IN THE HIGH COURT AT CALCUTTA

CIRCUIT BENCH AT JALPAIGURI

CRIMINAL APPELLATE JURISDICTION

(APPELLATE SIDE)

CRA/22/2021

C T RAGHUNANDAN @ RAGHUNANDAN

VS

STATE OF WEST BENGAL

Before: The Hon'ble Justice Arijit Banerjee

The Hon'ble Justice Chaitali Chatterjee (Das)

For the petitioner	:	Mr. Abhishek Sarkar, Adv., Ms. Debopriya Ghosh, Adv.
For the State	:	Mr. Jagriti Mishra, Ld. AAAG, Mr. Uday Bhattacharjee, Adv.
For Judgment on	:	13.11.2026

Arijit Banerjee, J. :-

1. This appeal is directed against a judgement of conviction and order of sentence dated April 30, 2021, passed by the learned Additional Sessions Judge, Dinhata, District: Cooch Behar in Sessions Trial No. 04(03)/2019 arising out of Sessions Case No. 85 of 2018. By the impugned judgment and order, the appellant was held to be guilty for commission of offences punishable under Sections 302/201 of the Indian Penal Code. He was acquitted of the charge under Sections 25(i)(a)/27 of the Arms Act. For commission of offence under Section 302 of the IPC, the appellant was

sentenced to suffer rigorous imprisonment for life which was explained by the learned Judge to mean imprisonment for the remainder of the appellant's natural life. For commission of offence under Section 201 of the IPC, the appellant was sentenced to suffer rigorous imprisonment for 7 years and also to pay fine of Rupees One Lakh, in default to undergo further rigorous imprisonment for 1 year. The sentences were directed to run concurrently.

2. The victim (Arbind Kumar) and the appellant (C T Raghunandan) both belonged to the Border Security Force. They were constables in the force.

3. The prosecution case is that on the eventful night, i.e., January 24, 2018, the victim (hereinafter referred to as 'Arbind') was on duty at point Alpha – 9. Jitamitra Sahu (in short, 'Sahu') was on duty at point Alpha – 15. Other BSF personnel were also on duty at nearby points under Durga Nagar BOP. Between 10 and 10:30 pm, Sahu heard a sound of bomb coming from somewhere between Alpha – 9 point and Alpha - 15 point. Another constable by the name of Srisile Sangoppa Chincholli (in short, 'Chincholli') who was on duty at a nearby post contacted Sahu through radio set inquiring about whether he had heard a sound. Sahu said that it may be the sound of a bomb. Then Sahu called Alpha – 9, i.e., Arbind through radio set but there was no reply. He also tried to draw Arbind's attention by torch light, but in vain. Then Sahu told Chincholli over radio set that Arbind was not responding. Chincholli asked Sahu to go to Alpha – 9 point. Sahu's commandant also told him to go to that spot. Sahu called constable Mahendra Chaudhury (in short, 'Mahendra') and after keeping him at Sahu's post, Sahu went to Alpha – 9. He did not find Arbind there. He

started searching for Arbind. He found Arbind's body in a jungle. His hands and legs were tied. His eyes were open. Mahendra also appeared at that spot and saw Arbind's body.

4. The superiors of the aforesaid constables were informed about the dead body of Arbind. They came to the place of occurrence. Inquest was held. A First Information Report was lodged at around midnight on that date, by Murar Tukaram Patil (in short, 'Patil') who was in charge of the concerned BOP. Initially the FIR was against unknown miscreants.

5. Investigation followed. That led the investigating officer to Dasami Modak (in short, 'Dasami'). Dasami recorded her statement under Section 164 of the CrPC implicating Raghunandan as the assailant of Arbind. She claims to be an eye-witness to the incident. In a nutshell what she said was that she was in physical relationship with both Arbind and Raghunandan. On the night of the event, as had been planned between her and Arbind, she left her home and met Arbind at a little distance from her home. While they were engaged in having physical relationship, Raghunandan suddenly appeared at the spot and shot Arbind on his chest with Arbind's service rifle which was lying next to Arbind.

6. On the basis of the investigation report, charges were framed under Sections 25 (i) (a)/ 27 of the Arms Act and Sections 302/201 of the IPC. Upon the charges being read out to Raghunandan, he pleaded not guilty and claimed to be tried. Hence, the Sessions trial.

7. The prosecution examined 12 witnesses. PW-1 to PW-7 were all BSF personnels. PW-8 was a local person whose evidence is of no use. PW-9 was the doctor who conducted post-mortem on Arbind's dead body. PW-10 is

Dasami, the lady, on whose statement Raghunandan was apprehended. PW-11 is Dasami's husband, *viz*, Dulal Modak. PW-12 is the investigating officer, S.I. Mrityunjay Chakraborty.

8. The evidence of PW-1 to PW-7 is not of much significance. It was PW-4 (Chincholli) who first discovered Arbind's body and he was soon thereafter joined by PW-6 (Mahendra). The other BSF personnel witnesses have no direct knowledge of the incident.

9. As rightly noted by the learned Trial Judge and in fact admitted before us in course of argument by learned State Advocate, the entire prosecution case rests on the evidence of PW-10 and PW-12. It would be helpful to reproduce the deposition of PW-10 (Dasami), which runs as follows:-

> **"**I know accused Raghunandan. Today Raghunandan is present in court room and identified by P.W-10 on dock.
>
> The incident took place about 2 years ago. Raghunandan and Arbind Kumar used to contact with me over phone before Durga Puja about 2 years ago. I had physical relationship with Raghunandan. Thereafter I had the physical relationship with Arbind Kumar. Some days before the date of incident, I came at Mahamaya Cinema Hall at Dinhata with Arbind Kumar and took meal in a hotel at Dinhata. Thereafter Arbind returned to his camp and I returned my home. About 1/2 days ago of the incident I met with Arbind in a "Shaani Mandir" (God Shaani Temple) beside barbed wire fencing and talked with him and he told me that I had to go to him when he will give signal of a torch at night. On the date of incident at about 8:30 P.M, I finished my dinner and went to Arbind by bolting the door from outside when I noticed the signal of the

torch of Arbind. There, I started physical relationship with Arbind kumar. Suddenly, Raghunandan reached there and at that time I was in a sitting position upon Arbind Kumar. I stood up then and there and Raghunandan shot on the chest of Arbind by the gun of Arbind Kumar. I ran away from the spot but Raghunandan followed me and asked me to stop. Then Raghunandan threatened me with dire consequences to kill myself and my children and deterred me not to disclose anything to anybody about the incident whatever I have seen. Then I returned to my house.

Police interrogated me in connection with case.

Subsequently, I made statement before the Ld. Magistrate. The Ld. Magistrate read over and explained the contents of the statement to me and after understanding the same as correct, I put my six signatures on the statement. (Statement of the witness recorded u/s 164 of the Cr.P.C is tendered to the witness)- These are my signatures on this statement. (Signatures of the witness on the statement are marked as exhibits-12/1 to 12/6 respectively). (Statement of the witness recorded u/s 164 of the Cr.P.C is marked as exhibit-12).

(Cross-examination by the defence)

I have one son and one daughter. My husband is a farmer. We have 3/4 bighas of cultivated land. BSF camp is 1½ mile away from my house. Border is 5/6 bighas away at the northern side from my house. The alleged place of occurrence is 5/6 bighas away from my house which is the planted field of Nalani Barman. I cannot say the exact date

but one year before the last Durga Puja I had acquaintance with Raghunandan and Arbind Kumar.

I did not tell the police that the name of Raghunandan and Arbind Kumar but they used their names used as Sonu.

Police interrogated me just after 2/3 days of the incident and at that time my husband was not at home and I made statement before the Ld. Magistrate after 2 months from the death of Arbind Kumar. At that time BSF personnel went to my house but I had not been at my home.

The alleged incident took place in between 9:30/10 P.M and after the incident within 15 minutes I returned to my house. I entered into my room after opening the door and at that time my husband was sleeping. On the next day many people gathered there and I also went to see Arbind Kumar at about 7/8 A.M. I noticed BSF personnel there. I told nothing to the BSF personnel and local people. I went to BSF camp as their senior officer came there.

When I came out from my house, my husband was sleeping. I am leading conjugal life with my husband for the last 11 years.

Not a fact that I met with several BSF personnel during 11 years.
Not a fact that Raghunanda and Arbind did not contact with me over phone before Durga Puja about 2 years ago or that I had no physical relationship with Raghunandan or that Raghunandan never contacted with me or that on the date of incident I did not go to Arbind Kumar after getting the signal by the torch of Arbind at night or that I had no physical relationship with Arbind Kumar or that Raghunandan did not threaten me with dire consequences to kill myself and my children or

that Raghunandan did not deter me not to disclose anything to anybody about the incident whatever I have seen.

Not a fact that I have deposed falsely or that BSF personnel threatened me or that as per instructions of BSF personnel I made statement before the Ld. Magistrate or that whatever I deposed is false.**"**

10. PW-11, i.e., Dasami's husband, deposed that he had told the police that he had heard that his wife 'made an illicit relationship with a BSF personnel of Durga Nagar camp.' He also deposed that on the date of the incident, he saw a BSF personnel behind his home. At that time, he found that his wife was absent from the room and the door was locked from outside. He called his wife and she opened the door. Then he deposed:

"I asked my wife and also assaulted her. She replied that she went to nature's call. Thereafter we went asleep.**"**

11. PW-12, i.e., the investigating officer, in his deposition, narrated the articles that he seized from the place of occurrence. Thereafter, he went on to depose as follows:

"As per statement of Dasami Modak, I arrested the accused CT Raghunandan and forwarded him before the Ld. ACJM, Dinhata. He was taken into remand. During remand period one broken mobile NOKIA without battery, black cover and another black coloured NOKIA mobile were recovered from Raghunandan. Through the mobile phone record it was established that there was relation in between deceased Arbind Kumar, Raghunandan and Dasami Modak.

I collected the CFSL so forwarded to the Court on 02-05-2018 and CFSL so forwarded to the Court on 10-05-2018. (CFSL so forwarded to the Court on 02-05-2018 is marked as Exhibit-14 and CFSL so forwarded to the Court on 10-05-2018 is marked as Exhibit-15).

I also collected the call details report along with authentication certificate issued by Bharti Airtel Limited containing 13 sheets. Company and call register duly certified by Airtel Authority (Call details report along with Authentication certificate issued by Bharti Airtel Limited is marked as Exhibit- 16 collectively).

……."

12. The defence examined two witnesses. They were both BSF personnel. Their depositions are very short and may be reproduced hereunder. DW-1, Vinod Kumar Yadav, deposed as follows:

"I am constable no. 124521162 of 42, Bn. BSF.

I know CT Raghunandan. Today he is absent before this Court. (*Due to non availability of police escort with vehicle, the accused Raghunandan is not produced before this Court today*) *Report of Supdt. Of Coochbehar Dist Correctional Home is kept with the record.*

On 24-01-2018 I had been posted at Durganagar BOP, CoochBehar. On that day CT Raghunandan was at Durganagar BOP, CoochBehar. On that day I was on duty on and from 12:00 A.M to 06:00 A.M and CT Raghunandan was on duty on and from 12:00 Λ.M to 06:00 Λ.M. On that day CT Raghunandan was at camp of Durganagar BOP, CoochBehar and he was taking rest in barrack. He was just adjacent to my bed.

(Cross-examination by the prosecution)

Now, I am posted at Jammu and Kashmir. On 24-01-2018 I had been posted at BOP Chowdhurihat of 42, Bn. BSF, Head Quarter, Sonari Cooch Behar. Today, I have said about the date and time of duty without going through any duty register. CT Raghunandan is my senior and he is my colleague.

Not a fact that what ever I deposed today at the instruction of CT Raghunandan being senior.

To Court: Today I have come to depose in civil dress not in our proper uniform.**"**

13. DW-2, Vasim Ali, deposed as follows:

"I am constable no. 12450983 of 42, Bn. BSF.

I know CT Raghunandan. He is my senior. Today he is absent before this Court. (*Due to non availability of police escort with vehicle, the accused Raghunandan is not produced before this Court today*) *Report of Supdt. Of Coochbehar Dist Correctional Home is kept with the record.*

On 24-01-2018, I had been posted at Durganagar camp, BOP Durganagar, CoochBehar. On that day CT Raghunandan was at BOP camp, Durganagar, CoochBehar. On that day I was on duty on and from 12:00 A.M to 06:00 A.M and CT Raghunandan was also on duty on and from 12:00 A.M to 06:00 A.M. On that day before 12:00 A.M, CT Raghunandan was at the camp of Durganagar BOP and he was taking rest in barrack. Today, I come here to depose with movement order:

(Cross-examination by the prosecution)

On 24-01-2018, I had been posted at Durganagar BOP of 42, Bn. BSF. I cannot say the pillar number where I was on duty on 24-01-2018.

Not a fact that on 24-01-2018 CT Raghunandan was not on duty on and from 12:00 A.M to 06:00 A.M or that on that day before 12:00 A.M CT Raghunandan was not at camp of Durganagar BOP or that he was not taking rest in barrack or that whatever I deposed today at the instruction of CT Raghunandan being my senior.

To Court: Today I have come to depose in civil dress not in our proper uniform.**"**

14. The accused Raghunandan was examined under Section 313 of the Code of Criminal Procedure. As many as 106 questions were put to him. The entire facts and circumstances of the case were put to him. His consistent answer to all the questions was: "I am innocent."

15. The learned Trial Judge meticulously analysed the evidence on record. On a meaningful assimilation of the evidence, the learned Judge disbelieved the defence witnesses. He rejected the defence of alibi. He came to the conclusion that it could only be the present appellant who could murder Arbind. The appellant also had clear motive for eliminating Arbind. Being satisfied that the prosecution had been able to bring home the charges framed against the accused, the learned Judge convicted the accused under Sections 302/201 of the IPC. However, the learned Judge acquitted the accused of the charges framed under the Arms Act. Certain portions of the impugned judgment and order may be noticed:

"……. On meticulous scrutiny of the entire materials on record and the FIR which is the genesis of the instant case, it appears that there is

direct evidence to link the accused which hinges on the evidence of Dasami Modak who is the sole eye-witness. Prosecution heavily placed reliance upon the testimony of PW-10 Dasami Modak who is the sole eye-witness to the incident. It is well settled that conviction can be based on the evidence of a single eye-witness if the testimony of witness is found to be reliable and trustworthy. It is the quality of the evidence of the solitary witness whose testimony has to be tested on the touchstone of credibility and reliability. In the case in hand, the sole eye-witness of the incident is PW-10, Dasami Modak, the paramour of deceased who vividly in this case deposed implicating herself and stated that she knows the accused Raghunandan and identified him during trial. She has also stated that the incident took place about 2 years ago. Raghunandan and Arbind Kumar used to contact with her over phone before Durga Puja about 2 years ago and she had physical relationship with Raghunandan. Afterwards, she made physical relationship with Arbind Kumar prior to the date of incident, she came at Mahamaya Cinema Hall at Dinhata with Arbind Kumar where they together took meal in a hotel at Dinhata and thereafter Arbind returned to his camp and she also returned to her home. PW-10 has also stated that about 1 or 2 days prior to the incident, she met with Arbind Kumar (since deceased) in a 'Shaani Mandir' (Temple of God Saturn) beside barbed wire fencing and talked with him and he told her that she had to go to him when he would give signal of a torch at night. On the date of incident at about 8:30 pm, after finishing her dinner she went to Arbind Kumar by bolting the door from outside when she

noticed the signal of the torch of Arbind Kumar and there, she started physical relationship with Arbind Kumar. Suddenly, Raghunandan reached there and at that time she was in a sitting position upon Arbind Kumar and when she stood up then and there and Raghunandan shot on the chest of Arbind Kumar by the gun of Arbind Kumar. Thereafter, she ran away from the spot but Raghunandan followed her and asked her to stop and Raghunandan threatened her with dire consequences to kill her and her children and deterred her not to disclose anything to anybody about the incident whatever she had seen and then she returned to her house. From Exhibit-12, i.e., the statement of PW-10 recorded under Section 164 of the CrPC, 1973, it appears that she has also corroborated the prosecution story whatever she deposed on dock. During cross-examination she has categorically stated that police interrogated her in connection with case. She has further deposed that the alleged incident took place in between 9:30/10 pm and after the incident within 15 minutes she returned to her house and entered into her room after opening the door and at that time her husband was sleeping, the complexity of the accused in the alleged crime is thereby corroborated from the evidence of PW-10.

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The prosecution has able to prove the fact that the alleged weapon, i.e., INSAS rifle was the same which was used in the incident.

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There are no such contradictions or discrepancies in the oral testimony of PW-10 which render her statement untrustworthy. The testimony of

PW-10 describes the detailed role of accused. PW-10 is a natural witness for the reason that she is a village rustic woman and her financial condition is very poor and impecunious. Even, there was no history of animosity between the accused and PW-10. It is hardly believable that PW-10 will reap some benefit by implicating the accused falsely rather her evidence appears natural and trustworthy. In the evidence of witnesses there will always be some discrepancies, however honest or truthful he or she may be. These discrepancies are quite normal. Even if there are some discrepancies which have come in the cross-examination of the witness, her entire testimony cannot be thrown out. A witness cannot be expected to possess a photographic memory and to recall the details of an incident in *toto*. Ordinarily, it so happens that a witness is overtaken by events. A witness could not have anticipated the occurrence which very often has an element of surprise. The mental faculties cannot, therefore, be expected to be attuned to absorb all the details. Thus, minor discrepancies were bound to occur in the statement of witnesses [**State of U.P. v. M.K. Anthony, (1985) 1 SCC 505**].

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PW-9 Doctor Manosh Kumar Sinha opined that the death of CT Arbind Kumar was due to gunshot injury (point blank range) causing perforation and laceration of heart, laceration of left lungs with huge blood loss. The post-mortem examination report prepared and signed by Doctor Manosh Kumar Sinha with office seal was entirely marked as Exhibit- 11.

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On scanning the evidence of prosecution, it can be held that the prosecution has been able to prove its case barring some minor discrepancies which have no effective bearing on this case. Nothing could be elicited in the cross-examination of PW-10 to demolish her evidence. No motive could be attributed to the witness for deposing falsely against the accused. The evidence of PW-10 appears to be natural, spontaneous and without any exaggeration and found credible and trustworthy, thus, there is no reason to disbelief the evidence of PW-10.

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Besides this, the evidence of the prosecution collectively leads to the only irresistible conclusion that the accused alone is the perpetrator of a crime and the same is of conclusive in nature consistent only with the hypothesis of the guilt of the accused. Learned Advocate for the defence has submitted that the evidence PW-10 is full of material contradiction and material improvements. The evidence of PW-10 is not reliable and she is not a trustworthy witness. During trial, the defence in order to the innocence of accused, cross-examined PW-3 Ravi Kumar, PW-4 Srisile Sangoppa Chincholli, PW-6 Mahendra Chaudhury and PW-8 Ranjith Burman respectively and tried to establish a new story as of his defence and also put suggestions to that effect. The story of the defence is that the area is a smuggling prone area and duty to activity of smuggler and bombing in the border area, CT Arbind Kumar died. But the plea of the defence has no leg to stand upon as, on the particular

date, time and place of incident when the murder was committed, no specific information of cross-border firing or bombing were reported either by BSF or by local police. Not a single scrap of paper was produced were from it would be evident that near to the place of occurrence remanence of bombs or ammunitions were collected by the BSF personnel or local police where the brutal murder of BSF personnel has been committed in support of plea taken by the defence to show that the story of defence happens to be genuine. Particularly, on the date of occurrence, when a tragic murder of a JAWAN (BSF) took place, it is quite natural that the entire Force would obviously take massive steps to trace out the culprit or cause of death of their colleague to unearth the truth behind the incident. But no report has yet been furnished from the side of defence to that effect. The accused has also tried to controvert the story of prosecution and produced D.Ws but the evidence of defence witnesses is found baseless and of no use. Therefore, no reliance could be placed on the stray evidence of defence side. Moreover, this particular incident which is based on a peculiar fact which should always be a sequester and nobody would pierce the veil. In this case, all the BSF personnels deposed nothing against the accused person rather they remained mum about the incident during trial.

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It is pertinent to mention that the INSAS-1B with body number 16534414 (MAT Exhibit- I) used in the commission of the offence [Ballistic FSL report (Exhibit-16)] by the accused CT Raghunandan has

been recovered from the place of occurrence that is the land of Noloni Barman (Exhibit-3).

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Learned Advocate for the accused has submitted that the prosecution has failed to prove the motive behind the murder. But this Court is not accorded with the agreement of the defence in this regard. It is pertinent to mention here that the weapon used by the accused in the commission of murder is a INSAS rifle (service arm of the deceased), which is exclusively a sophisticated arm, and ordinary person cannot fire or handle or deal with the arm as special technical knowledge, skill and training is required to operate the arm. The immediate cause and motive of committing murder were amply proved by the prosecution evidence.

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Learned Advocate for the accused has submitted that the prosecution failed to explain as to why the accused was arrested at belated stage, i.e., after 2 months from the date of incident and the statement of witness was recorded after 2 months. In support of his argument, from the side of accused, learned Advocate has cited the decisions reported in AIR 1979 SC 135 and 1991 Cri.L.J 356. Against the argument of defence, it would be appropriate to mention that apparently from Exhibit- 8 (Seizure – List of mobile of Raghunandan), Exhibit- 18 'Call Details Record' and after seizure of mobile of PW-10, Dasami Modak that is number '8597216908' (Exhibit – 13) it is explicit that the Investigating Officer masterly rummaged and traced out the culprit

behind the murder who is none other than the accused. The entire episode of investigation though long drawn but result of skilled investigation of the I.O. that9 came to light after examination of PW-10 and through Exhibit- 8 and 13. It is needless to mention that Investigating Officer being an independent and disinterested person, his evidence cannot be discarded simply because he is a police or officer-in-charge of investigation

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It is pertinent to mention here that as of 'Defence Protocol' both the accused and the deceased never used their official mobile phone during conversation with PW-10 rather they secretly used their personal mobiles all along, i.e., through Exhibit- 8 mobile number '7076077139' (CT Raghunandan) and '7551824173' (CT Arbind Kumar) to talk with PW-10.

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From the evidence of prosecution witnesses including the exhibits, it is established that the accused after the murder of CT Arbind Kumar concealed the corpus in the bushes which is a thick plantation land of Noloni Barman (Exhibit- 15) in such a manner to show that CT Arbind Kumar died due to bombing or cross-border firing. It is very unlikely that the victim would be tied by ropes by the miscreants after his death if there was any incident of cross-border firing or bombing. The conduct of accused together with the circumstances clearly indicates that he had the intention to screen himself by causing evidence of murder to

disappear and concealing the dead body of his colleague CT Arbind Kumar in order to save him from the crime.

.....

In judging the culpability of an accused, the circumstances when collectively considered must lead to the only irresistible conclusion that the accused alone is the perpetrator of a crime in question which is of conclusive in nature consistent with the hypothesis of the guilt of the accused person. On careful scanning of the materials in evidence it appears that the perforated dead body of CT Arbind Kumar coupled with brutal wounds on the chest was found on the P.O. Evidence of prosecution witnesses including medical evidence and ballistic FSL report (Exhibit- 16) only point towards the accused so there was no scope but to draw conclusion within all human probability that the murder was committed by accused and none else. The incriminating evidence and circumstances were put to the accused during his examination under Section 313 CrPC and the accused denied all questions and pleaded that he has been falsely implicated. The evidence of doctor, seizure witnesses to the articles and ballistic expert report are credit worthy and inspire confidence to made the basis to draw the conclusion against the accused CT Raghunandan on the charge so framed against him.

Though the evidence of prosecution are infested with some minor discrepancies, there can be no doubt that the prosecution was able to adduce enough substantive evidences during the trial, which were not only credible but clinching as well. The substantive evidences could not

be impeached so as to creep in any reasonable doubt with regard to the allegations and proofs thereof.

The accused person actually got infatuated towards the lady and entered into an illicit relation which led to the extramarital affairs with PW-10 (the paramour of both the accused and victim) and this was the reason why, he designed and hatched a plan to remove his impediment for all times to come, which ultimately yielded in the ghastly murder of his own colleague.

……."

Argument advanced on behalf of the Appellant

16. Learned Advocate for the appellant argued that the trial, conviction and sentence are void ab-initio as the same are contrary to the provisions led down in Section 475 (1) of the Code of Criminal Procedure. The appellant/accused was a member of an Armed Force to which proceedings under a Court-Martial applies. Hence, it was the duty of the learned Magistrate to transfer the trial to the Court-Martial. Since the trial was not transferred to the Court-Martial nor the learned Trial Court recorded any reason to proceed with the trial and proceeded to conclude the trial and convicted the accused, the appellant/accused is entitled to raise such jurisdictional point even at the appellate stage.

17. It was then argued that from the evidence of PW-1 to PW-6 who are all BSF personnel, the possibility of the deceased being attacked by cattle smugglers who hurled bomb at him and thereafter tied his hands and feet and then shot him on his chest by his rifle, cannot be ruled out. The

prosecution witnesses have admitted in evidence that the area in question is prone to smuggling activities. It is a border between India and Bangladesh without any fencing. Hence, benefit of doubt should have been given to the appellant.

18. It was submitted that the evidence of PW-10 is murky and in contradiction with other circumstantial evidence. There are several discrepancies in the evidence of PW-10 including those relating to the wearing apparel of the deceased, articles seized from the place of occurrence, etc. Further, there is no explanation as to why there was a delay of 63 days in recording the statement of the most vital witness of the prosecution case, i.e., PW-10. Therefore, the said witness is completely unreliable and her statements lose credibility completely.

19. It was then argued that the dead body of the victim was recovered in a condition which is absolutely contradictory to the statement of the eye-witness (PW-10). The prosecution has failed to explain the situation as to how a person was shot dead while he was engaging physically with PW-10 but his dead body was recovered with hands and legs tied. The eye-witness never deposed or stated before the investigating officer or the learned Magistrate that after shooting the victim, the accused tied the hands and legs of the victim. The so-called eye-witness (PW-10) is the table work of the investigating officer and she was not at all present at the spot.

20. It was then argued that to cover up the aforesaid loopholes, the prosecution got the post-mortem of the dead body conducted by an ENT specialist. The prosecution left no stone unturned to shield the actual

offender. An ENT specialist had no authority to conduct the post-mortem examination nor he had the requisite expertise.

21. It was then submitted that the investigation was done in a most lackadaisical manner and the entire effort of the prosecution was to shield the actual offender. The circumstances show that the quality of the sole eye-witness was not of sterling nature. No reliance could be placed on the evidence of the so-called eye-witness.

22. On the basis of the aforesaid argument, learned Counsel submitted that the prosecution of unable to prove its case. In any event, benefit of doubt should have been given to the appellant.

23. In this connection it may be noted that learned Counsel for the appellant had filed copies of two judgements, namely, ***Kali Ram v. State of H.P., reported at (1973) 2 SCC 808*** and ***Raja Khan v. State of Chhattisgarh, reported at (2025) 3 SCC 314***. Reliance was placed on the first decision in support of the contention that an eye-witness who kept silent for over 2 months after the date of the alleged incident, loses his/her credibility to a great extent. In the second decision, the Hon'ble Supreme Court discussed the actual scope and effect of Section 27 of the Evidence Act.

Submission made on behalf of the State

24. Learned Advocate for the State submitted as follows:-

(i) The prosecution case hinged on the sole eye-witness PW-10 (Dasami Modak), who testified that she was in physical relationship with the deceased as well as the accused. On the night of the incident, PW-10

went to meet the deceased at his duty point. While she was physically intimate with him, the accused arrived and shot the deceased on the chest using the rifle of the deceased. After the murder, the accused threatened PW-10 with dire consequences including killing her children if she disclosed the incident to anyone. The Investigating Officer traced the accused through Call Detail Records and seized the mobile phones of the accused as well as PW-10, leading to the arrest of the accused.

(ii) On April 8, 2018, the Investigating Officer seized one Vodafone Sim bearing cell number '7076077139' which belonged to the accused was used by him to contact PW-10. Earlier on March 30, 2018, the I.O. had seized a black coloured mobile phone belonging to PW-10. Through the records of those mobile phones, the I.O. established a clear connection between the accused, the deceased and PW-10. The accused using his mobile phone with number '7076077139' and the deceased used his mobile phone having number '7551824173', being their personal mobile phones, took secretly contact PW-10 whose mobile number was '8597216908'.

The Call Detail Records corroborated the testimony of PW-10 to the effect that both the accused and the deceased used to contact her over phone before the incident. The defence did not object to the admissibility of the Call Detail Records when it was tendered as evidence during the trial. Hence the same was marked as Exhibit.

(iii) The circumstances surrounding the inquest on the deceased strongly suggest the presence of PW-10 (Dasami Modak) at the scene while simultaneously pointing to the absence of any unknown miscreant. The

fact that no valuables were taken from the deceased, indicates that the incident was not a robbery but a targeted killing, as the deceased's personal weapon (INSAS rifle), stun grenade, magazines and other service articles were all found at the scene, with only one round of ammunition having been fired. The inquest report further notes the discharge of urine and 'probably semen' from the private parts of the deceased, which corroborates the testimony of PW-10 that she was engaged in physical act with the deceased at the time when the accused arrived and shot him. This finding of semen, coupled with the fact that both the hands and leg of the deceased were tied with blue-colour nylon net-type rope, point to a deliberate pre-planned act of murder rather than a random cross-border firing or smuggling incident. This was an act committed upon a BSF personnel by another trained BSF personnel. The INSAS rifle used in the commission of offence is a sophisticated weapon requiring special technical knowledge, skill and training to operate, making it impossible for an ordinary person or an unknown miscreant to have fired it; the ballistic report conclusively proved that the empty cartridge found at the scene was fired from the INSAS rifle of the deceased, which could only have been handled by someone with military training. The inquest report also reveals that the deceased was on duty from 18:00 hours to 00:00 hours (midnight) on January 24, 2018. At about 22:30 hours he went missing from his post. He was later found dead with a gunshot injury on his chest. The absence of any sign of a struggle with unknown assailants, the presence of the paramour of the accused at the scene, the intact nature

of the valuables of the deceased, the discharge of semen and the fact that only a trained BSF personnel could have operated the INSAS rifle, all align perfectly with the prosecution case that the accused, Raghunandan, committed the murder of the victim out of jealousy and to eliminate his rival in the illicit relationship with PW-10 being the sole eye-witness and corroborated by the medical evidence, ballistic report and call detail records.

(iv) The testimonies of DW-1 and DW-2 do not inspire confidence for several reasons. Both witnesses are constables in the same BSF battalion as the accused. They admitted during cross-examination that the accused is their senior colleague, creating a strong likelihood of bias and a natural inclination to protect a fellow officer, which is consistent with the Trial Court's observation that "all the BSF personnels deposed nothing against the accused person rather they remained mum about the incident during trial."

Critically, DW-1 admitted that he deposed about the date and time of duty "without going through any duty register", a significant flaw that renders his testimony unreliable and susceptible to manipulation. Similarly, DW-2 was unable to provide basic details about his duty stating that he "cannot say the pillar number where he was on duty on January 24, 2018." Additionally, both witnesses appeared before the Court in civil dress rather than their uniform, which is unusual for serving BSF personnel and suggests a casual approach to the proceedings, also indicating that they were appearing as personal witnesses for the accused

rather than in their official capacity. No reliance can be placed on the testimonies of the two defence witnesses particularly when the alibi that the accused was taking rest in the barracks before his 00:00 hours duty (midnight), is directly contradicted by the prosecution's overwhelming evidence, especially the credible and trustworthy testimony of the sole eye-witness PW-10.

Furthermore, neither DW-1 nor DW-2 produced any documentary evidence such as the duty roster, attendance register or movement order to corroborate their claim. While DW-2 mentioned that he came with a movement order, no such document was exhibited during the trial. In short, the evidence of DW-1 and DW-2 lacks credibility due to their bias as colleagues of the accused, their failure to rely on official records, their vague and inconsistent statements, their casual appearance in civil dress and the absence of any corroborative evidence.

Court's View

25. I have given my anxious consideration to the rival contentions of the parties.

26. As regards the point of lack of jurisdiction of the learned Trial Court to conduct the trial of the accused, this point was never urged before the learned Trial Court. Even at the hearing before us, this point was not argued. This point emerges from the written notes of argument filed on behalf of the appellant. Hence, we should not be entertaining this point at all. However, since a question of jurisdiction has been raised relying on Section 475(1) of the Code of Criminal Procedure, let me address that issue.

27. Section 475 (1) of the CrPC reads as follows:

> **"**475. Delivery to commanding officers of persons liable to be tried by Court-martial.—(1) The Central Government may make rules consistent with this Code and the Army Act, 1950, the Navy Act, 1957, and the Air Force Act, 1950, and any other law, relating to the Armed Forces of the Union, for the time being in force, as to cases in which persons subject to military, naval or air-force law, or such other law, shall be tried by a Court to which this Code applies, or by a Court-martial; and when any person is brought before a Magistrate and charged with an offence for which he is liable to be tried either by a Court to which this Code applies or by a Court-martial, such Magistrate shall have regard to such rules, and shall in proper cases deliver him, together with a statement of the offence of which he is accused, to the commanding officer of the unit to which he belongs, or to the commanding officer of the nearest military, naval or air-force station, as the case may be, for the purpose of being tried by a Court-martial.
>
> Explanation: —In this section—
>
> (a) "Unit" includes a regiment, corps, ship, detachment, group, battalion or Company,
>
> (b) "Court-martial" includes any Tribunal with the powers similar to those of a Court-martial constituted under the relevant law applicable to the Armed Forces of the Union.**"**

28. Firstly, the appellant's learned Counsel has not placed before us, or pointed out that the Central Government has made relevant rules pertaining to the Court which should try accused persons like the appellant herein.

29. Secondly, in my opinion, even if there was any such rule, the same would only be directory in nature. The Section contemplates that the Magistrate before whom the accused person is brought, shall consider such rule and in appropriate cases send him to the Court contemplated by such rule. Any such rule would not touch the jurisdiction of the Trial Court if it otherwise has jurisdiction. Hence, I find absolutely no merit in the contention of learned Advocate for the appellant that the trial, conviction and sentence are null and void and non-est in the eye of law for lack of jurisdiction of the learned Trial Court.

30. Coming to the merits of the case, the learned Trial Court has rightly observed that the evidence of a sole eye-witness may well be the basis for convicting an accused person. If the testimony of such witness is found to be reliable and trustworthy, his / her evidence would not require any corroboration. It is the quality of evidence available in a criminal trial that is important and not the quantity of evidence.

31. In the present case, PW-10 (Dasami Modak) recorded her statement before the concerned Magistrate under Section 164 of the Code of Criminal Procedure. In such statement she clearly narrated that she was in physical relationship with both the deceased and the accused person. On the day of the incident, she went out of her house upon seeing the indication sent by the deceased through his torchlight and met the deceased at or around his post. Then they engaged in physical relationship. At that time, the appellant

suddenly appeared at the scene and shot the deceased on his chest with the service rifle of the deceased. When Dasami became afraid and tried to run away, the accused followed her for some distance warning her not to disclose the incident to anybody or else he would kill Dasami's children. In her statement, Dasami also confessed that she was very poor and engaged in physical relationship with others for money.

32. The deposition that Dasami recorded before the learned Trial Court is very much in tune with her statement recorded under Section 164 of the Code of Criminal Procedure. Hence, the argument of the appellant's Counsel that the prosecution witnesses improved their versions, has no merit.

33. Now the question is did the learned Trial Court fall in error in concluding that Dasami's evidence is completely trustworthy? I think not. I am of the considered view that the learned Trial Court rightly came to the conclusion that Dasami's evidence was quite credible or reliable and could be acted upon. There could be no reason for a poor rustic lady having little or no education, to falsely implicate the appellant, particularly when admittedly she was in physical relationship with the appellant also. No motive could be suggested by appellant's Counsel as to why Dasami would make a false allegation against the appellant. Dasami has recorded her statement before the learned Magistrate and deposed before the learned Trial Court implicating herself. This lends even more credibility to her testimony. It is generally inconceivable that a lady who is a mother of two children, would implicate herself in not such an honorable incident only to falsely implicate another person. By admitting that she was in physical

relationship with both the accused and the deceased, she has definitely compromised her honor.

34. Dasami also withstood her cross-examination like a rock. There are minor discrepancies in her evidence. However, the basic testimony that she was eye-witness to murder of the victim by the appellant, remains unshaken. As rightly held by learned Trial Judge, a witness cannot be expected to have a photographic memory. Each and all the details of occurrence of a crime cannot be expected to be narrated correctly by an eye-witness.

35. In view of the aforesaid, I find no reason to disbelieve Dasami's testimony. Her evidence is corroborated by the ballistic report and the inquest report which recorded urine and semen in the private parts of the deceased. The call detail records also support Dasami's version that she was in relationship with both the accused and the deceased.

36. The appellant's Counsel argued that no motive could be attributed by the prosecution to the accused for killing Arbind. This contention is also meritless. The obvious motive for Raghunandan to kill Arbind was to eliminate Arbind from the triangular illicit relationship between Arbind, Raghunandan and Dasami. This was kind of a revenge taken by Raghunandan against Arbind. His murderous act was obviously prompted by jealousy and urge to enjoy exclusive physical relationship with Dasami by annihilating Arbind.

37. In so far as the defence witnesses are concerned, their evidence does not inspire confidence. Learned Trial Court has rightly held that their evidence is baseless. There is high degree of possibility of the two defence

witnesses trying to shield their fellow senior colleague by deposing falsely. No records were produced in support of their version that on the eventful night, Raghunandan was resting at the barracks till his duty hours which were to start from midnight. The fact that the two defence witnesses appeared in casual clothes to depose also detract somewhat from their credibility. This is unusual in the Armed Force. The quality of evidence recorded by the two defence witnesses is also poor. I have found the testimony of P.W. 10 to be reliable and credible. The evidence of DW -1 and DW- 2 is directly in conflict with Dasami's evidence. In my opinion, learned Trial Court rightly rejected the evidence of the two defence witnesses.

38. In a nutshell therefore, I find the evidence of the sole eye-witness to the killing of Arbind to be completely trustworthy. She clearly narrates the manner in which the appellant killed the victim. The appellant's Counsel has not been able to come up with any possible reason as to why PW - 10 would falsely implicate the appellant. The evidence of PW -10 alone is sufficient to sustain the conviction of the appellant. Her evidence has found support from the inquest report, ballistic report, FSL report and call detail records.

39. I am also of the opinion that the appellate forum should not lightly interfere with the learned Trial Judge's appreciation of the facts and circumstances of the case and assimilation of the evidence on record. One must keep in the mind that the learned Trial Court actually saw the witnesses adducing oral evidence and therefore had the advantage of watching their demeanor. The demeanor of a witness surely goes a long way to assess his/her credibility. Hence, unless the Appellate Court finds that

the Trial Court's appreciation / appraisal of the facts of the case and the testimonies of the witnesses, is clearly wrong or perverse, the Appellate Court, in my view, should not interfere. In the present case, I find no such infirmity in the judgment of conviction of the appellant under Sections 302 and 201 of the IPC, as would persuade me to interfere. There is ample evidence on record to demonstrate that the appellant committed cold blooded murder of the victim. Once the conviction under Section 302 of the IPC is upheld, there is no scope to interfere with the sentence of life imprisonment imposed on the appellant by learned Trial Judge.

40. The appeal accordingly stands dismissed. A copy of the judgment be made available to the appellant. The appellant should be informed that he has a right to prefer appeal against this judgment and order before the Hon'ble Supreme Court.

41. CRA/22/2021 is accordingly stands dismissed. There will be no order as to costs.

42. Urgent Photostat certified copies of this judgment and order, if applied for, be supplied to the parties on compliance of all necessary formalities.

I agree.

[Chaitali Chatterjee (Das), J.] **(Arijit Banerjee, J.)**