2026:CHC-AS:286-DB

Form No. J(1)

IN THE HIGH COURT AT CALCUTTA

CRIMINAL APPELLATE JURISDICTION

Present :

The Hon'ble Justice Rajasekhar Mantha
And
The Hon'ble Justice Ajay Kumar Gupta

C.R.A. 480 of 2012
Aimuddin Sheikh & Anr.
Versus
The State of West Bengal

For the Appellant	:	Mr. Arindam Jana, Mr. Sumanta Das, Mr. Yuvraj Chatterjee, Mr. Saikat Guin, Mr. Akash Sarkar.
For the State	:	Mrs. Faria Hossain, ld. A.P.P., Mr. Anand Keshari.
Hearing concluded on	:	February 13, 2026.
Judgment on	:	February 18, 2026.

Rajasekhar Mantha, J.:

1. The subject appeal is directed against judgment and order of conviction dated 16.07.2012 passed by the Additional District and Sessions Judge, 2nd Court, Nadia in Sessions Trial No. IX (II) of 2012 arising out of Sessions Case No. 26 (2) of 2012. The appellants were convicted and sentenced to suffer life imprisonment and to pay a fine of Rs.10,000/- for offences punishable under Sections 302, 326 read with Section 34 of the IPC.

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THE PROSECUTION CASE AND THE EVIDENCE ON RECORD

2. The appellants and victims were related to each other as brothers. The appellants and victims are 4 out of 6 brothers and 2 sisters. Raham Box Sk was their father. He had divided his properties equally amongst the 6 brothers. After the brothers received the property by way of registered instrument from their father, a dispute cropped up between them as to who would feed their parents.

3. In view of the reluctance and difference of opinion between the appellants and the victims, a meeting was called by one of the brothers namely Kalimuddin Sk at the house of the said father. In course of the meeting, there was a heated exchange between the appellants and the victims Ainuddin Sk and Shukur Ali Sk. The appellants are stated to have left the place of occurrence and returned back within 3 minutes with sharp cutting weapons which included a Bhojali, Hasua and a rod and a stick mounted with a metal fork. They assaulted the deceased victim Ainuddin Sk and Kalimuddin Sk.

4. To prevent the assault on the victims, the wife of Ainuddin and his mother are stated to have intervened. The mother was struck on the head with a hasua. Upon a hue and cry being raised by the wife of Ainuddin**, PW 2 Hosai Bibi,** the local villagers from a nearby mosque immediately rushed to the place of occurrence.

5. The appellants fled from the scene. Ainuddin and Kalimuddin were taken to Katwa Hospital where Ainuddin was declared brought dead. Kalimuddin, however, recovered after a few days.

6. The police are stated to have received information about the incident late in the night of the fateful day over the telephone. No GD entry was however recorded by the police on receipt of this information.

7. It is only after Ainuddin died, that **PW 1 Mohiruddin Sk,**hisfather-in-law, who came to the place of occurrence on being informed over the telephone by his daughter Hosai Bibi, filed a formal complaint with the Kaligunj PS. The complaint was scribed by PW 3 allegedly on the instructions of PW 1. It is surprising to note that none of family members from the side of the appellants or the victims lodged any complaint with the police.

8. Kaligunj PS registered the FIR no. 214 of 2011 dated 13.04.2011 at about 03:05 PM under Section 326, 307, 302 read with Section 34 against Alimuddin Sk, Asish Sk and Shukur Ali Sk. Shukur was the son of appellant no. 1 Alimuddin Sk.

9. Charges were framed against Aimuddin Sk and Shukur Ali Sk the two appellants herein under Section 326, 307 and 302 of the IPC. The other FIR named accused went absconding even before the charge sheet was filed.

10. It appears from the deposition of the **PW 13, the Investigating Officer,** that the statement of PW 2 under 164 of the CrPC was recorded two months after the incident. The statement of **PW 5 Bakul Sk, the son of the deceased** was not recorded under Section 164 of the CrPC.

ANALYSIS OF THIS COURT

11. There are some discrepancies between the witnesses for the prosecution as regards the exact place of occurrence. PW 1 and 3 stated that the PO was the house of the father of the victim. Whereas PW 2 and 5 stated that the PO was the house of Kalimuddin, the victim who recovered from injures. The aforesaid discrepancies can however be discounted since the father's residence is also treated as the son's residence or his children' residence in general.

12. The appellants and victims received immovable properties from their father just few days before the incident. The house where the crime took place was one of such immovable properties. There is no evidence on record to suggest that the appellant and victims had any self-acquired properties, or the PO was a self-acquired property of the appellant and the victims. The obvious inference therefore is that on that fateful day, the appellants and victim assembled for a settlement at the house which once belonged to their father. It was thus natural for the prosecution's witnesses to have a difference of opinion on who should be called the owner of the house, where the crime took place.

13. The evidence of PW 1 is rather curious, in that he chose to participate in inquest and post mortem of the victim who was is his son-in-law before lodging of the complaint.

14. PW 2 and PW 5 are the star witnesses of the prosecution.

15. **PW 2 Hosai Bibi** was present when the assault occurred. She stated under Section 164 before the Magistrate that she went to the place of occurrence along with her husband. She also stated that she

was standing next to her husband when the appellants suddenly assaulted the victims including her deceased husband.

16. However in course of her examination during trial, she deposed that the accused persons upon failure of the talks of settlement as regards who would feed their parents went out from the place of occurrence and came back within 3 minutes and committed the murderous assault on the victims. Her statement under Section 164 of the CrPC does not mention the factum of the appellants leaving the place of occurrence and coming back within 3 minutes with weapons.

17. Apart from the aforesaid inconsistency, the rest of her evidence in course of trial is consistent with her statement recorded under Section 164 of the CrPC. She clearly deposed that appellant Aimuddin Sk assaulted the deceased victim with a hasua as did Ashish Sk and Shukur Ali Sk, sons of the appellant no.1, with a hasua and bhojali respectively. Alimuddin is also stated to have assaulted the victim deceased and taken his life with a bhujali. The rest of her evidence is consistent with the prosecution case.

18. **PW 3 was Khokon Sk,** the scribe of the complaint to the Kaligunj PS. He was the uncle of the appellants. He was clearly therefore trying to shield and safeguard the appellants. He turned hostile. He denied that he had written the complaint on the instructions of PW 1. He further stated that the deceased victim was pushed by PW 9, Kalimuddin the injured witness, and the deceased victim fell on a boti (an instrument is used in all kitchens in India for cutting vegetables) and sustained injuries on his body.

19. **PW 5 Bakul Sk,** parroted the evidence of PW 2 in verbatim. He has deposed that he was present at the place and time of occurrence. His presence is confirmed by the statement of PW 2 under Section 164 of the CrPC. There is however no mention of the presence of PW 5 at the place and time of occurrence by PW 2 in course of his deposition in the trial.

20. **PW 7 was Dr. Bhaskar Jyoti Barman** who examined both the victims at Katwa Hospital. He also performed postmortem on the deceased victim.

21. The injuries on the deceased victim noted by the PW 7 are as follows:

> '1. Cut injury 2" x ½" on the left side neck.
>
> 2. Blunt trauma injury along 3rd rib measuring about 2" x 6" on the right Side of chest.
>
> 3. Cut injury measuring 2" x 1" over the scalp.
>
> 4. Lacerated injury on the right lung beneath the blunt trauma.'

22. Curiously none of the weapons allegedly seized by the IO were produced before the medical officer for opinion or before the Trial Court.

23. **PW 8 was Dr. Tapas Sarkar** who examined the surviving victim Kalimuddin Sk PW 9. The bed head tickets of either the deceased victim or Kalimuddin were not produced by the IO in course of trial nor collected in course of investigation.

24. **PW 9 Kalimuddin,** the injured witness could have been the star witness of the prosecution very strangely turned hostile. He however

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confirmed the incident in some detail in course of cross-examination by the prosecution under Section 154 of the CrPC.

25. **PW 13 was Ratan Chakraborty, the IO.** He denied that any of the witnesses that he examined under Section 161 had ever narrated the events or named the accused in course of his investigation. The entire evidence of PW 2 and PW 5 therefore came out for the first time in course of the trial.

26. Despite the aforesaid discrepancies referred to hereinabove and the lapses on the part of the IO, this Court based on the medical evidence and the evidence of PW 2 is of the clear view that the incident of assault by the appellant on the deceased victim and PW 9 has in fact occurred at the date and time mentioned.

27. Indeed, it is true that the prosecution could have examined the villagers who took the victims on a motor rickshaw van to the Katwa Hospital and the mother of the victim who was allegedly injured in the course of the assault. The evidence of PW 2 and the medical evidence indicate the participation of the 4 accused persons in the murderous assault on the victims.

28. The evidence of PW 5 however cannot be entirely believed since the IO had stated he was informed by PW 5 in course of the investigation that the latter was returning from the mosque after attending a feast thrown by a villager. PW 5 however has denied having attended any such feast.Apart from the statement of PW2 under Section 164 of the CrPC there is no other evidence to suggest that PW 5 was present at the time of the place of occurrence.

29. As already stated hereinabove the evidence of PW 2 and the PW 7, the post mortem doctor, established the occurrence of the assault by the 4 accused persons on the 2 victims one of whom has died.

30. The evidence on record has clearly established that the appellants and victims assembled on that fateful day at the house, which originally belonged to their father, and was subsequently transferred either to the deceased victim or the surviving victim. They assembled to decide as to who will feed their parents. They could not arrive at a common arrangement. Settlement talks failed, hence ensued an assault on the said victims by the appellants.

WHETHER THE PRESENT CASE FALLS UNDER SECTION 300 OR 304 OF THE IPC.

31. The question that comes for consideration before this Court as to whether the crime that has occurred resulting in the death of Ainuddin and grievous injuries to PW 9 Kalimuddin his brother, would fall under Section 302.

32. The intention of the appellants has to be ascertained in the backdrop of the event that made them assemble together on that fateful day. The appellants and the victim were to decide who would feed their parents. The appellants proposed that all of them should feed their parents by turns. The victims disagreed with the said proposal. This was the trigger for the said incident.

33. The appellants left the PO. They, however, came back just within 3 minutes. In this regard, PW 2 has stated before the Magistrate that the appellants assaulted the victims just after the failure of settlement talks.

34. The appellants were not carrying weapons when they arrived at the PO to take part in the settlement talks. The weapons allegedly used by the appellants are normally found in every rural Indian house-hold. They by their very nature are not murderous. Thus, any premeditation on part of the appellants stands clearly ruled out.

35. The prosecution has not run the case there was premeditation between the appellants to kill the victims. That is why the surviving victim, PW 9, did not die. He subsequently recovered. In ***Narayan Yadav Versus State Of Chhattisgarh reported in 2025 INSC 927*** it was held as follows:-

> 40. Exception 4 to Section 300 of the IPC ***applies in the absence of any premeditation. This is very clear from the words used in the provision itself.*****It contemplates that the sudden fight must occur in the heat of passion, or upon a sudden quarrel....**.

36. The provocation for the assault was the demand of the appellants from the victims that the latter shall relinquish the property received from their father, if the victims are not willing feed their parents by turn or at all. This was undoubtedly the trigger for the enragement of the accused persons including the appellants. In ***Narayan Yadav(supra),*** it was held as follows***:-***

> 41. A "sudden fight" implies mutual provocation and the exchange of blows on both sides. In such cases, the homicide committed is clearly not attributable to unilateral provocation, nor can the entire blame be placed on one side..... There is no prior deliberation or intention to fight; the fight breaks out suddenly, and both parties are more or less to blame. One party may have initiated it, but had the other not aggravated the situation by their own conduct, it may not have escalated to such a serious level. In such scenarios, there is mutual provocation and aggravation, making it difficult to determine the precise share of blame attributable to each participant. ***The protection of Exception 4 may be invoked if death is***

> ***caused: (a) without premeditation; (b) in a sudden fight; (c) without the offender having taken undue advantage or acted in a cruel or unusual manner; and (d) the fight must have been with the deceased.***

37. The 3 minute time gap between the departure of the appellants and their arrival at the PO is not enough for cooling down the nerves. The said short time gap cannot impute the appellants with the motive to kill the victim. The said period is too short for a cold-blooded decision to murder a person. The said time is not adequate for a decision making process to start on and formation of a premeditation to commit the murder. In ***Narayan Yadav (Supra)***, it was held as follows:-

> 42. To bring a case within Exception 4, all the ingredients mentioned therein must be satisfied. It is important to note that the term "fight" occurring in Exception 4 to Section 300 of the IPC is not defined in the IPC. ***A fight necessarily involves two parties – it takes two to make a fight. The heat of passion requires that there must be no time for the passions to cool, and in such case, the parties may have worked themselves into a fury due to a prior verbal altercation. A fight is a combat between two and more persons, whether with or without weapons. It is not possible to enunciate any general rule as to what constitutes a "sudden quarrel". This is a question of fact, and whether a quarrel is sudden or not must necessarily depend upon the proved facts of each case. For the application of Exception 4, it is not enough to show that there was a sudden quarrel and no premeditation.*** It must also be shown that the offender did not take undue advantage or act in a cruel or unusual manner. The expression "undue advantage" as used in the provision means "unfair advantage"

38. The location of the injuries on the person of the victim is relevant to ascertain the intention of the accused. In **Kunhimuhammed@ Kunheethu ... Versus The State Of Kerala, reported in 2024 INSC 937,** it was held as follows:-

> 25.8 ....However, intent can be inferred from the circumstances surrounding the act, including the nature and location of the injuries inflicted, the weapon used,

> and the actions of the appellant during the incident. The injuries were concentrated on the vital parts of the deceased's body, such as the chest and ribs, which house critical organs like the heart and lungs. The deliberate targeting of these areas indicates a clear intent to cause harm that could lead to death.....The decision to carry and use such a weapon during the scuffle reflects a readiness to escalate violence beyond a mere physical altercation....

39. The deceased victim has suffered 4 injuries on his person. The injuries were, inter alia, to the organs of some importance namely scalp and right lung. The intensity of the said injuries was, however not murderous in view of PW 7, the post mortem doctor, having deposed that the deceased victim may have survived if he had been brought to the hospital early.

40. Each accused including the appellants inflicted one assault each resulting in 4 injuries suffered by the deceased victim. The surviving victim also faced the said assault. He, however, survived.

41. The Prosecution was duty bound to establish the distinguishing feature in the assault mounted against the surviving victim as opposed to the deceased victim. The surviving and deceased victim found themselves in the similar situation. However, while the former survived, the latter died. Both suffered injuries; the latter succumbed to them but not the former.

42. Clearly therefore, the deceased victim and surviving victim did not receive similar injuries. The said dissimilar treatment could not be pre-mediated since both the victims were assaulted at once. The said dissimilarity creates a doubt in mind of this Court as to whether the appellants at all intended to kill the victims.

43. The intention of the appellants could not have been to kill one and injure the other. The Prosecution was, therefore, specifically required

to prove that the appellants intended to kill only the deceased victim and leave the surviving one.

44. This Court is therefore of the view that the crime committed by the accused persons including the appellants would fall under the first part of Section 304 of the IPC. The punishment therefore is prescribed as ranging between 10 years and life imprisonment.

45. Admittedly the appellants and the victims are blood brothers. The dispute was within the family. The issue was whether the appellant's victims would feed their parents for the days on which their turn would come amongst the 6 siblings. The injured and surviving victim, one of the brothers of the appellants, turned hostile.

Conclusion

46. Having regard to the fact that the dispute in question was between brothers and not premeditated, this Court is of the view that the appellants must be sentenced to the extent of the incarceration already suffered by them, i.e. 14 years. The appellants are thus held convicted under Section 304' part I for a period of 14 years and/or to the extent that they have already suffered incarceration.

47. The appellants are hereby held convicted under Section 304's part I for a period of 14 years and/or to the extent that they have already suffered incarceration. The fine imposed on the appellants shall also stand set aside.

48. The conviction of the appellants under Section 302 and other sections shall stand set aside. The appellants shall now be set at liberty unless they wanted in connection with any other offense and

upon execution of a bond upon execution of a bond to the satisfaction of the Learned Trial Court, which shall remain in force for a period of six months under Section 437A of the Code of Criminal Procedure corresponding to Section 481 of the BNSS, 2023.

49. CRA 480 of 2012 is, therefore, is allowed in part and disposed of.

50. There shall be no order as to costs.

51. Let a copy of this judgment be sent down to the Court below for information and necessary action

52. Let the T.C.R. be returned to the Court below at once.

53. Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties as early as possible upon completion of all requisite formalities.

(*Rajasekhar Mantha, J.*)

I agree.

(*Ajay Kumar Gupta, J.*)