tried to flee away, Ashim Sarkar fired at Netai Naskar. At that time he managed to flee away and hide in a bush in the house of

Arun Naskar. During this time he heard sound of firing for about 6/7 minutes. He identified the three accused persons in Court. In cross-examination

he stated that he was not examined by police. He is not a member or supporter of TMC but Jyotish Sardar and Netai Naskar are the supporters of

TMC party. His house is at a distance of about 2 minutes from the party office, he informed the relations of Jyotish and Netai vividly regarding the

occurrence. He stated that he deals with fish at Ganga Duara and Garia, he is not aware who has initiated the case and against whom. He denied the

fact that he was deposing falsely at the instance of Netai Naskar.

PW-11, Dr. Manoj Kumar Bhattacharyya, on 6.8.2001 he was head of the Department and Professor of Neuro Surgery at Bangur Institute of

Neurology and I.P.G.M. Bangur Institute of Neurology. He deposed that Netai Naskar was under his treatment at S.S.K.M. Hospital on and from

6.8.2001 to 6.10.2001, for suffering from bullet injury of Maxilla, he identified the informal discharge certificate signed by Dr. M. Chowdhury which

was marked as Exhibit-8, he also identified Xerox attested copy of case history of patient Netai Naskar, this was marked as Exhibit-9. Another copy

of discharge certificate of Netai Naskar was marked as Exhibit-10. According to him the patient Netai Naskar was admitted on 7.8.2001 in the

morning hours in the Edward Ward, he attended the patient and found tear in the right ear filled up with blood, the tempering membrane could not be

properly visualised, there was no nasal bleeding, no injury in the nose, throat

respiration was depressed. C.T. Scan was shown on 8.8.2001 and it was evidenced that there was a bone chip fragmented, collection in right maxillary antrum and left nasal cavity. C.T. Scan suggested bullet in front and behind C-2 vertebra with multiple bone chips injury to right posterolateral to right styloid process. Case history did not suggest that bullet was extracted from the body of the patient and is still lying in the body of the patient Netai Naskar. In cross-examination he deposed the patient made a statement before the attending doctor on 6.8.2001. He further stated that the patient was discharged at a stage of near cure but not completely cured.

The patient had no trouble in his brain and his conscious level was normal.

PW-12, Haradhan Saha is the investigating officer of Sonarpur P.S. case No.174 dated 7.8.2001. On being assigned investigation of the case he

visited the place of occurrence, drew rough sketch map index, recorded the statement of witnesses under Section 161 of the Code of Criminal

Procedure, recorded the statement of the victim Netai Naskar at S.S.K.M. Hospital, Kolkata, collected the injury report during the pendency of the

case, collected post-mortem report of Jyotish Sardar and Niranjana Sardar. He identified the rough sketch map index which was marked as Exhibit-11.

He also identified the original injury report which was marked as Exhibit-12. On completion of investigation he submitted charge-sheet against the

three accused persons namely Basudev Mandal, Ashim Sardar and Provash Sardar.

We have taken into consideration the material on record which reflects that two persons namely, Joytish Sardar and Niranjana Sardar were murdered

and Netai Naskar suffered an attempt on his life. Each of the victims sustained bullet injury in addition to that the victim Niranjana Sardar was stabbed

with a sharp cutting weapon.

Netai Naskar (PW-1) is an injured witness, who was there inside the party office when Jyotish Sardar and Sankar Mondal were present. It would not

be out of place to state that from the deposition of the doctor it is reflected that although he sustained bullet injury, but the bullet could not be

extracted. He was admitted in hospital for treatment from 6.8.2001 to 6.10.2001. His oral evidence cannot be brushed aside, he has categorically

deposed that on 6.8.2001 at about 19.20 hours when he along with

Jyotish Sardar and Sankar Mondal were present inside the party office, Basudev

Mondal, Ashim Sarkar and Provash Sarkar alongwith 5/6 persons entered inside the party office. According to him Basudev Mondal and Ashim Sarkar had revolver in their hand and Provash Sarkar was carrying a pipegun while 5/6 other person had bomb in their hand, Basudev Mondal fired at Jyotish Sardar while Ashim Sarkar fired on his face which caused bullet injury on the right side of his face i.e. just by the side of his right ear. PW-2, Dulal Sanpui deposed that when he was sitting on a bench he heard two sounds of firing, PW-10, Sankar Mondal stated that he was sitting inside the party office alongwith Jyotish Sardar and Netai Naskar when Basudev Mondal, Ashim Sarkar, Provash Sarkar entered in the party office with arms and Basudev Mondal fired at Jyotish Sardar and Ashim Sarkar fired at Netai Naskar when he tried to flee away. In our considered view the evidence taken as a whole reflects that so far as the persons sitting in the party office are concerned at the time of commission of the offence, the assailants who have been named are completely corroborated.

The issue which has been canvassed by the appellants are that Basudev Mondal was not named in the written complaint/FIR and Sankar Mondal (PW-10) is not a witness cited by the investigating officer in the charge-sheet or his statement has been recorded by the investigating officer. In order to address this issue the scenario existing subsequent to the incident in the vicinity of the place of occurrence is to be taken into consideration. The evidence of the witnesses reflect that unusual tension was prevailing at the locale and there was such deterioration in the law and order situation that the local police force were not able to control the same and Rapid Action Force had to be deployed. In fact there were suggestions from the side of the defence also that whether police vehicle was set at fire or not. Now, PW-2, Dulal Sanpui being the FIR maker was definitely in a state of shock being in the vicinity of the place of occurrence where a series of violent act has taken place and non-mentioning of name of Basudev Mondal as such do not dilute the prosecution case. Similarly PW-1, Netai Naskar was fighting for his life in hospital bed, as he himself sustained bullet injury in the right side of his face in such a manner that the doctors were unable to conduct any operation, further he had lost his vision in the right eye, under such circumstances his statement to the doctor/police cannot be scrutinised in a stiff manner.

It has been argued on behalf of the appellants that PW-10, Sankar Mondal although he was not named in the charge-sheet as a witness yet he has

been examined as a prosecution witness in the trial. In this regard it would be apposite to refer to the order dated 12.12.2005 passed by the learned

Trial Court, wherein after exhaustively dealing with the issue the learned Trial Court allowed the application under Section 311 of the Criminal

Procedure Code, relying upon the evidence of PW-1 and PW-2, who specifically named this witness. The accused persons cross-examined the PW-

10, but he remained unshaken, as such his evidence can be treated to be creditworthy and acceptable.

Non-examination of PW-10 by the investigating officer is of no consequence, as the investigation in the instant case was not conducted in a proper

manner, in fact the medical documents relating to the injuries sustained by PW-1 were collected in course of trial after the learned Public Prosecutor

took initiative. It is settled law that mere lapses on the part of the investigating officer itself cannot be a ground for acquitting the accused. If that is the

basis, then every criminal case will depend upon the will and design of the investigating officer. Interest of justice demands that such acts or omissions

of the officers of the prosecution should not be taken in favour of the accused, for that would amount to giving premium for the wrongs of the

prosecution designedly committed to favour the appellant. The law on this issue is well settled that the defect in the investigation by itself cannot be a

ground for acquittal.

In the case of a defective investigation the court has to be circumspect in evaluating the evidence.

The next issue relates to the prosecution version whether Basudev Mondal fired at Jyotish Sardar and Ashim Sarkar fired at Netai Naskar, from the

evidence of PW-1 and PW-10 it is seen that both of them were inside the party office and they have corroborated the version of firing.

The second murder which took place is that of Niranjana Sardar. PW-2 in his deposition stated that after fleeing away from party office he sat at a tea

stall at Sitala More and while he was sitting, he saw that Provash Sarkar stabbed Niranjana Sardar with a dagger and Ashim Sarkar fired at him from

his revolver. He further deposed that due to firing and stabbing Niranjana Sardar died at the spot. This part of the evidence relating to the murder of

Niranjan Sardar is identical to the narrations made in written complaint, Exhibit 7/2 and is corroborated by medical evidence so far as the nature of the injuries are concerned, reflecting in the PM report, Exhibit-5. Further PW-10 Sankar Mondal deposed that while he fled away from the party office and took shelter in a bush at the house of Arun Naskar he continuously heard the sound of firing.

The defence raised the issue of political rivalry, however no specific instance of politically implicating the accused persons have surfaced in course of cross-examination of the prosecution witnesses rather the motive is fortified by the defence suggestion that there was a property dispute between Ashim Sarkar and Provash Sarker on one side and the son of Ashim Sarkar, namely Indrajit Sarkar on the other side. The evidence do not suggest that there was any political rivalry rather dissatisfaction in respect of settlement dispute are more expressed in evidence.

An important aspect in the evidence of this case is that PW-1 survived even after sustaining bullet injury and his evidence as an injured witness assumes much more importance than any other witness, the defence could not in any way dislodge him from his version which has strengthened the prosecution case in respect of murder of Jyotish Sardar. So far as the evidence of PW-2 is concerned, relating to the murder of Niranjan Sardar, the same corroborates his earlier version in the written complaint.

The appellant's contention that the charge framed by the learned Trial Court is defective cannot be a valid contention at this stage of the case when the legal position has been settled to the effect that a mere defect in language or in the narration or in the form of the charge would not render a conviction bad in law if the appellant is unable to show that he has been affected because of such defect in charge.

The contention of the appellants relating to non-seizure of blood stained wearing apparels is of no consequence in the background of the facts and circumstances of the instant case and it would not be out of place to reiterate the settled principle of law that the function of a criminal court is to find out the truth and it is not the correct approach to simply pick up the minor lapses of the investigation and acquit the accused, particularly when the ring of truth is undisturbed. It is not every doubt but only a reasonable doubt of which benefit can be given to the accused. A doubt of a timid mind which is

afraid of logical consequences, cannot be said to be reasonable doubt.

The prosecution by way of cogent evidence has proved beyond all reasonable doubt the charges against the accused/appellants and as such there is

no scope for interference in the judgment and order of conviction passed by the learned Trial Court.

In view of the above discussions, both the appeals are dismissed and the impugned conviction and sentence are upheld.

A copy of the judgement along with the Lower Court Records may be sent down to the learned Trial Court forthwith for information and necessary

action.

Urgent Photostat certified copies of this judgement may be delivered to the learned Advocates for the parties, if applied for, upon compliance of all

formalities.