

**IN THE HIGH COURT AT CALCUTTA**  
**CIRCUIT BENCH AT JALPAIGURI**  
**CRIMINAL APPELLATE JURISDICTION**

**APPELLATE SIDE**

**Present:-**

**HON'BLE JUSTICE DEBANGSU BASAK**

**AND**

**HON'BLE JUSTICE CHAITALI CHATTERJEE DAS.**

**CRA (DB) 12 OF 2025**

**SURESH THAPA**

**VS**

**THE STATE OF WEST BENGAL**

**For the Appellant** : **Mr. Rajesh Kumar Sharma, Adv.**  
**Mr. Mithun Prasad, Adv.**  
**Mr. Rohan Niroula, Adv.**

**For the State** : **Mr. Ujjwal Luksom, Adv.**  
**Dr. Arjun Chowdhury, Adv.**

**Last heard on** : **09.01.2026**

**Judgement on** : **14.01.2026**

**Uploaded on** : **14.01.2026**

**CHAITALI CHATTERJEE DAS:-**

1. This criminal appeal has been filed under Section 415(2) of the BNSS 2023, for setting aside the judgement and order dated February 6, 2025, passing

order of sentence of life imprisonment to the appellant/convict for the offence committed under Section 302 of the Indian Penal Code.

**Brief resume of the case**

**2.** A complaint was lodged before the inspector-in-charge, Bhakti Nagar Police Station, Shevok Road, Siliguri, by the de facto complainant alleging that Suresh Thapa of Ramchandra Basti was drunk and started abusing the husband of the de-facto complainant and also assaulted him with fists and blows, and at the end took out an iron rod and hit her husband on his forehead. He sustained severe injuries and was admitted at Ananda Lok Nursing Home. The incident happened on November 14, 2022 in between 3 PM to 3:30 PM at Prakash Nagar, Ramchandra Basti. On the basis of such complaint, Bhakti Nagar Police Station case no. 1237/22 dated 14/11/22, under Section 341/506/326/307 IPC started. During pendency of the investigation, the injured succumbed to his injuries on 19.11.2022 and hence Section 302 of the Indian Penal Code was added at the time of filing of charge-sheet. Since the offence was exclusively triable by the Court of a session the matter was transferred to the learned District and session judge on commitment and subsequently the charge was framed by the learned Additional Session Judge 3rd (Special) Court under Section 341/326/302 of the Indian Penal Code and the contents of the same was read over and explained to the accused person to which he pleaded not guilty and claimed to be tried. Hence, the trial commenced.

3. The prosecution in order to bring home the charges adduced 15 witnesses and also proved the exhibited documents. The learned court after considering the materials and the argument advanced before the Court by both the prosecution as well as on behalf of the defence passed the order of conviction against the appellant. Being aggrieved by the same this appeal has been filed.

**Submissions**

4. The learned Advocate representing the appellant argued that the judgement and order of conviction is liable to be set aside on the ground that the same has been passed without proper appreciation of evidence as adduced by the prosecution witnesses. The offending weapon was not sent before the Forensic Department. No sample of blood was collected and sent for forensic examination, and the said weapon was not produced before the Court. That apart there are glaring discrepancies regarding the date of death of the deceased as the P.W. 1, P.W. 3 and P.W. 6 deposed that the deceased succumbed to his injury on November 14, 2022, when the investigation says he died on November 19, 2022, and this discrepancy cannot be said to be minor and ought to have been considered as fatal for the prosecution. Furthermore the learned Judge failed to consider that in absence of mens rea there cannot be any order of conviction.

5. The judgement of conviction was delivered mostly relying on the basis of the oral testimony of P.W.1, 4, 7, 9 and 12, who are not the eyewitnesses, but

are interested witnesses. The learned Advocate further argued that the learned Court ignored that the son of the deceased mistakenly hit his father with iron rod in attempt to cause hurt to the accused. The order of conviction was passed on the basis of sole testimony of witness P.W.3 Raja Vishwakarma despite the fact that P.W.3 is the son of the deceased and an interested witness and his testimony was not corroborated by the independent witness P.W. 12 and he mentioned the date of death as on 14<sup>th</sup> November, 2022 and therefore, passing order of conviction, relying upon such sole testimony is wholly unsafe. The learned Advocate representing the appellant relied upon the decisions reported in, ***Esakkimuthu versus State***<sup>1</sup> represented by the Inspector of police, ***Hansraj versus State of Chhattisgarh***<sup>2</sup>, ***Mehta versus State of Maharashtra***<sup>3</sup>, ***Raja Khan versus State of Chhattisgarh***<sup>4</sup>, ***Ramji Prasad Jaiswal@ Ramjee Prasad, Jaiswal, and others VS The State of Bihar***<sup>5</sup>.

6. The learned prosecution on the other hand submitted that the learned Court was right in passing the order of conviction after considering the entire facts and circumstances of the case. The prosecution adduced 15 witnesses including the eye witness and the doctors who proved the medical papers. The postmortem report was proved by the autopsy surgeon. The offending weapon was recovered by way of seizure list and the same was duly proved.

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<sup>1</sup> 2025 INSC 880

<sup>2</sup> 2025 ISC 178

<sup>3</sup> 2025 INSC 216

<sup>4</sup> 2025 INSC 167

<sup>5</sup> 2025 INS 738

There are minor contradictions in the evidences which may not be fatal for the case of prosecution and that has been otherwise fully established beyond the shadow of reasonable doubt. Accordingly prayed for dismissal of this appeal.

7. Heard the submissions. On the basis of the available materials and on submissions advanced by the learned Advocates the moot question now falls for consideration is whether the prosecution was able to prove the case beyond the shadow of reasonable doubt, and or as to whether the learned Court rightly delivered the judgement and order of conviction sentencing him for life.

### **Analysis**

8. Out of 15 witnesses P.W.1 is the de-facto complainant being the wife of the deceased. According to her testimony, her husband died on 14th November. P.W.3, the son of the deceased also supports the date of death as of 14th November, 2022 and he was present at the time of incident and he claimed to be the eye witness. P.W.4, the daughter of the deceased, however, said that her father died on 19 November 2022, and the incident took place on 14.11.2022 at about 3:30 P.M. In this case other than family members, the person who knew the deceased also gave two different date of death that is on 14th November 2022, and 19th November, 2022. P.W.6 said the date of death is 14th November, 2022 but he came to learn from Raja Vishwakarma that Suresh Thapa assaulted the deceased with iron rod and he was taken to

hospital. P.W.7 and P.W. 9 on the other hand gave the date as 19th November, 2022. Therefore, a cloud has been created by the witnesses regarding the exact date of death of the deceased and hence in order to ascertain the exact date of death the medical papers and the postmortem report are to be scrutinized. In this case the victim was taken to Anandalok Hospital a Nurnishg home and not a government Medical College and hospital.

**9.** P.W.8 deposed as ASI of police that on November 20, 2022 he conducted Surathal/inquest over the dead body of the deceased in connection with Bhakti Nagar UD case no. 69/22 and in the report the date of death is mentioned on 19.11.22. P.W. 10 Dr. Nagendra Nath Kundu, a doctor of Anandalok Hospital deposed that on 26th November 2023, he was working with Anand Lok Hospital as Medical Officer. On that day he examined one patient, namely Bhavesh Vishwakarma and prepared a report who was admitted with history of physical assault by a known person with iron rod overhead at around 3:30 P.M. on November 14, 2022 near Prakash Nagar, Siliguri. On examination, he found the patient, unconscious and disoriented and CT scan of head was done, which was showed that there were multiple fracture, liener fracture of left frontal bone involving roof of left orbit, Supra orbital ridge , fracture both maxillary sinus, fracture medical wall of both orbit, fracture of basi sphenoid born and extending left sphenoid sinus, fracture lateral wall of right orbit is extending into roof, fracture frontal process of Maxillary at the right side , fractured left, nasal bones,

hemorrhagic contusion in left frontal temporal cortex and sub cortical white matter, Saab Udal hemorrhage in left fronto partied region, sub arachnoids hemorrhage in cortical sul I in left frontal temporal region. He further deposed that the nature of injury was grievous. He also said that the patient expired on 19th November, 2022. On close scrutiny it transpired that the year of the report is typed incorrectly as 26.11.23 in place of 26.11.22.

**10.** The P.W. 14 Dr. Achintya Biswas deposed that he was posted as professor in the department of F.M.T, Sagar Dutta medical College, Kamarhati, Kolkata on November 20, 2022, he was posted as Associate Professor in the same Department in North Bengal medical College and Hospital and on that date he conducted post-mortem examination over the dead body of Bhavesh Vishwakarma . During examination, he found the injuries which are as follows:- Peri – orbital hematoma around both eyes Stitched up lacerated wound 3 inch long present over left side of frontal region of head 10 inch long curvilinear stitch wound, surgically incised wound, transversely placed over anterior aspect of both parietal region. On dissection of the injuries, OD hematoma underneath, on further OD 3 inch into 3 inch part of left front parietal bon, surgically excised. On further OD, surgical repair, and for the dissection subdural hemorrhage. The injuries show evidences of vital reactions. According to his opinion, the death was due to the effect of injuries and anti mortem in nature. I.O of the case PW 15 deposed that on November 14, 2022, he received the complaint from Neetu Vishwakarma and the investigation commenced and he recorded the statement under Section

182 of BNSS of the available witnesses, visited Anand Lok Hospital on November 15, 2022, where the victim was admitted in critical condition. He collected copies of the treatment papers from the nursing home. During treatment, the victim succumbed to his injuries and then he made a prayer for adding Section 302 of the Indian Penal Code which was allowed. He also collected the postmortem report and the injury report from Ananda Lok Hospital and submitted the charge-sheet, adding Section 302 of the Indian Penal Code.

**11.** Therefore, on carefully scrutiny of the evidences, as discussed above it is glaringly visible that the incident occurred on November 14, 2022, when the victim suffered the injuries and was admitted at the hospital and then he died. There is no specific Hospital report regarding the date and timing of death .In the inquest report, which has been marked with exhibit the date and hours of death was recorded as on November 19, 2022 at 8:35 P.M. In the postmortem report, which is also proved by the autopsy surgeon, the body was arrived at 14.10 hours on November 20, 2022 and the examination held on 15.10 hours on November 20, 2022. The P.M. report is silent about any opinion that the dead body was of few days old or the death occurred five days before. In this case, another witness Bhaskar Chhetri deposed as P.W. 13, who knew the deceased. He was informed over phone by Manoj Chhetri that Suresh assaulted the deceased and he requested him to come to Anandalok Hospital, Siliguri, and he went there and found the injured lying at emergency of the said hospital with his head covered with bandage.

Injured was then alive and spoke with him. He told him that when he went to the place of Suresh, there was an altercation and “marpit” with Suresh. The witness was not allowed to talk much with the injured by the hospital authority. P.W. 12 Buddha Tamang , who knew the deceased deposed that on the date of incident, the witness was asked by the deceased whether he was free and then he told him that he did not visit his married daughter’s house for a long time and requested him to take him to his house against money. The witness is a driver by profession. His testimony further reveals that at about 2 P.M. to 2:30 P.M., the witness picked up Bhavesh Vishwakarma in his car and proceeded to his married daughter’s house who used to stay at Roy colony More. After half an hour journey from the residence, a person named Suresh stopped the car and started slapping on the bonnet of his car, then out of fear, the witness dropped Bhavesh on the road and he saw through looking glass that there was a scuffling between Bhavesh and Suresh. Raja went to the spot as Bhavesh called his son over phone, and then he parked his car at a little distance and found Vishwakarma not at the spot and he came to know that Bhavesh was taken to the house of Suresh. Then the witness proceeded to the house of Suresh and found Raja coming with tears. Raja told him to bring a car as Suresh assaulted on the head of his father with iron rod. When the witness reached to the spot, he found Bhavesh lying on the narrow gully in front of the house of Suresh with bleeding injury on his head. He with the help of Raja and two other persons took the injured in his car to Ananda Lok Hospital, and then

the witness returned back to his house. He had to wash his car as it was stained with blood. Later, he came to learn that the injured died after 3 to 4 days at Anand Lok Hospital.

**12.** In the case of ***Esakkimuthu (Supra)*** the Hon'ble Apex court set aside the judgement and order of conviction on the ground that the heavy reliance was placed by the courts on the testimonies of the witnesses when their presence at the place of crime was of highly contentious and cannot be said to be proved definitely, and the number of injury suffered unlikely to be caused by a sole assailant and therefore was more probable to be a result by an attack by a group of individual. In the case of ***Hansraj (supra)*** conviction was under Section 302 IPC and the prosecution case was based on circumstantial evidence in absence of any witness. The Court set aside the judgement and order of conviction on the ground that these circumstances raising finger upon the appellant are not of conclusive nature to prove beyond the shadow of doubt that appellant was the person responsible for the commission of the crime. In the case of ***Mehatar (Supra)*** the order of conviction was affirmed by the High Court of judicature at Bombay, Nagpur bench against which the appeals were preferred before the Supreme Court and it was held that if the evidence of a sole witness is found to be reliable, then only conviction could be maintained and equally, even in a case of a sole witness the conviction could be maintained. If the evidence of such a witness is of sterling quality. But when evidence of such witness is found to be doubtful, the court should always seek for some corroboration. The Court

took note of the decision of **Vedivelu Thevar vs state of Madras** where the law of evidence was discussed forbidding conviction is on the testimony of a single witness. The section shrines the well recognized maxim that evidence has to be weighed and not counted. It was observed that the matter does depend upon the circumstances of each case, and the quality of the evidence of the single witness, whose testimony has to be either accepted or rejected, and if such testimony is found by the court to be entirely reliable, there is no legal impediment to the conviction of the accused person on such proof. The appeal was allowed and the order of the Appellate court was set aside by the Supreme Court holding that the High Court was not justified in resting the conviction solely on the basis of the evidence of the witness, whose evidence was partly, reliable and partly unreliable.

**13.** In the case of **Raja Khan (Supra)** the question as to whether evidence relating to recovery is sufficient to fasten guilt on the accused. In that case from evidence. It came that the witness who recovered the article deposed that upon instruction from the police such recovery was made and those were also seized upon instruction from the police and the statement was found corroborated by the statement of another witness. The Hon'ble Supreme Court discussed Section 27 of the Indian Evidence Act presently where it was held that the extent of the information admissible must depend on the exact nature of the fact discovered to which such information is required to relate . The basic idea embedded in Section 27 of the Evidence Act is the doctrine of confirmation .Mere statement that the accused led the

police and the witnesses to that place where he had concealed the articles is not indicative of the information given. From the evidence of the I.O. by the I.O for police remand , as per statement made by the accused during interrogation he was taken to the concerned place and the accused took out the sabol ,the offending weapon beside the drain adjacent to his house in presence of witnesses and it was seized where the accused also signed. The seizure list was proved and marked with Exhibit 9 but none of the seizure list witnesses were examined. In a recent decision of the Supreme Court reported in, **Ram Singh versus State of UP**<sup>6</sup> observed that non-recovery of the weapon of the offence would not discredit the case of the prosecution subject to other convincing evidence.

**14.** In the case of **Ompal versus State of UP**<sup>7</sup>, where the Hon'ble Supreme Court revisited important questions of weather, procedural lapse like delay in FIR and non-recovery of weapons could undermine a murder conviction when supported by credible witnesses and medical evidence. The said case was not based on circumstantial evidence as there was eye witness. It was held that as per settled provision of law, the testimony of an injured witness is recorded a special status in law and being a stamped witness, his presence cannot be doubted. It was also held that motive, although is a relevant factor in all criminal cases, it, however, is not a sine qua non for establishing the guilt of the accused persons. Motive, even in a case which rests on an eye witness account, lens strength to the prosecution case and

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<sup>6</sup> 2024 INSC 128

<sup>7</sup> 2025 INSC 1262

fortify the court in its ultimate conclusion. Thus, the fact of motive has to be seen in the light of other cogent evidence available. The other point raised in that case was non-recovery with the weapon and it was observed by the Hon'ble Supreme Court that many and many times, the Supreme Court has reiterated that non-recovery of the weapons cannot be considered fatal to the case of prosecution if there is consistent, medical and ocular evidence. In this case, the eye witness being the son, P.W.3, Raja Vishwakarma deposed that on November 14, 22, Suresh Thapa had hit on the forehead of his father with iron rod when he was present there and saw the incident. His father was going to her sister's house and on the way Suresh met his father and started abusing him in filthy languages and returned to home and stated to his mother that Suresh Thapa had abused him calling name of father and mother. After that his father left the house in anger and this time, he followed his father when accused hit his father on his forehead with a iron rod. Then says at first, he assaulted his father with fist and blows, and then hit with iron rod. When the accused was assaulting his father with fist and blows, he tried to save his father. He and Manoj Chhetri rescued his father and took him to Anand Lok Hospital. He also said that Manoj was also present at a very little distance from the P.O. During his cross examination, he said that his father was going to her sister's house which was situated at Eastern bypass, Forrestal guest house. His father left house at 2:30 PM and returned at 3 PM and again he left and the incident took place between three and 3:30 P.M. They shifted his father in a vehicle which was of Buddha.

**15.** The daughter of the deceased that is P.W.4 said that her mother called her in between three and 3:30 P.M. and she reached to Anand Lok Hospital where she found Manoj Chhetri, Raja Vishwakarma present at Anand Lok Hospital. Manoj Chhetri deposed as P.W.7 who said that the deceased died on 19th of November, 2022. He gives statement before the magistrate which proved as exhibit 3. On careful Perusal of the examination of the accused person made under Section 313 of the Code of Criminal Procedure a different story was found narrated by him. The accused deposed that on the relevant day the deceased was drunk and he was abusing the accused with filthy languages and then he returned to his house. On hearing hue and cry he came out from his room, and the deceased hit him on his face and Raja, the son hit him with the rod, and since he sat down, the rod hit the deceased. He also said that both deceased and Raja came to his house to kill him. He denied that Manoj Chhetri was present at the spot. However though he said that he wanted to adduce evidence, no defence witness was cited. As per the sketch map prepared by the I.O, the PO is situated in front of the house of accused Suresh Thapa and adjacent to the PO the house of Anthony Rai and Uttam Rai's grocery shop are noted. The P.O. is on the Kacha Road, Ramchandra Basti Prakash Nagar. Uttam Rai and Anthony Rai deposed a P.W.2 and P.W. 5 respectively but are of not much help since they only said that he heard a quarrel between Bhavesh and Suresh Vishwakarma. P.W. 6 Som Bahadur who was cited as witness said the death of death as 14th November 2022 and he was informed by Raja about the assault buy the

accused on the head of his father .This witness was never examined. By the I.O and stated those facts for the first time before the Court.

**16.**On careful scanning of the entire evidence, the dispute between the deceased and Suresh Thapa, and an altercation on the relevant day is found to be admitted and the same is also found from the examination of the accused person. According to the P.W. 1 Raja followed his father and evidence of the P.W.1, the de-facto complainant, and Raja the son of the deceased, coupled with the evidence of Buddha Tamang, P.W. 12 are clubbed together and the nature of injury sustained by the deceased as found from the postmortem report are compared their remains no room to doubt that the deceased sustained the injury over his forehead and died due to effect of such injuries . The question remains who was the assailant. The glaring discrepancies found from the testimonies of the de facto complainant the wife, the eye witnesses being the son along with some other witnesses regarding the different date of death which has created serious cloud about the veracity of their statement and also reliability on the same. P.W.9, Karan Vishwakarma who is the nephew of the deceased said that he, Raja Vishwakarma, the victim since deceased and Manoj Chhetri, along with Suresh Thapa were all present at Limbu Basti near the house of Suresh Thapa when Suresh and Bhabesh were talking and Suresh went to his house, brought out an iron rod and hit Bhavesh as a result Bhabesh fell down. This witness, Raja Vishwakarma and Manoj Chhetri shifted Bhavesh to Anandalok Hospital where he died on 19th of November 2022. This

witness was never examined by the I.O and for the first time deposed before the Court and there is no evidentiary value to his evidence and cannot be accepted. From the evidence of Raja or Manoj Chhetri presence of Karan are not found. Manoj also did not say that he was present at the spot but relied upon his statement given before the Magistrate. Both the statement of Raja and Manoj Chhetri recorded their statement on 28/12/22 that is almost 10 days after the date of death of the victim, before the Magistrate. No explanation has come as to why they took so long time to record their statement before the Learned Magistrate.

**17.** In this case the glaring discrepancies found from the evidence of the Doctor of Anandalok Hospital P.W. 10 who said that on 26.11.23 when he was working with Anadalok Hospital he examined the dead body and prepared the report marked with exhibit 5 on that date. In that report it was noted that the injured died on 19.11.22. After comparing with the exhibited document it is detected that the date 26.11.23 was incorrectly typed in place of 26.11.22. Then also a doctor on examining a patient preparing an injury report when that patient died about 7days ago and the post mortem of that body took place on 20.12.22, is something unheard of more so when the patient was never admitted under this doctor. Interestingly the doctor said specifically that he examined the patient so this statement coming from a doctor attached with a reputed Nursing Home goes to show the ground reality of the medical system prevailing . The doctor in his cross examination also admitted that he issued the report on 26.11.22 and the patient expired

on 19.11.22. The witness prepared such report consciously as can be found from his deposition when he denied the suggestion that he prepared the Report mechanically. It glaringly manifests the nature of investigation conducted as the I.O. who either mechanically collected the report or did it with mala fide intention in order to mislead the court and for vested interest. It also unearths the affairs of the administration of the private hospital and the ground realities prevailing. The Learned Court also in absence of any seizure list to seize the paper from the Nurshing home admitted and marked the document as exhibit and also put reliance on the same while passing the order of conviction. The narration of the witness Buddha Tamang gives a totally new story when his vehicle was stopped and the accused banged on the bonnet of the car and or the deceased and Raja were taken by him in his car to the house of the daughter of the deceased and also the scuffling he watched through his mirror. The son of the deceased Raja never said he and his father was taken by the car of Buddha or anything happened like that. In view of severe inconsistencies the evidence loses its credentials and cannot be relied upon for corroborating the evidence of the eye witness.

**18.** In this case, before the learned Trial Court, the learned defence counsel relied upon a photocopy of a formal F.I.R lodged by the appellant before Bhakti Nagar Police Station on 14 November 2022 against the deceased Bhavesh Vishwakarma and Raja Vishwakarma in respect of an incident dated 14 November 2022 at 14 hours to 14:45 hours. The FIR was lodged on 19.05 hours but no copy of written complaint was produced before the

Court. That apart the learned Court noted that the incident as alleged there was of at 2 to 3:45 hours when the present F.I.R was lodged at 18:45 hours in respect of an incident of 15 hours to 15:30 hours. From the FIR no., also, it can be seen that the complaint lodged by the de-facto complainant was Bhakti Nagar P.S case no. 1237 of 2022, when the other F.I.R was of 1238/2022 but I.O did not say anything about the progress of such F.I.R. The learned Court was of the view that this exhibit A and the present complaint was not originated in respect of self incident. Even if that analysis is accepted for not consideration of the subsequent F.I.R, it establishes that at the place of occurrence there was an incident between the present appellant and the deceased. Since the written complaint was not produced before the court the nature of incident cannot be ascertained.

**19.** The learned Court also was of the view that there are a lot of latches in the prosecution case and the role of the I.O was not satisfactory as he did not collect blood stained wearing of the deceased and also not collected the blood stain earth from the P.O. but despite all the flaws on the part of Investigating Officer, prosecution case stands proved beyond reasonable doubt by the evidence of the witnesses being P.W.3 and P.W.7. The further point raised that P.W.3 is the interested witness and hence his evidence cannot be relied upon, but the learned court was also of the view that it is not the principle of law that Court shall discard the evidence of a relative witness. This Court do concur such observation but with the rider that the evidence of said eye witness must be clinching enough to inspire confidence. The cumulative

evidences of the witnesses being the family members and neighbors with the glaring inconsistencies , the doctor of Anadalok Hospital and his injury report prepared after 7 days from the date of death, absence of seizure memo in collecting the medical papers from the hospitals, and procedural lapses in recovery of offending weapon ,the process of investigation is certainly not the one where it been proven beyond the shadow of all reasonable doubt .In fact from the photocopy of Anandalok Hospital which was not proved and marked with X for identification, the history of intake of alcohol by the patient can be found which corroborates the version of the accused/appellant that the deceased was drunk at that point of time. This fact was never mentioned either in the F.I.R or by many of the witnesses. The admitted fact of the prevailing dispute and an altercation between the victim and the accused coupled with his inebriated condition along with the lodging of the F.I.R by the accused and the inconsistencies in the evidence of the son, the alleged eye witness makes it highly probable that there is a different version of the story. It is a settled law that enmity is a double edged weapon, on one hand it provides motive, on the other hand it also does not rule out the possibility of false implication.

**20.** This is a case where the evidence of the eye witness and the de-facto complainant was partly reliable and partly unreliable and according to the decision of ***Vedivelu Thevar vs State of Madras***<sup>8</sup> the in such situation conviction cannot be maintained on the basis of such evidence and the court

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<sup>8</sup> 1957 SCC Online SC 13

must look for further corroboration .In this case no such corroborations can be found excepting that the death occurred due a physical assault with a deadly weapon as it tallies with the injury sustained by the deceased but the prosecution has failed to establish that the death was due to the physical assault made by the accused .In criminal jurisprudence a well established principle that unless the charges are proved against the accused beyond all reasonable doubts order of conviction cannot be passed . Therefore this court is unable to accept the reasoning and analogy of the learned trial court and hence the same is liable to be set aside.

### **Conclusion**

- 21.** In light of the above discussion, we are of the view that the prosecution was not able to substantiate the charges levelled against the appellants beyond all reasonable doubts. They are entitled to be acquitted from this case.
- 22.** Accordingly, the appellant is acquitted from all the charges he had been charged with. The present appellant is directed to be set at liberty forthwith, if not wanted in connection with any other case. He shall, however, furnish a bond to the satisfaction of the trial Court in terms of Section 437A of the Code of Criminal Procedure Code which shall remain valid for 6 months from date.
- 23.** All pending applications, if any, including application for bail, shall stand disposed of in the above terms.

**24.** Let a copy of the judgement along with the Trial Court records be sent down to the Court below at once.

**25.** Urgent certified copy of this order, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

I agree

**(DEBANGSU BASAK, J.)**

**(CHAITALI CHATTERJEE DAS, J.)**

