IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

CRA 242 of 2021

CRAN 1 of 2021
CRAN 2 of 2025

Dilip Dey @ Dila

Vs.

The State of West Bengal

With

CRA 729 of 2006

Manoj Singh @ Mota Manoj

Vs.

The State of West Bengal

For the Appellant [In *CRA 242 of 2021*]	:	Ms. Anita Kaunda, Adv. Ms. Anubrata Dutta, Adv.
[In *CRA 729 of 2006*]	:	Mr. Amit Ranjan Pati, Adv.
For the State [In *CRA 242 of 2021*]	:	Mr. Debasish Roy, Ld. PP Ms. Sreyashree Biswas, Adv. Mr. Asif Dewan, Adv.
[In *CRA 729 of 2006*]	:	Mr. Binoy Panda, Adv. Mr. S. Bhakat, Adv.
Heard on	:	25.08.2025
Judgment on	:	24.09.2025

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Md. Shabbar Rashidi, J.:-

1. Appeal is directed against the judgment of conviction dated April 29, 2006 and order of sentence dated May 3, 2006 passed by learned Additional Sessions Judge, 2nd Court, Alipore in connection with Sessions Trial No. 1(2) of 2003.

2. By the impugned judgment, the appellants were convicted of the offence punishable under Section 302/34 of the Indian Penal Code, 1860. In addition, the appellant Manoj Singh @ Mota Manoj was also convicted of the offences punishable under Section 25(1B) (a)/27 of the Arms Act. By the impugned order of sentence, both the appellants were sentenced to imprisonment for life with fine of ₹5,000/- each for committing the offence under Section 302/34 of the Indian Penal Code. The appellant Manoj Singh @ Mota Manoj was separately sentenced to imprisonment for 2 years with fine of ₹500/- for the offence under Section 25(1B)(a) of the Arms Act. In default of payment of fine, the convict was directed to undergo rigorous imprisonment for a further period of 6 months. The appellant Manoj Singh @ Mota Manoj was also sentenced to imprisonment for 3 years and a fine of ₹1,000/- for the offence punishable under Section 27 of the Arms Act and in default of payment of fine, the convict was directed to undergo rigorous imprisonment for a further period of one year. All the aforesaid sentences were directed to run concurrently.

3. Learned advocate for the appellants submitted that the prosecution has not been able to substantiate the charges levelled against the appellants with the help of convincing evidence. He also stated that the alleged dying declaration by the victim was not proved in accordance with law. It was not established that at the time of alleged declaration, the victim was physically fit and mentally alert to record the dying declaration. Therefore, such dying declaration is not trustworthy for securing the conviction of the appellants.

4. Learned advocate for the appellant further submitted that the firearm was allegedly recovered from an abandoned place and there is no evidence to establish an association between the appellant and the firearm. Besides, vital witnesses examined on behalf of the prosecution turned hostile rendering the case of the prosecution highly doubtful.

5. On the other hand, learned advocate for the State stood by the impugned judgment and order. It was submitted on their behalf that the prosecution produced sufficient evidence to establish the charges against the appellants. Learned Trial Court was quite justified in convicting the appellants.

6. The victim China Deshmukh recorded a statement with the police in presence of Dr. Bijon Kumar Biswas on June 29, 2002 at SSKM Hospital. In such statement, he stated that on June 29, 2002 at

about 5 o'clock in the evening he came out of his residence and went to watch a movie with his friend Samiran Seal at Shailashree Cinema Hall in the night show i.e. 8-11 p.m. After watching the movie, they were returning home walking through Akshoy Kanan. At about 11.20 p.m. suddenly, Ghatababu, Dila and Manoj Singh accompanied by 4/5 other persons chased him. In front of J-317, Akshoy Kanan Shitala Mandir, Dila and Manoj Singh shot at him, hitting on the upper portion of his left arm and upper abdomen and thereafter, both of them fled away. The informant also stated that he kept on running out of fear whereas his friend Samiran fled away being afraid. Later, his friend Samiran took him to SSKM hospital by a taxi. He further disclosed in his statement that he was shot due to an old dispute between himself and Ghatababu, Dila and Manoj Singh.

7. The statement of the victim so recorded was treated as complaint and on the basis of such statement, Garden Reach PS Case No. 102 of 2002 dated June 30, 2006 under Sections 307/34 of the Indian Penal Code and Section 25 (1B) (a)/27 of Arms Act was started against 3 named accused persons including the appellants and 4/5 unknown accused persons. Later, on the death of the informant, Section 302 of the Indian Penal Code, 1860 was added.

8. The police took up investigation and on completion thereof, submitted charge sheet in the case. Accordingly, on the basis of

materials in the case diary, charge under Sections 302/34 was framed on February 1, 2003, against four accused persons against whom, charge sheet was submitted after investigation and were sent up for trial including the appellants. Separate charges under Sections 25(1B)(a) and 27 of the Arms Act, 1959 were framed against the appellant Manoj Singh @ Mota Manoj. The appellants pleaded not guilty to the charges and claimed to be tried.

9. In order to substantiate the charges, prosecution examined 24 witnesses in all. In addition to the ocular evidence, prosecution also relied upon certain documentary as well as material evidences which were admitted in evidence and marked as exhibits.

10. An Assistant Sub-inspector of police deposed as PW1. On June 30, 2002 he was posted in Detective Department, Plan Section of Lalbazar. Upon a requisition from Garden Reach police station, he accompanied SI Amit Dey Sarkar of Garden Reach PS to J-317, Paharpur Road and prepared a rough sketch map of the place of occurrence under directions of the investigating officer. He proved the rough sketch map (Exhibit 1). On the basis of such rough sketch map, he prepared a final drawn to the scale plan thereof and a blueprint of the place of occurrence. He also proved the final plan and the blueprint prepared in his pen and signature (Exhibit 1/1and Exhibit 1/2). In his deposition, PW1 also described the details of locality

around the place of occurrence including that of Akshoy Kanan temple and the passages and pathway around.

11. A police constable attached to Detective Department, photography section was examined as PW2. He stated that on July 3, 2002, following a requisition received by his section, he had been to Mominpur morgue to take snaps of a dead body in connection with Garden Reach PS Case No. 102 dated June 30, 2002. As per the identification by Constable Samir Nath, he took photograph of a male deceased person whose name was disclosed as China Deshmukh. Thereafter, he developed the negative and prepared a print at his office. He proved the negative and printed photo (Mat. Exhibit I and I/I).

12. An Upper Division Clerk posted in the Record Department of SSKM hospital was examined as PW3. He produced the bed head ticket in respect of China Deshmukh from the Record Department of SSKM hospital which was seized by the police under a seizure list. He proved the seizure list and his signature thereon (Exhibit 2 and 2/1).

13. Father of the victim deposed as PW4. He stated that his son China Deshmukh was shot dead on June 29, 2002. On the relevant date, he was in his office for night duty and after returning home on the following morning, he came to know of the incident. One Babai, a friend of his son China, reported him that he along with China went to

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see a movie in the night of June 29, 2002. At about 11.20 p.m. when they were returning home, Mota Manoj, Dila and 3/4 others shot at China, in front of Shitala Mandir at Akshoy Kanan. China was taken to SSKM hospital after the incident where he was admitted for treatment and on July 7, 2002 China expired at the hospital. In his cross examination, PW4 admitted that he did not state before the police that Babai, a friend of his son, China reported him that he along with China went to see a movie in the night of June 29, 2002. At about 11.20 p.m. when they were returning home, Mota Manoj, Dila and 3/4 others shot at China, in front of Shitala Mandir at Akshoy Kanan. He also stated that his office was at a distance of 10/15 minutes' walk from his residence.

14. A Son of PW4 and Elder brother of the victim deposed as PW5. He also stated that victim China Deshmukh was his younger brother. He was shot at on June 29, 2002 in front of Shitala Mandir of Akshoy Kanan at about 23.20 hours. He further stated that at that time PW5 was returning home from Paharpur Road through Akshoy Kanan at about 23.05/23.10 hours. At that time, he noticed Mota Manoj, Dila, Khote Babu, Kalia and 3/4 other persons talking by the side of the tank in front of Shitala Mandir of Akshoy Kanan. There was a lamp post with lighted mercury lamp in front of the temple. He further stated that the persons there had a bad reputation in the

locality for which he walked away hurriedly and going to his house, he narrated their presence to his elder brother. His brother asked PW5 if he had seen China there. When PW 5 asked his elder brother as to why he was asking for China, he replied that Mota Manoj threatened to kill China if he continued his companionship with Raj Kumar and Bhola.

15. PW 5 further stated that at about 23. 30 hours, he heard a hue and cry. Local residents started calling PW 5 and his brother. They came out and came to know from the local people that their brother China was shot at in front of Shitala temple. PW 5 rushed to the place of occurrence. Arriving there, he came to know that China was taken to SSKM hospital. On enquiry in the hospital, PW 5 and his brother were informed that China was taken to Curzon Ward. They saw China in an injured condition in a trolley in front of the operation theatre. When the elder brother of PW 5 asked China as to what had happened, China told that he was shot at by Mota Manoj and Dila. They were accompanied by Khote Babu and 2/3 other persons. Police came to the hospital and recorded the statement of China in presence of doctor as well as in presence of PW 5 and his elder brother. PW 5 also stated that coming out from the upstairs, he met Samiran Seal @ Babai with other local boys. Samiran informed PW 5 that he along with China was returning home after watching a movie at Sailashri

cinema hall. At that time Mota Manoj, Dila and Khote Babu accompanied by 2/3 others surrounded China in front of Shitala temple of Akshoy Kanan. Thereafter Mota Manoj and Dila shot at China with their firearms and fled away from the place of occurrence. Samiran, with the help of some local boys took the injured China to SSKM hospital. PW 5 identified the accused persons including the appellants in Court. He was cross-examined on behalf of the appellants at great length.

16. Sister in law of the victim was examined as PW 6. She stated that British Deshmukh was her husband and the victim China Deshmukh was the youngest brother of her husband. She further stated that on June 29, 2002 at about 17. 00 hours Samiran Seal @ Babai came to her house and thereafter China and Samiran went out telling her that they were going to watch a movie in the cinema hall. The second brother of her husband Bharat Deshmukh returned home at about 23. 15/23. 20 hours. At that time her husband was at home. She further stated that at about 23.30 hours some local boys came to her house calling her husband and Bharat. Both of them went out. When the husband and brother-in-law of PW 6 did not return for a long time, she came out for an enquiry and at that time she came to learn from local people that China was shot at by some miscreants. Thereafter she returned to her house. On the following day i.e. June

30, 2002 Samiran again came to her house in the morning and told her that in the previous night when he along with China were coming home, China was shot at by Mota Manoj, Khote Babu, Dila and Kalia in front of Shitala temple of Akshoy Kanan. Following the incident, China was taken to SSKM hospital. She was interrogated by police on June 30, 2002.

17. The elder brother of the victim deposed as PW 7. He stated that China Deshmukh was his younger brother and was no more. On June 29, 2002 at about 11:15/11:20 hours his brother PW 5 returned home. At that time he was also in the house with his wife (PW 6), his minor son and mother. PW 5 told him that he had seen Mota Manoj, Dila, Kalia, Khote Babu and 1/2 others gathered by the side of the tank of Shitala Mandir of Akshoy Kanan. PW 7 asked PW 5 as to whether the aforesaid persons were discussing about China Deshmukh. PW 7 also stated that he told PW 5 that a few days ago Manoj Singh @ Mota Manoj had threatened PW 7 to kill China if he continued with his company with Bhola and Rajkumar. After sometime, local boys started calling at his house. Coming out, PW 7 heard that China was shot at near Shitala Mandir of Akshoy Kanan. He along with others rushed towards the place of occurrence. On the main road, some local boys informed him that China was taken to SSKM Hospital by a taxi. Going to the emergency department of the

hospital he found Samiran and other para boys sitting there. He was informed that China was taken to operation theatre of Curzon Ward. PW 7 and his brother had a talk with China whereupon China disclosed that he was shot at with firearms by Mota Manoj and Dila and at that time Khote Babu and 2/3 others were with the appellants. PW 7 further stated that thereafter police officer came there with a doctor and in presence of PW 7 and his brother China made a statement before the police officer which was reduced into writing. The doctor present there endorsed signature on such writing. PW 7 signed on a bond as required by the doctor. While China Deshmukh was inside the operation theatre, PW 7 was interrogated by police. He also stated that Samiran told him that when he along with China was returning home after watching a movie in Sailashri Cinema Hall, Mota Manoj, Dila, Khote Babu and 2/3 others surrounded them near Shitala Mandir of Akshoy Kanan and, thereafter, China was shot at with firearms by Mota Manoj and Dila. PW 7 proved his signature on the bed head ticket of the victim.

18. PW 7 further stated that on July 2, 2002 China Deshmukh expired at about 12:00 hours at the hospital. Inquest was conducted over the dead body in his presence. He proved his signature on the inquest report. He received the dead body of his brother after post

mortem examination. PW 7 was cross-examined on behalf of the appellants.

19. The police officer who conducted inquest over the dead body of the victim on July 3, 2002 deposed as PW 8. He proved the inquest report as Exhibit 4/1.

20. A medical officer deposed as PW 9. He stated that on June 30, 2002 at about 00:05 hours one China Deshmukh was admitted in PG Hospital under Dr. Abhimanyu Basu with multiple bullet injuries on his person. PW 9 attended the said patient in front of Curzon ward. He further stated that on interrogation, the patient stated that while returning from cinema hall at about 23:00 hours on June 29, 2002, he was attacked by four persons who shot at him from a close distance and fled away. He could identify two of the miscreants as Manoj and Dila. PW 9 further stated that on examination, the patient was found conscious, alcoholic smell was coming out from his breath. He also described the pulse rate and blood pressure of the patient.

21. On local examination, PW9 found one wound of entry measuring 1 cm x 1 cm over left shoulder region about 3 cm below mid clavicle. There was surrounding echymosis around the wound. He also found another wound of entry measuring 2 cm x 2 cm over the epigastrium with omentum coming out. There was a wound of exit over left flank near the loin. Echymosis was also present over left

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hand. There was active bleeding from both wound of entries. On local examination, abdomen was found rigid and tender. PW 9 also stated that he was present when the patient made the statement before the police officer in presence of some of his relatives at the corridor in front of the operation theatre. PW 9 also put his signature on the statement recorded before the police officer. He proved his signature on the statement (Exhibit 5). In his cross-examination, PW 9 could not say as to exactly after how long the patient was moved to the operation theatre. He further stated in such cross-examination that in his report he has not stated in so many specific words that the patient was in a fit state of mind to make a statement when he was interrogated.

22. The police constable who carried the dead body of the victim to the morgue under direction of the investigating officer and identified the dead body before the autopsy surgeon was examined as PW10. He handed over all the relevant documents to the doctor conducting post mortem examination.

23. A person from the locality of the victim deposed as PW11. He stated that he knew the victim. He heard from Samiran Seal @ Babai in the morning of June 30, 2002 that China Deshmukh was shot dead. He saw the dead body at SSKM hospital where British Deshmukh and other people from the locality were also present. He

was also a witness to the inquest done by a police officer of Bhabanipur PS. He proved his signature on the inquest report.

24. The Sub-inspector of police deposed as PW12. He arrested accused Pijush Kanti Majumder @ Khota Babu in connection with Garden Reach PS Case No. 102 dated June 30, 2002 from the crossing of Paharpur and Mudiali Road and informed the investigating officer of the case. He identified the said accused in Court.

25. Another local resident deposed as PW13. He stated that he knew China Deshmukh who was murdered on June 29, 2002. He further stated that on the date of incident at about 22.15/22.30 hours he was standing on the opposite side of Sailashree Cinema Hall. At that time a yellow taxi stopped in front of the gate of cinema hall. Some 4/5 persons got down from the taxi. They were Mota Manoj, Dila and Khota Babu. After sometime, they proceeded towards Akshoy Kanan on foot. He further stated that at about 22.45 hours he returned to his house. At about 23.30/23.45 hours, he came out from his house to purchase a cigarette and came to know from the shop owner that China Deshmukh was shot by means of firearms near Shitla Mandir of Akshoy Kanan. Thereafter, PW 13 along with others went to SSKM Hospital. Reaching there he came to know that China was taken to operation theatre. He met Samiran Seal in the hospital who told him that China was shot by means of firearm by Mota Manoj,

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Khote Babu, Dila and 1/2 others. Police came to the hospital and PW 13 was interrogated by the police.

26. Another person from locality was examined as PW 14. He knew China Deshmukh was murdered on June 29, 2002. He stated that on the date of incident, at about 23. 00/23. 10 hours he was returning home through Akshoy Kanan. When he reached near Shitala Mandir of Akshoy Kanan, he heard two sounds of firing. He was scared and tried to conceal himself inside a lane. It was drizzling at that time and there was a street light at the place. He further stated that he saw 4/5 persons running away towards Paharpur Road. Two of them were armed with firearms. He identified the aforesaid persons as Mota Manoj, Dila, Khote Babu and Kalia. PW 14 also stated that when he was proceeding towards his house and reached near Shitala Mandir, he found China Deshmukh standing with bleeding injuries keeping his hand on his abdomen. PW 14 also stated that on his query, China told him that he was shot at by Mota Manoj and Dila whereas Khote Babu and 2/3 others were with them. Many locals were assembled there. PW14 informed the incident to the locals and went to his house. He was interrogated by police in connection with the case on the following morning. PW 14 identified the four accused persons in Court.

27. A sub- inspector of police deposed as PW 15. He arrested the appellant Manoj Singh @ Mota Manoj on September 12, 2002 in connection with Garden Reach PS Case No. 102 dated June 30, 2002, on the basis of source information. After arresting the appellant, PW 15 informed the investigating officer and handed him over to him.

28. The friend of the victim with whom, he went to watch the movie on the date of incident was examined as PW 16. In his deposition, he stated that he knew the victim. He heard that China was murdered. He further stated that the incident took place about 1 ½ year ago. On that day at about 19.30 hours, he was in his house. At that time China came to his house and invited him to watch a movie. Thereafter, both of them went to Sailashri Cinema Hall to watch the movie in the night show. On their way back when they reached near Shitala Mandir of Akshoy Kanan, a gang of persons suddenly came there running and caught China. He further stated that he fled away out of fear and hid himself in a garden by scaling the boundary wall where he remained hidden for about 20 minutes. PW 16 also stated that he heard sounds of bomb explosion at the time. When he was returning home, he found the victim lying on the road with bullet injuries on his person near a garage at a walking distance of four minutes from Shitala Mandir of Akshoy Kanan.

29. PW 16 also stated that at that time, China was conscious and asked him to take him to hospital immediately. PW 16 immediately called taxi and took the victim to SSKM hospital. The victim was attended by the Doctor at the emergency department. PW 16 signed on some documents as required by the Doctor which he proved at the tiral. He also helped the ward boy to take the victim to the ward. He further stated that he saw PW 7, the brother of the victim, in the hospital. PW 16 was made to sit in a police vehicle for the night and on the following day he was interrogated by police. He did not see any other brother of the victim except PW 7 in the hospital. He also could not say as to who were the assailants and did not disclose any name of any of the assailants before the police.

30. PW 16 was declared hostile by the prosecution and in his cross-examination on behalf of the prosecution, he denied having made a statement before the investigating officer to the effect that there was street light at the place of occurrence and when he along with the victim reached near Shitala temple of Akshoy Kanan, Manoj, Dila, Khote Babu, Kalia and 1/2 others tried to detain them by the side of the tank near the temple. He also denied having stated before the police that he clearly saw Dila and Manoj Singh shooting at China from firearms one after another and thereafter they fled away and that the miscreants who caught him also fled away or that he and the

victim narrated the incident before the doctor who recorded it in a form and PW16 signed on it. PW16 also denied having stated before police that the victim met two of his brothers in the hospital and talked with them and that the victim told PW7 that he was shot by Mota Manoj and Dila by means of firearms and Khote Babu and 2/3 others were with them.

31. PW17 and PW18 did not add any value to the case of the prosecution. They did not state anything about the incident.

32. A medical officer was examined as PW 19. On July 3, 2002, he conducted post mortem examination over the dead body of the victim and found the following injuries:-

i. *"Abrasion over medial side of left forearm lower part placed above down measuring 1½" x 1";*
ii. *Abrasion over medial side left arm upper part placed above down measuring 3" x 2½";*
iii. *Abrasion over medial side of left arm middle portion placed side to side measuring 2" x 1";*
iv. *Abrasion over left shoulder anteriorly to down left side chest wall anteriorly measuring 6" x 4";*
v. *Abrasion over medial side right forearm upper part placed above down measuring 2½" x 1";*
vi. *One stitched up wound over xyphisternum to down abdomen with 22 stitches. On removal of the stitches it measured 11" x ½" x cavity deep – rectus muscle – peritoneum – intestine – stomach all found repaired;*
vii. *Bruises over left side chest wall anteriorly measuring 6"x 4";*

viii. *One gunshot wound of entrance with evidence of scorching, singeing, blackening, tattooing contused, lacerated, abraded and inverted skin margin placed over left side of chest wall upper part close to shoulder measuring ½" x ½" x cavity deep – at the level of 1st rib – dissection and tracing the track of the wound it is found to have piercing skin, tissues, muscles – one metallic foreign body found lodged over left side chest wall at the level of 1st rib with evidence of fracture of left clavicle and the 1st rib – 2½" left of mid line – and the metallic foreign body was removed and preserved;*

ix. *One gunshot wound of entrance with evidence of scorching, singeing, blackening, contused, abraded, tattooing, lacerated and inverted skin margin placed over abdominal upper part on the left side measuring ½" x ½" x cavity deep – on dissection and tracing the track of the wound it is found to have piercing skin, tissues, muscles – vital organs of the abdomen which were surgically repaired – and finally coming out from the side of abdomen lower part making a wound 1" x 1" x cavity deep with evidence of erected skin margin – 1" left of anterior auxiliary line and 4" above pelvic brim.*

The abrasions are non-scabbed, reddish and the bruises are of red in colour and all the injuries showed evidence of vital reaction."

33. In his opinion death was due to gunshot injuries, ante mortem and homicidal in nature. He proved the post mortem report prepared in his pen and signature as exhibit 7.

34. A Sub-inspector of Kolkata police was examined as PW20. He stated that on September 18, 2002 he was posted at Garden Reach PS. At about 15.00 hours, one officer from Lalbazar namely S.K. Pal came to the police station with one accused and sought police assistance for search of some places as per the identification of such accused. As directed by the officer-in-charge, PW20 accompanied the said officer to premises No. 48 Taratala Road into a factory of Calcutta Docking and Engineering Company. The accused accompanying the police officer S.K. Pal, led them to a bushy place by the side of the factory. There were two local witnesses present. Going near the boundary wall following a Kaccha Road, the accused brought out a yellowish polythene packet from inside the bush. He brought out one country made firearm from inside the packet and handed over the same to S.K. Pal who seized the firearm and polythene packet under a seizure list in presence of PW20 and other witnesses who signed on the seizure list. The accused also signed on such seizure list. PW20 proved the seizure list and his signature thereon (Exhibit 8 and 8/1). He also proved his signature on the labels attached to the seized articles (Exhibit 9 and 9/1). He also identified the seized firearm and the polythene packet in Court (Mat. Exhibit III and IV) and identified appellant Manoj Singh as the person at whose instance, the seized articles were recovered.

35. The medical officer of SSKM hospital was examined as PW21. He stated that on June 29, 2002 he was on duty medical officer at SSKM hospital emergency department from 21.00 hours. At about 00.05 hours on June 30, 2002, one China Deshmukh was brought by Samiran Seal in the emergency department in an injured condition. He further stated that Samiran Seal told him that the injured was shot at by 5 persons namely Manoj Singh, Dila, Khote Babu, etc. by firearms from a close range while they were returning from Sailashree Cinema Hall. The patient was admitted with uncertain prognosis. PW21 proved the injury report prepared in his pen and signature (Exhibit 6/1).

36. The Senior Scientific Officer in the Ballistic Division of Forensic Sciences Laboratory, Government of West Bengal was examined as PW 22. He stated that his office received two packets marked 'A' and 'B' on September 27, 2002 for examination in connection with Garden Reach PS Case No. 102 dated June 30, 2002. The packet marked 'A' contained one break-open improvised pistol of overall length 9.5", barrel length 5.6" and bore-diameter at muzzle was 0.38". PW 22 also stated after examination the pistol was fond designed to 0.308" rifle ammunition. Weight, dimensional and constructional feature of the fired bullet marked 'B' indicated that it was a bullet used in a 0.315"/8 MM sporting rifle ammunition. Both

the articles, according to PW 22 were found to fall under the provisions of the Arms Act. Traces of firing were detected inside the pistol suggesting that it was fired through, previously. Nature of marks present on the fired bullet indicated that it was fired through improvised firearm. PW 22 also stated that on the basis of the examinations and observations it was found that pistol marked 'A' was in working condition and the fired bullet marked 'B' was fired through pistol marked 'A'. PW 22 proved the report prepared in his pen and signature (Exhibit 10). He also identified the pistol sent for examination (Mat Exhibit III) and the fired bullet (Mat Exhibit II). The pistol and fired bullets were returned back to the Deputy Commissioner of Police, Detective Department, Kolkata under a sealed packed with a label of his office. He proved the label on the sealed packed (Exhibit 11).

37. The investigating officer of the case deposed as PW 23. He stated that he took up the investigation of this case on July 2, 2002. He described various steps taken by him during his part of investigation. He collected the death certificate of the victim. He also visited the place of occurrence and recorded the statement of some local witnesses. On July 3, 2002 he sent requisition to Bhabanipur PS for holding inquest and post mortem on the dead body of the victim and collected viscera, hair, nail, bullet head and other articles of the

victim after post mortem examinations and deposited the said articles in the police station. He also engaged plan maker and surveyor to prepare a site plan of the place of occurrence. He also conducted search and raid at different places. On July 14, 2002, he arrested one Md. Arsad @ Kalia whom PW 22 identified in Court. He also collected the inquest report, post mortem report, bed head ticket of the victim and seized the same under a seizure list. He proved the said seizure list, the site plan and photographs of the victim. Thereafter, in compliance with his superiors, PW 23 handed over the charge of investigation to the Officer-in-Charge, CIW, Detective Department.

38. A Sub-Inspector of Police was examined as PW 24. He stated that on June 29, 2002 when he was posted at Garden Reach PS, at about 11:30 pm PW 24 got information about some disturbance in Paharpur area. Getting such information he went to the place of occurrence with other officers. He was also informed by the Officer-in-Charge of Garden Reach PS that at Paharpur Road near Shitala Mandir a person named China Deshmukh was shot. Accordingly, PW 24 went to the place of occurrence and tried to talk to the local people but he could not gather any information. Subsequently, the Officer-in-Charge again informed that the victim China Deshmukh was taken to SSKM Hospital, Emergency Department. Accordingly PW 24 proceeded to the emergency room of SSKM Hospital and verified the information

from Dr. Jayanta Chowdhury. He was informed that the victim China Deshmukh was under treatment in the emergency room and was referred to Curzon Ward of the hospital for operation. PW 24 went to Curzon Ward O.T. room and found a person lying on stretcher. The operation theatre Dr. Bijon Biswas was present there and in his presence and with his permission, PW 24 recorded the statement of the injured China Deshmukh. The victim was identified by Dr. Bijon Biswas. PW 24 also stated that after recording the statement of the victim it was read over and explained to the victim whereupon the victim admitted the recording to be correct and put his left thumb impression on such statement. Dr. Bijon Biswas also put his signature on the statement so recorded. PW 24 proved his statement recorded in his pen and signature (Exhibit 5/1).

39. On the basis of such statement, PW 24 had drawn up an FIR and started a specific case under instruction of the Officer-in-Charge of the police station. PW 24 also recorded the statement of one Samiran Seal, Bharat Deshmukh and Jayanta Chowdhury who were present in the hospital. Thereafter, PW 24 returned to the place of occurrence in front of the J-317, Paharpur Road accompanied by Samiran Seal and searched for the witnesses but none could be found. Thereafter, he returned to the police station and started the case on the basis of statement of China Deshmukh. PW 24 proved the formal

FIR (Exhibit 12). PW 24, in course of investigation of the case, visited SSKM Hospital and recorded the statement of Dr. Bijon Biswas, Dr. Jayanta Chowdhury, British Deshmukh and Kishore Das. He again went to the place of occurrence and recorded statement of other witnesses including a footpath dweller and the sister-in-law of the victim. He also examined the neighbouring people. PW 24 arrested accused Dilip Dey @ Dila on July 22, 2003 whom he identified in Court. Thereafter, he handed over the case diary to the Officer-in-Charge as per his directions.

40. The second investigation officer of the case deposed as PW 25. He took up investigation of Garden Reach PS Case No. 102 dated June 30, 2002 on September 17, 2002. He also took charge of accused Manoj Singh and examined him and recorded his statement. During his part of investigation, the accused Manoj Singh gave a statement that he would lead the police to recovery of the offending weapon used by him. Since the place where the offending weapon was kept fell under the jurisdiction of Garden Reach PS, PW 25 gave a requisition to such police station for assistance. Thereafter, with the assistance of local police and accompanied by accused Manoj Singh PW 25 visited the place indicated by the accused Manoj Singh. He identified accused Manoj Singh in Court. They went to Taratala Road beside 48, Taratala Road, Calcutta Docking and Engineering Company. From inside the

bush of an abandoned place accused Manoj Singh brought out the weapon of offence in his presence which was kept in a polythene packet. It was an improvised iron made wooden butt single shooter firearm measuring 10" from tip of the barrel to the tip of the bullet. PW 25 seized the weapon of offence under proper seizure list, sealed and labelled the same. The accused as well as the witnesses put their signatures on the seizure list and the packet. PW 25 proved the seizure list (Exhibit 8). He also identified the recovered weapon and his signature on the label attached to such weapon. He also identified the polythene packet in which the offending weapon was kept before its seizure. PW 25 also proved the statement of accused Manoj Singh recorded by him on the basis of which the weapon was recovered (Exhibit 12). He sent the seized articles to FSL by a memo dated September 26, 2002. He proved the forwarding letter. The other articles like glass vial containing blood of the victim, that containing skin, hairs, nail cutting etc. were also sent by PW 25 to FSL for chemical examination. PW 25 collected the FSL reports. PW 25 also sent requisition to the Manager, System Control, CESC Calcutta with regard to the power supply at the place of occurrence in between 23:00 hours and 23:05 hours on June 29, 2002 and received report thereof. PW 25 also obtained sanction from Commissioner of Police, Calcutta (Exhibit 16). Thereafter, in consultation with his

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predecessors, PW 25 submitted charge-sheet against four accused persons under Section 302/34 of the IPC and 25/26 of the Arms Act against the accused Manoj Singh.

41. Upon conclusion of the evidence on behalf of the prosecution, the appellants were examined under Section 313 of the Code of Criminal Procedure. In such examination, the appellants pleaded innocence having no knowledge about the incident. They also stated that the allegations made against them by the prosecution witnesses were false. The appellants however declined to adduce any defence witness.

42. The victim China Deshmukh is alleged to have been shot by firearms, by the appellants over previous disputes when he was returning home after watching movie with one of his friends. He was taken to hospital where, in course of treatment, he succumbed to the injuries. The doctor who attended the victim in the emergency ward, PW21, has testified that at about 00.05 hours on June 30, 2002, one China Deshmukh was brought by Samiran Seal in the emergency department in an injured condition. He further stated that Samiran Seal told him that the injured was shot at by 5 persons namely Manoj Singh, Dila, Khote Babu etc. by firearms from a close range while they were returning from Sailashree Cinema Hall. The injuries found on the person of the victim were noted by PW21 in Exhibit 6/1.

43. The medical officer who immediately attended the victim i.e. PW 9, testified that on June 30, 2002 at about 00:05 hours one China Deshmukh was admitted in PG Hospital under Dr. Abhimanyu Basu with multiple bullet injuries on his person. PW 9 attended the said patient in front of Curzon ward. PW9 also stated that on interrogation, the patient stated that while returning from cinema hall at about 23:00 hours on June 29, 2002, he was attacked by four persons who shot at him from a close distance and fled away. He could identify two of the miscreants as Manoj and Dila. PW 9 further stated that on examination, the patient was found conscious, alcoholic smell was coming out from his brother. On local examination, PW9 found one wound of entry measuring 1 cm x 1 cm over left shoulder region about 3 cm below mid clavicle. There was surrounding echymosis around the wound. He also found another wound of entry measuring 2 cm x 2 cm over the epigastrium with omentum coming out. There was a wound of exit over left flank near the loin. Echymosis was also present over left hand. There was active bleeding from both wound of entries. On local examination, abdomen was found rigid and tender. PW 9 also stated that he was present when the patient made the statement before the police officer in presence of some of his relatives at the corridor in front of the operation theatre. PW 9 also put his signature on the statement recorded before the police officer, Exhibit 5.

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44. The victim succumbed to the injuries, in course of treatment. A post mortem examination was conducted on the dead body of the victim by PW 19. On such examination, PW19 found several injuries, in fact eight injuries, on the person of the victim which included two gunshot injuries namely:

i. *"One gunshot wound of entrance with evidence of scorching, singeing, blackening, tattooing contused, lacerated, abraded and inverted skin margin placed over left side of chest wall upper part close to shoulder measuring ½" x ½" x cavity deep – at the level of 1st rib – dissection and tracing the track of the wound it is found to have piercing skin, tissues, muscles – one metallic foreign body found lodged over left side chest wall at the level of 1st rib with evidence of fracture of left clavicle and the 1st rib – 2½" left of mid line – and the metallic foreign body was removed and preserved;*

ii. *One gunshot wound of entrance with evidence of scorching, singeing, blackening, contused, abraded, tattooing, lacerated and inverted skin margin placed over abdominal upper part on the left side measuring ½" x ½" x cavity deep – on dissection and tracing the track of the wound it is found to have piercing skin, tissues, muscles – vital organs of the abdomen which were surgically repaired – and finally coming out from the side of abdomen lower part making a wound 1" x 1" x cavity deep with evidence of erected skin margin – 1" left of anterior auxiliary line and 4" above pelvic brim."*

45. PW19, on the basis of post mortem examination and its report Exhibit 7, opined that the death of the victim was caused due to gunshot injuries which were ante mortem and homicidal in nature.

Therefore, on the basis of the testimonies of PW19 and PW21 coupled with that of exhibit 6/1 and exhibit 7, it stands emphatically established, beyond any iota of doubt that the victim was murdered with gunshots.

46. So far as the persons responsible for the fatal injuries to the victim is concerned, it is the case of the prosecution that while the victim was returning to his home with one of his friends PW16, he was intercepted by the appellants and others near Shitala temple of Akshoy Kanan and shot him from a close range leading to severe gunshot injuries.

47. PW16, although declared hostile by the prosecution, but in his deposition, he has admitted going to Cinema Hall for watching a movie in the company of the victim. He has also testified that on their way back when they reached near Shitala Mandir of Akshoy Kanan, a gang of persons suddenly came there running and caught China. PW16 fled away out of fear and hid himself in a garden by scaling the boundary wall where he remained hidden for about 20 minutes. PW 16 also stated that he heard sounds of bomb explosion at the time. When he was returning home thereafter, he found the victim lying on the road with bullet injuries on his person near a garage at a walking distance of four minutes from Shitala Mandir of Akshoy Kanan. PW 16 also stated that at that time, China was conscious and asked him to

take him to hospital immediately. PW 16 immediately called taxi and took the victim to SSKM hospital. The victim was attended by the Doctor at the emergency department. He also signed on certain documents there.

48. PW16 did not identify the appellants as the assailants in his deposition and possibly for such reason, he was declared hostile by the prosecution. PW21, the other medical officer who was on duty at the emergency department has also stated in his deposition that the victim was brought to SSKM hospital at about 00.05 hours on June 30, 2002 by PW16. PW5 and PW7 have corroborated the statement of PW16. They have stated that upon hearing hue and cry in the locality, when they reached the place of occurrence, they were informed by the local boys that the victim was taken to SSKM hospital by a taxi.

49. The First Information Report involving the death of the victim China Deshmukh was apparently initiated on the basis of statement of the victim himself recorded by police in presence of the attending doctor when he was brought to the emergency department of SSKM hospital. Such statement disclosed that the victim went to watch a movie with his friend Samiran Seal i.e PW16 at Shailashree Cinema Hall in the night show i.e. 8-11 p.m. After watching the movie, they were returning home walking through Akshoy Kanan. At about 11.20 p.m. suddenly, Ghatababu, Dila and Manoj Singh accompanied by

4/5 other persons chased him. In front of J-317, Akshoy Kanan, Shitala Mandir, Dila and Manoj Sing shot at him, hitting on the upper portion of his left arm and upper abdomen and thereafter, both of them fled away.

50. Therefore, such statement identifies the two appellants as the persons who shot at the victim with firearms. The two brothers of the victim, PW5 and PW7 have stated in their testimony that the victim had previous disputes with the appellants for which they were worried with the presence of the appellants and others at the place of occurrence prior to the incident. Not only that, the aforesaid two witnesses had the opportunity to meet the victim before he was taken into the operation theatre. The victim confided in them and disclosed the appellants to be his assailant. Although, PW5 and PW7 were cross examined on behalf of the appellants at the trial but such cross examination does not seem to imprint any dent with regard to the testimony of such witnesses, so far as it relates to the dying declaration made by the victim. The presence of the appellants at the place of occurrence at the relevant time was corroborated by PW5 and PW7. The said witnesses saw the appellants at the place of occurrence while they were returning to their house. PW13 also saw the appellants coming near Shailashree Cinema Hall by a taxi just prior to

the incident. He also saw them moving towards the place of occurrence on foot after deboarding the taxi.

51. In fact, the dying declaration made by the victim before PW5 and PW7 is in quite consonance with the dying declaration made by the victim before the doctor. The contents of the statement recorded by the victim before the police, as testified by PW9 and that made before PW5 and PW7 qualifies to the characteristics of a valid dying declaration and such dying declaration forms the basis of the First Information Report.

52. On behalf of the appellants, the dying declaration made by the victim was confronted on the ground that the alleged dying declaration was recorded by police, though in presence of attending medical officer, but the same is not supported by a certificate by the medical officer that the victim was mentally and physically fit to make such statement. In his cross examination, PW9 stated that in his report he did not state in so many specific words that the patient was in a fit state of mind to make a statement when he was interrogated. However, in his deposition, PW9 established that the statement of the victim was recorded by police in his presence and it was apparently recorded without any objection on the part of PW9. The defence had also the opportunity to cross examine PW21 who treated the victim on the relevant date. No suggestion was advanced to such witness to the

effect that the victim was not in a fit state of mental and physical health to record a statement. More so, PW24, the police officer who recorded the dying declaration also stated that he recorded the statement of the victim with the permission of the attending doctor PW9.

53. Furthermore, PW5 and PW7 have categorically stated in their deposition that the victim, before he was taken to operation theatre, made statements identifying the appellants as his assailants by means of firearms. PW9 has corroborated such fact by stating that the statement of the victim was recorded by police in his presence as well as in presence of the some relatives of the victim in the corridor in front of the operation theatre. Besides, PW16 stated in his deposition that at the relevant time, the victim, China was conscious and asked him to take him to hospital immediately. PW 16 immediately called taxi and took the victim to SSKM hospital. Such statement of PW16 coupled with that of PW9 sufficiently establishes that the victim was mentally alert and physically fit enough to record a dying declaration.

54. In the statement recorded by the victim, Exhibit 5/1 stated that in front of J-317, Akshoy Kanan Shitala Mandir, Dila and Manoj Singh shot at him, hitting on the upper portion of his left arm and upper abdomen. The attending medical officer, PW9, on examination of the victim, when he was brought to the hospital, on local

examination, found one would of entry measuring 1 cm x 1 cm over left shoulder region about 3 cm below mid clavicle. There was surrounding echymosis around the wound. He also found another wound of entry measuring 2 cm x 2 cm over the epigastrium with omentum coming out. There was a wound of exit over left flank near the loin. Similarly, the autopsy surgeon PW19, also found gunshot injuries namely:

i. *"One gunshot wound of entrance with evidence of scorching, singeing, blackening, tattooing contused, lacerated, abraded and inverted skin margin placed over left side of chest wall upper part close to shoulder measuring ½" x ½" x cavity deep – at the level of 1st rib – dissection and tracing the track of the wound it is found to have piercing skin, tissues, muscles – one metallic foreign body found lodged over left side chest wall at the level of 1st rib with evidence of fracture of left clavicle and the 1st rib – 2½" left of mid line – and the metallic foreign body was removed and preserved;*
ii. *One gunshot wound of entrance with evidence of scorching, singeing, blackening, contused, abraded, tattooing, lacerated and inverted skin margin placed over abdominal upper part on the left side measuring ½" x ½" x cavity deep – on dissection and tracing the track of the wound it is found to have piercing skin, tissues, muscles – vital organs of the abdomen which were surgically repaired – and finally coming out from the side of abdomen lower part making a wound 1" x 1" x cavity deep with evidence of erected skin margin – 1" left of anterior auxiliary line and 4" above pelvic brim."*

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55. The injuries found by PW9 and PW19 are quite in conformity with the description of the incident narrated in the statement of the victim. That apart, besides the gunshot injuries, PW19 also found at least 7 injuries in the nature of bruises and abrasion on the person of the victim which corroborates the statement of the witnesses including PW16 that the victim was chased and caught by the miscreants. The victim sustained such injuries in the process of chasing and catching him. We have seen from the evidence of the prosecution that the miscreants were none other than the appellants accompanied by some other persons.

56. PW14, a local resident had seen the incident. He was returning home when he heard sound of firing. On the date of incident, at about 23. 00/23. 10 hours he was returning home through Akshoy Kanan. When he reached near Shitala Mondir of Akshoy Kanan, he heard two sounds of firing. He was scared and hid himself inside a Lane. It was drizzling at that time and there was street light at the place. He saw 4/5 persons running away towards Paharpur Road. Two of them were armed with firearms. He identified the aforesaid persons as Mota Manoj, Dila, Khote Babu and Kalia. He found China Deshmukh standing with bleeding injuries keeping his hand on his abdomen. The victim informed PW 14 that he was shot at

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by Mota Manoj and Dila whereas Khote Babu and 2/3 others were with them.

57. Another local resident, PW13, had seen the appellant getting down from a taxi near Shailashree Cinema Hall and then proceeding on foot towards Shitala Mandir of Akshoy Kanan. PW5 and PW7 also saw the appellants sitting near the place of occurrence before the incident. Moreover, the offending weapon was recovered on the leading statement, i.e. exhibit 12, of one of the appellants. The recovered firearm together with the bullet retrieved from the dead body was sent for examination by the firearm expert of the Forensic Science Laboratory. The report, Exhibit 10 proved by PW 22 stated that on the basis of the examinations and observations it was found that pistol marked 'A' was in working condition and the fired bullet marked 'B' was fired through pistol marked 'A'.

58. The aforementioned evidence establishes beyond any doubt that the appellants were the persons who intercepted the victim on way back to his home while coming after watching movie on the date and time of incident. The two appellants fired from their firearms resulting in fatal injuries to the victim. The firearm was recovered at the behest of the appellant in accordance with Section 27 of the Indian Evidence Act, 1872 and exhibit 12 unerringly established that the bullet retrieved from the body of the victim was fired from such

firearm. The evidence led at the trial, as discussed hereinabove, establishes the involvement of the appellants in the incident and their guilt.

59. Therefore, on the basis of discussions made herein, we find no reason to interfere with the impugned judgment and order. The same stands affirmed.

60. Accordingly, the instant appeals being **CRA 242 of 2021** and **CRA 729 of 2006** along with connected application, if any, are hereby dismissed without any order as to costs and thus, disposed of.

61. Period of detention already undergone by the appellant shall be set off against the substantive punishment in terms of the provisions contained in Section 428 of the Code of Criminal Procedure.

62. Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties on priority basis upon compliance of all formalities.

[MD. SHABBAR RASHIDI, J.]

63. I agree.

[DEBANGSU BASAK, J.]