
(2015) 01 CAL CK 0051

In the Calcutta High Court

Case No : C.R.A 45 of 2006 and G.A. 5 of 2006

Dilip Tarafdar and Others

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 29-01-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 164
Penal Code, 1860 (IPC) — Section 302, 34

Citation : (2015) 01 CAL CK 0051

Hon'ble Judges : Nishita Mhatre, J; Samapti Chatterjee, J

Bench : Division Bench

Advocate : Subir Debnath, Debojit Kundu and Joy Prakash Mondal, Learned Advocates, for the Appellant; Madhusudan Sur and Kakali Chatterjee, Learned Advocates, Advocates for the Respondent

Final Decision : Allowed

Judgement

Samapti Chatterjee, J.—The instant appeal is directed against the Judgment and Order of Conviction passed in Sessions Trial being No. 1(11)2003 arising out of Sessions Case No. 23(8)2003 passed by the learned Additional Sessions Judge, 4th Court, Nadia dated 30.11.2005 holding the accused persons/appellants guilty of offence punishable under Section 302 read with Section 34 of the Indian Penal Code and they are sentenced to suffer Rigorous Imprisonment for life each and to pay a fine of Rs. 5000/- each, in default to suffer Rigorous Imprisonment for six months.

2. Put in a short frame, the prosecution case runs as under:-

On 29.09.2002 at about 6 to 6.30 p.m. one Madan Mandal (defacto complainant) along with his brother deceased Sukdeb Mandal and others were returning home from local market, on their way the accused Manoj Mandal obstructed Sukdeb Mandal (deceased) holding his cycle. Thereafter, the accused Dilip Tarafdar, Biswanath Mandal and Mohitosh Mandal fired at Sukdeb Mandal. As a result he fell down on the ground and when his elder brother Madan Mandal went to help

him, the accused Santosh Mandal abused him in filthy language and pushed him down. Their associates, the other accused persons namely Brajen Mandal, Sukhen Mandal and Newton Mandal were also there with deadly weapons. It was reported that another brother of his, Bharat was murdered in the same way on the occasion of Pous Sankranti by the accused persons as named above.

On the basis of such F.I.R Tehatta P.S. Case No. 189 of 2002 dated 29.09.2002 under Section 302/34 of the Indian Penal Code was registered and police started investigation. On completion of the investigation police submitted charge-sheet. Accordingly, trial started against the accused persons and after completion of the trial learned Sessions Judge convicted the appellants as aforesaid.

3. In order to prove the case prosecution examined as many as 16(sixteen) witnesses.

4. P.W.1, Madan Mandal who was the brother of the deceased Sukdeb Mandal stated that on 29.09.2002 (Sunday) at about 5.35 p.m. he found the dead-body of his brother in front of Mahadeb Mandal's house. He further stated that on that day he along with his brother Sukdeb Mandal (deceased), Madhu Ghosh, Bulu Ghosh and Sufal Mandal were returning home after marketing from Saheb Nagar and when they reached near the house of Mahadeb Mandal then they found Monoj Mandal, Newton Mandal, Bishu Mandal, Brajen Mandal, Mohitosh Mandal, Santosh Mandal and Sukhen Mandal standing in front of the house of Mahadeb. Brajen and Monoj caught hold of his brother along with his cycle when he was at a distance of about 2/4 cubits from his brother. He further stated that Dilip at first fired at his brother Sukdeb and Sukdeb fell down on the ground then Mohitosh Mandal fired at his brother from a separate gun. When he tried to run away, Santosh Mandal obstructed him and as a result he fell down on the ground while Brajen, Sukhen, Bishu @ Biswanath were assaulting his brother Sukdeb. Some were throttling him and some were kicking him. When he raised hue and cry many people assembled at the scene of occurrence and the accused persons fled away. He further stated that Chandrasekhar wrote the complaint under his instructions as he is an illiterate person and he put his LTI over there. He further deposed that police came on the next morning. He gave the statement before the Judicial Magistrate also. P.W.1 further stated that there was mud in front of Mahadeb Mandal's house. They all purchased vegetables from the "Haat". He further deposed that their village is situated in a thickly populated area. There were many localities in their village namely Bus Stand Para, Natunpara, Abhaynagarpara, Bangalpara, Bamunpara, Madhyampara and Uttampara.

He further deposed that while his brother fell down after sustaining bullet injury he and others ran away. As a result bags containing green vegetables fell on the ground and cycle of the deceased also fell on the canal on the eastern side of the road. He further deposed that his brother was shot at point blank range. He also stated in his evidence that he did not state in the complaint that 5 persons namely P.W.1 himself, Sukdeb (deceased), his brother Modhu, Bulu and Sufal were returning from "Haat" after marketing together. He further deposed that he

could not recollect whether Santosh kicked him while he was running away. He further stated that he could not recollect that Brajen, Sukhen and Bishu were throttling his brother and also kicked him. He further stated in his evidence that the houses of Anil Ghosh, Bera Biswas, Bang Biswas, Mohini Biswas, Biswanath Biswas, Madhu Mandal, Bipad Bhanjan, Bikash Sarkar, Purna Mandal, Riten Mandal, Chittya Ranjan Mandal, Jiten Mandal, Matan Mandal and Sunil Mandal are situated surrounding his house. He also stated that the houses of Santosh Mandal, Balai, Ashu, Sudhir Biswas, Uttam Biswas, Bholanath Mandal, Netai Mandal and Rafique Mandal, Khagen Mandal, Haru Mandal, Basudeb Mandal, Suman Biswas and Subhash Biswas are situated surrounding the house of Mahadeb Mandal. He also deposed that he could not recollect whether five persons were proceeding on foot from Saheb Nagar Market on that day.

He further deposed that the complaint was written on the Macha by the side of the road. He further deposed that he could not recollect whether he put his LTI with the help of ink of Chandrasekhar or with the help of ink pad. He further deposed that when they saw that the accused were coming to attack his brother they did not notice any fire arms in their hands.

He further deposed that though he was also assaulted but he did not show his wearing apparels to the Investigating Officer.

5. P.W.2, claiming herself as an eye witness, stated in her evidence that deceased was her Bhasur (elder brother-in-law). At that relevant time she was coming from her paternal home towards her matrimonial home which is situated in the same village.

She further stated that at first Dilip Tarafdar fired at Sukdeb Mandal thereafter Mohitosh fired at him for the second time. Accused Brajen and Mohitosh also caught hold the hands of Sukdeb, her elder brother-in-law then Sukdeb along with his cycle fell on the ground and sustained bullet injuries. Thereafter Newton, Narayan, Biswanath and Sukhen dragged him and when he asked for water then instead of offering water Biswanath urinated on the mouth of deceased Sukdeb. She further deposed that P.W.1, her elder brother-in-law took her from the paternal home along with her child. She further deposed that about 40/50 villagers assembled at the scene of occurrence on that day.

6. P.W.3 was the younger brother of Sukdeb Mandal. He was a post occurrence witness and also a seizure list witness. After gathering the knowledge of incident from P.W.1, he rushed to the scene of occurrence and saw that accused Monoj Mandal, Newton Mandal, Sukhen and Dilip Tarafdar and Brajen Mandal were dragging the body of his elder brother on the road in front of the house of Mahadeb Mandal. When his other brothers came to the place of occurrence then the accused persons fled away. The next morning Investigating Officer came to the scene of offence and seized blood-stained earth and prepared a seizure list (Exbt.1). He further deposed that he was examined by the Investigating Officer but he could not recollect what he stated to the Investigating Officer regarding

date, hours and place of occurrence.

He further deposed that he could not recollect that the incident occurred in front of the house of Mahadeb Mandal or that Sukhen, Brajen, Newton, Monoj and Dilip were dragging the body of his elder brother.

He further deposed that like him many local people rushed to the place of occurrence and he had some talk with 3/4 persons.

7. P.W.4 Tapan Mandal, brother of the deceased was a hearsay witness and also a seizure list witness. In his evidence he stated that police came to the place of occurrence and seized blood-stained earth and prepared a seizure list and he signed on the seizure list (Exbt.1/1).

He further deposed that cycle of his elder brother Sukdeb was lying at the scene of offence.

8. P.W.5 was the younger brother of the deceased Sukdeb Mandal who in his evidence stated that on that day i.e. on 29.09.2002 at about 4.45/5 p.m. when he was coming from market he saw Dilip and Mohadeb Mandal shot at his brother Sukdeb. Brajen and Bishu caught hold of Sukdeb and after firing Brajen Mandal left his brother on the ground and while many people assembled at the place of occurrence then the miscreants fled away. He thereafter returned home and informed about the incident. He signed in the inquest report.

He further deposed that he witnessed the incident from a distance about 25/30 cubits but he did not inform the incident to the police. He also stated that near the place of occurrence there are houses of Biswanath, Sasti Mandal, Basudeb Mandal and many others.

Police came to the scene of offence at night and on the following day he narrated the incident to the police but his signature was not obtained on the paper by the police.

He further deposed that he could not recollect whether he stated to the Judicial Magistrate that at the Puja Mandap of their house the incident occurred.

He further deposed that initially he alone was present in the place of occurrence and thereafter about 15 to 20 local people rushed to the place of occurrence.

9. P.W.6 was the post occurrence witness and son of deceased Sukdeb Mandal. He deposed that he saw his father lying blood-stained in front of the house of Mahadeb. Bulu Ghosh told him that Dilip and Mohitosh inflicted bullet injury on his father. He saw Dilip and Mohitosh with fire arms and accused persons namely Sukhen, Brajen were armed with Lathi and he saw them fleeing away.

He further deposed that there was no electricity in their village. He also stated that he used to reside with the deceased (father) in the same premises. Tinkari, Naphar, Ganesh Biswas, Benu Biswas, Kanai, Jaga Biswas, Balai, Bharat and Kabiraj and many others reside surrounding their house.

10. P.W.7 was a villager. She deposed that on that day her husband Madhusudan, Sukdeb, Suchitra, Babu, Madan and others were also coming through the road. Then Monoj and Bishu caught hold the hands of Sukdeb. Brajen throttled Sukdeb and Dilip fired at Sukdeb. Thereafter Brajen, Sukhen and Newton tried to assault Sukdeb by kicks, fists and blows.

He further deposed that he narrated the incidence to Babu, her mother and her sister-in-law. They came to the place of occurrence but they did not take the body of Sukdeb to their house. The deadbody was lying there. The house of Dipali and the house of Mahadeb are situated adjoining their house. She further deposed that she went to her paternal home along with her husband at about 12 noon on that day and she got frightened while her brother (Sukdeb) was inflicted bullet injury. Neither she nor her husband, Madhu and Suchitra fled away from the place of occurrence.

11. P.W.8 claiming to be an eye witness, was the husband of P.W.7. He deposed that he was then returning from "Haat". Deceased Sukdeb was in front of him. All on a sudden Sukdeb was caught hold by Bishu, Brajen, Dilip. While Mohitosh fired at Sukdeb. Sukdeb fell down on the road. Local villagers rushed to the scene of occurrence.

He further deposed that he purchased green vegetables from market. He was at a distance of five cubits from Sukdeb. Deceased Sukdeb also purchased green vegetables from the "Haat" and he was walking along with P.W.8 with his cycle. When the accused inflicted Sukdeb with fire arms then Sukdeb fell down on the road. But P.W.8 did not raise hue and cry out of fear and he came back. Investigating Officer came to the scene of offence after two days and he was examined by the Investigating Officer.

He stated that he knew accused Dilip, son of Raghunath. He also knew Dilip Mandal, son of Panchu Mandal.

12. P.W.9 was declared hostile by the prosecution.

13. P.W.10 was the signatory of inquest report.

14. P.W.11 was also the signatory of inquest report.

15. P.W.12 scribed the complaint sitting at Tehatta Police Station at about 8.30 p.m. He could not recollect which ink was used for putting LTI on complaint.

He further deposed that it has not been mentioned in the FIR that at what time and under whose instruction the FIR was scribed. There was no endorsement in the LTI under whose instruction it was scribed. There was no endorsement that it was read over and explained to the complainant.

In his evidence when P.W.12 was asked that it was not decided who will be the maker of complaint therefore LTIs" of two persons were obtained on blank papers which was denied by P.W.12.

16. P.W.13, was the Constable who brought the dead body of deceased Sukdeb Mandal to the Shantinagar Hospital.

17. P.W.14 was Autopsy Surgeon who examined the dead body of deceased Sukdeb and prepared post-mortem report. In his evidence he stated that on examination he found the following injuries:-

1. Penetrating wound with lacerated margin over the front of chest at 1/2" left to the Xiphisternum-half inch diameter around the injury skin burn present Entry wound,
2. Penetrating wound with lacerated margin over left lateral side of chest-3" lateral from the wound No. 1-half inch in diameter chest cavity deep-Entry wound,
3. Penetrating wound with lacerated margin at right lateral side of chest 3" below the right axilla half inch diameter chest cavity deep-Entry wound,
4. Penetrating wound with lacerated margin at the back of abdomen at the level of 10 vertebrae 1" left lateral from the mid-line -1" in diameter x abdominal cavity deep.

He further stated that in his opinion the death was due to shock and hemorrhage following above mentioned fire arm injuries which were ante mortem and homicidal in nature. He identified his signature on P.M. Report (Exbt.5).

He further stated in his evidence that perhaps two bullets were used and as such there are two entry wounds of bullets. There is link in between the injury No. 1 and injury No. 3 and there is link in between injury Nos. 2 and 4.

He further stated that apart from the injuries which he had noted in his P.M. Report, he did not notice any other injury on the person of the deceased. He was not in a position to say definitely about the connection of one injury with the other. He noticed only one exit wound. He had tried his best to locate another bullet of which the exit wound has not been mentioned in his report.

He further stated that smoke, flame, wad and bullet particles would enter into the body of the person injured. He did not get all those elements in the wounds of the deceased. He did not see any rigor mortis present in the body. He further stated that Rigor mortis will persist within 24 to 36 hours in the body after death. He examined the body at 2.45 p.m. on 30.09.2002. He stated that post mortem was held within twenty-four hours from the time of occurrence.

He further stated that there was no note in his post mortem report regarding the existence of urine.

18. P.W.15, was the Investigating Officer of the case. In his evidence he stated that he was endorsed vide Case No. 189 of 2002 dated 29th September, 2002 under Section 302 of the Indian Penal Code. During investigation he seized blood-stained earth(Exbt.1/2), prepared inquest report of the deadbody of Sukdeb

Mandal in presence of witnesses in the next following morning.

He examined the witnesses namely Babu Mandal, Mohitosh Mandal, Sukhen Mandal, Swapan Mandal and Tapan Mandal. But Suchitra Mandal, Abhik Mandal and Madan Mondal were examined by the Magistrate under Section 164 of the Cr.P.C. He arrested the accused person namely, Santosh Mandal on 30.09.2002. He also examined the witnesses namely Madhu Sudan Ghosh, Bulu Ghosh and Sufal Ghosh and recorded their statements under Section 161 Cr.P.C. and he also submitted charge-sheet.

He further stated that there was agitation against the police by the villagers. They were not allowing him to take delivery of the dead body. Since 8 months back another brother of Sukdeb was murdered. Therefore, he asked assistance from his superior. Then they were able to reach the place of occurrence. The mob who surrounded the dead body was not allowing him to take delivery of the dead body.

He further stated that inquest was not made on that night and he did not seize any bag used for marketing vegetables or wearing apparels of the deceased and he did not send the blood-stained earth for FSL examination. He did not record the statement of the complainant but he examined the complainant on 1st October, 2002. He also did not meet Suchitra Mandal and Abhik Mandal on 1st October, 2002. Abhik Mandal, Suchitra Mandal and Madan Mandal did not state anything on 29th and 30th September, 2002 regarding the alleged incident.

He examined Swapan Mandal, husband of Suchitra Mandal on 30th September 2002 and P.W.7 Bulu Ghosh on 30th September, 2002. Bulu Ghosh did not disclose anything to him that she was returning from her paternal home and met with her husband Madhusudan Ghosh. P.W.7 also did not disclose to him that accused Monoj, Bishu caught hold of the hands of Sukdeb and Brajen throttled Sukdeb and Dilip fired at Sukdeb and thereafter Mohitosh fired him. P.W.7 did not tell that Brajen, Sukhen, and Newton tried to assault Sukdeb by fists, blows and kicks on that they started dragging Sukdeb on the road and while Madan attempted to rescue, he was thrown away by Mohitosh. He further stated that P.W.7 also did not tell him that she witnessed the incident from a distance of 10 to 20 cubits.

The Investigating Officer further deposed that P.W.8 Madhusudan Ghosh did not tell him that the incident took place in front of the house of Mahadeb Mandal. He also did not tell him that he was returning from the Haat. P.W.8 also did not state that Sukdeb was caught hold of by Bishu, Monoj, Brojen, Dilip and Mohitosh and Mohitosh shot at Sukdeb. He also did not mention the names of Mahadeb, Santosh and Newton before him.

The Investigating Officer further stated that P.W.4 Tapan Mandal did not state to him regarding date and time of occurrence. P.W.4 also did not tell him that P.W.1 in course of shouting rushed from house and stated that his elder brother Sukdeb had been murdered by Dilip Tarafdar and Mohitosh Mandal. P.W.4 also

did not disclose that he saw accused persons namely Mohitosh, Dilip, Santosh, Sukhen, Brajen to flee away. P.W.4 also did not disclose the names of Mahadeb, Biswanath, Sukhen and Monoj to the Investigating Officer. The Investigating Officer further stated that P.W.3 did not disclose before him the date and time and place of occurrence. He also did not disclose that his elder brother (P.W.1) was proceeding in course of shouting but he stated to the Investigating Officer that after reaching his house his elder brother told that Dilip Tarafdar and Mohitosh Mandal shot at Sukdeb. The Investigating Officer further deposed that P.W.3 also did not disclose before him that the incident took place in front of the house of Mahadeb Mandal. P.W.3 also did not disclose that he saw the accused persons namely Monoj Mandal, Newton Mandal, Dilip Tarafdar and Brajen Mandal were dragging the body of Sukhdeb on the road. He disclosed before him the name of Dilip Mandal but not the name of Dilip Tarafdar as accused persons. The Investigating Officer further stated that he did not see cycle, marketing bag used for green vegetables and blood-stained wearing apparels of Madan Mondal in the vicinity of the dead body. The Investigating Officer further stated that he did not examine any independent witness of that village. He also did not examine the inhabitants adjoining the house of Suchitra Mandal. Investigating Officer further stated that there was no G.D as to who identified the alleged place of occurrence.

He did not seize any GD Entry but in the FIR GD Entry number was noted.

He did not send the blood-stained earth for FSL examination.

He further deposed that no offending weapons were found.

19. P.W.16, was the Judicial Magistrate who recorded the statement of Suchitra Mandal and Abhik Mandal (Exbt.8 and 8/1). He stated that Suchitra Mandal did not disclose the time of occurrence, only she disclosed that on Sunday before two years ago in 2002 the alleged incident took place.

P.W.7 Abhik Mandal stated to the Judicial Magistrate that near the Puja Mandap of their house the incident occurred. He did not mention any time. Madan Mandal also did not mention before P.W.16 about the alleged date and time of the occurrence. He also did not mention that he tried to rescue his brother (Sukdeb) but he was kicked by Santosh.

20. Mr. Subir Debnath, learned Advocate appearing for the appellants submitted that the prosecution case is full of loopholes, discrepancies and contradictions. Evidence of the eye witnesses namely P.W.1, P.W.2, P.W.5 and P.W.8 are not corroborating with each other.

He further contended that P.W.1 stated in his evidence that incident occurred in front of the house of Mahadeb but P.W.2 stated that incident occurred in front of house of Dilip while P.W.5 stated that incident took place at their house beside Puja Mandap.

Mr. Debnath also vehemently submitted that it is evident from the testimonies of P.Ws that the said village situated in a thickly populated area and so many

adjacent houses were there but none of the members of those houses was examined. All witnesses are related to the deceased.

Mr. Debnath further pointed out that P.W.1 in his evidence stated that FIR was written on the roadside "Mancha" of their village but P.W.12 who wrote the complaint for P.W.1 stated that he wrote it at Tahatta Police Station at about 8.30 P.M.

Mr. Debnath Further submitted that Autopsy Surgeon stated that perhaps two bullets were used and as such there were two entry wounds of bullets. There was link in between the injury No. 1 and injury No. 3 and there was link in between the injury No. 2 and injury No. 4.

Mr. Debnath further pointed out that P.W.1 stated Brajen and Monoj caught hold of Sukdeb and thereafter Dilip and Mohitosh fired at him, while P.W.1 and others along with Sukdeb were coming from "Haat" after purchasing vegetables. But P.W.5 stated in his evidence that Dilip and Mahadeb Mandal fired at Sukdeb while Brajen and Bishu caught hold of him (Sukdeb). But according to the Investigating Officer (P.W. 15) P.W.5 did not disclose any name before him.

Mr. Debnath further contended that it is evident from the testimonies of the witnesses that after gathering the knowledge of incident 40/50 local people were assembled there but none of them was examined as independent witness by the Investigating Officer.

Mr. Debnath also contended that P.W.15, the Investigating Officer on the next morning went to the scene of occurrence. No inquest was made on 29.09.2002 at night. No bag of green vegetables or cycle or wearing apparels were seized by the Investigating Officer.

Mr. Debnath further argued that Abhik Mandal, Suchitra Mandal and Bulu Ghosh did not disclose anything to the Investigating Officer. Not only that P.W.8 also did not disclose the names of Mahadeb, Sukhen, Newton etc.

Mr. Debnath further submitted that none of the witnesses stated to the Investigating Officer that the incident took place either in front of the house of Mahadeb Mandal or in front of the house of Dilip or near the Puja Mandap of the house of P.W.5.

Mr. Debnath further contended that as per FIR the incident occurred at 6.30 P.M. but learned Trial Court said that it was at 4.30 P.M.

Mr. Debnath further contended that the entire prosecution case is full of discrepancies and contradictions and not corroborated with the FIR as also with the evidence of P.W.14, P.W.15 and P.W.16.

Mr. Debnath also vehemently contended that it is evident from the testimonies of the P.W.1, P.W.2, P.W.5 and P.W.7 that they did not disclose the time of occurrence. They only disclosed the place of occurrence which did not corroborate with each other.

Mr. Debnath further contended that time of occurrence is an essential ingredient in case of murder. In support of his contention Mr. Debnath relied on an unreported Division Bench Judgment of our Hon''ble Court passed in CRA No. 350 of 1987 Paras-16, 17 and 32 (Soharab Gazi and Ors vs. The State of West Bengal) where the Hon''ble Division Bench following the Hon''ble Supreme Court Judgment reported in Babu and Others Vs. State of Uttar Pradesh, AIR 1983 SC 308 : (1983) CriLJ 334 : (1983) 1 Crimes 485 : (1983) 1 SCALE 105 : (1983) 2 SCC 21 : (1983) 2 SCR 328 and Ram Narain Singh Vs. State of Punjab, AIR 1975 SC 1727 : (1975) CriLJ 1500 : (1975) 4 SCC 497 held that in case of murder time, scene of offence and the manner must be specific. If there is any doubt regarding time, date and place of commissioning of the alleged murder and the manner in which it was committed then the appellant should be acquitted on benefit of doubt.

Mr. Debnath further contented that all the witnesses are relatives of the deceased, and no independent witness was examined by the prosecution though from the sketch map and also from the testimonies of the witnesses it is evident that the said incident occurred in a thickly populated village. In support of his contention Mr. Debnath relied on one Division Bench decision of our Hon''ble Court reported in (2014) 1 Cr.LR Page-171 , Paras-15, 24 and 32 where following the Hon''ble Supreme Court Judgment reported in Sharad Birdhichand Sarda Vs. State of Maharashtra, AIR 1984 SC 1622 : (1984) CriLJ 1738 : (1984) 2 SCALE 445 : (1984) 4 SCC 116 : (1985) 1 SCR 88 the Hon''ble Division Bench observed that the testimonies of the witnesses who are related to the deceased have failed to create any credence.

Mr. Debnath in on his submission pointed out regarding entry and exit wound and also on the point that no mark of dragging on the road was apparent in the post-mortem report he relied on a Supreme Court Judgment reported in Badam Singh Vs. State of Madhya Pradesh, AIR 2004 SC 26 : (2004) CriLJ 22 : (2003) 8 JT 547 : (2003) 9 SCALE 222 : (2003) 12 SCC 792 . Para 14 is set out hereunder:-

"*****.....Dr. Ramesh Kumar Sharma, P.W.10, who had conducted the post mortem examination on the body of deceased stated that he could not say from what distance the gun was fired. He also admitted that he had not mentioned in the post mortem report as to whether there was any blackening and charring around the skin of the wound of entry. He did not find any mark of dragging on the dead body nor did he find any mark on the body so as to suggest that the neck of the deceased was strangled."

21. Mr. Madhusudan Sur, learned Advocate appearing for the State contended that there were 3 eye witnesses namely P.W.1, P.W.2 and P.W.3 who in their evidence stated that they saw Dilip and Mohitosh inflicted gun shot injury to Sukdeb and P.W.5 saw that Dilip and Mohitosh inflicted gun shot injury to Sukdeb. Therefore, Mr. Sur argued that presence of Dilip and Mahadeb corroborated with the evidence of P.W.1, P.W.2 and P.W.5.

Mr. Sur further contended that the testimonies of eye witnesses also corroborated with the FIR and Post Mortem Report. He contended that prosecution has rightly proved the case against the convicts. Therefore, the impugned judgment and order of conviction and sentence has been rightly passed by the learned trial court which should be affirmed by this Hon'ble Court.

22. After carefully going through the oral evidence recorded by the learned Trial Court, and also the documentary evidence, the evidence of the Autopsy Surgeon we find that the prosecution's case is full of contradictions and discrepancies, with loosends and lacunae. It is also apparent that the prosecution's case was handled by the Investigating Officer in a very slipshod and callous manner.

From the testimonies of so called eye witnesses we find that P.W.1 stated that he saw Dilip Tarafdar and Mohitosh inflicted gun shot injury to Sukdeb whereas P.W.5 stated that Dilip and Mahadeb fired at Sukdeb.

Furthermore, we find from the testimonies of the witnesses that in respect of scene of offence P.W.1 stated that in front of the house of Mahadeb Mandal the incident occurred but P.W.2 stated that the incident occurred in front of the house of Dilip while P.W.5 in his evidence stated that incident occurred in their house beside Puja Mandap. So there are three different and contradicting version as to the place of occurrence which is of paramount importance to take note of.

We also find from the testimonies of P.W.14, scribe, stated that at about 8.30 P.M. he wrote the FIR at the Tehatta Police Station whereas P.W.1, the defacto complainant stated in his evidence that FIR was written on the roadside Manch.

We find curiously in the FIR that two LTI's were taken in different inks. One showed ink pad mark while the other showed pen ink mark which definitely creates doubt in our mind.

We find that the Autopsy Surgeon in his evidence opined that apart from the injuries which he noted in the post mortem report he did not notice any other injury on the body of the deceased. He was not in a position to say definitely about the connection of one injury with other. He only noticed one exist wound.

We also find from the evidence of P.W.15 the Investigating Officer who stated that Abhik Mandal, Suchitra Mandal, Bulu Ghosh never disclosed before him that they saw Dilip fired at Sukdeb and thereafter Mohitosh fired to Sukdeb.

We also find that neither wearing apparels, nor the cycle or the marketing bag of green vegetables or the offending weapons were seized by the Investigating Officer.

We also find neither the wearing apparels nor the blood-stained earth were sent for FSL examination.

We also cannot ignore that no independent witness was examined by the prosecution.

From the testimonies of P.W.16 we find that neither Suchitra Mandal nor P.W.5 Abhik Mandal disclosed before him regarding the time of occurrence, only P.W.2 Suchitra Mandal told him that the incident occurred near the house of Dilip. P.W.5 Abhik Mandal stated that the incident occurred in their house near their Puja Mandap.

We find on the basis of testimonies of the witnesses learned Trial Court observed that the incident took place at 4.30 p.m. to 5 p.m. and there is some discrepancies in respect of time of occurrence.

We cannot over look that the Hon"ble Supreme Court in catena of decisions held that the place and time of occurrence are essential ingredients in case of murder. Therefore, if the place and time do not corroborate with the FIR as well as with the testimonies of the prosecution witnesses then a doubt automatically comes in the mind of the Court.

We also find that the prosecution failed to prove any motive against the appellants to kill the deceased.

We further cannot ignore the fact that testimonies of the so called witnesses do not bear out their claim that they had witnessed the attack on the deceased.

We find that testimonies of eye witnesses do not corroborate with the FIR or with the evidence of the Investigating Officer (P.W.15) and Judicial Magistrate (P.W.16). Thus taking the overall view of the matter and considering the facts and circumstances of the case it creates in our mind a serious doubt about the truthfulness of the prosecution's case as well as the veracity of the eye witnesses. The conduct of the eye witnesses is highly questionable. There are many inconsistencies in the statement of the witnesses on material factual aspects which altogether are sufficient to create cloud of reasonable doubt on the prosecution's case beyond reasonable doubt.

23. We therefore, allow this appeal and give the appellants the benefit of doubt.

24. The appellants in CRA No. 45 of 2006 are acquitted all the charges leveled against them. They shall be released forthwith if not required in any other case or cases.

25. The impugned Judgment and Order passed by learned Additional Sessions Judge, 4th Court, Nadia dated 30.11.2005 is hereby set aside. CRA 45 of 2006 is hereby allowed.

26. In view of the above appeal preferred by State of West Bengal against the Judgment and Order dated 30.11.2005 vide G.A No. 5 of 2006 is hereby dismissed.