

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION**

APPELLATE SIDE

Death Reference No. 8 of 2025

The State of West Bengal

Vs.

Baladeb Paul

With

CRA (DB) 272 of 2025

Baladeb Paul @ Baldeb Paul

Vs.

The State of West Bengal and Ors.

Before: The Hon'ble Justice Arijit Banerjee

&

The Hon'ble Justice Apurba Sinha Ray

For the Appellants : Mr. Bikash Ranjan Bhattacharyya, Sr. Adv.
Mr. Rabi Sankar Chattopadhyay, Adv.
Mr. Uday Sankar Chattopadhyay, Adv.
Mr. Suman Chatterjee, Adv.
Mr. A. R. Bhattacharya, Adv.
Ms. Trisha Rakshit, Adv.
Mr. S. Rakshit, Adv.
Ms. B. Chakraborty, Adv.
Ms. S. Parveen, Adv.

For the State : Mr. Debasish Roy, Id. P.P.
Ms. Anasuya Sinha, Adv.
Ms. Amita Gour, Adv.

Reserved on : 22.01.2026

Judgment on : 12.03.2026

Apurba Sinha Ray, J.:-

1. At the very beginning of the hearing on death reference, the learned Public Prosecutor Mr. Roy, in his usual fairness, submitted that whether the death sentence of the convict Baladeb Paul will be confirmed or not, or whether the death sentence will be commuted to life imprisonment or not, all such questions are left to the Court for decision. He fairly pointed out that the guidelines issued by the Hon'ble Supreme Court from time to time in **Bachan Singh vs. State of Punjab (1980) 2 SCC 684, Machhi Singh v. State of Punjab (1983) 3 SCC 470, Manoj and Ors. vs. State of Madhya Pradesh (2023) 2 SCC 353 and so on** which settled the law regarding the duties of learned Trial Judges in imposing Death Sentence, were not properly taken into consideration in the impugned judgment imposing death sentence upon the convict. Mr. Roy has very candidly said that the concerned learned Trial Judge should be sent for appropriate training in Judicial Academy for upgrading his knowledge in this regard. However, learned Public Prosecutor has drawn the attention of this Court to the depositions of PW 1 Tahera Begum, being the defacto complainant, PW 6 Sk. Sairaf Ali, PW 7 Samir Malik, PW 8 Kajal Kr. Roy, PW 9 Fatik Mallick, PW 10 Sk. Nausher Ali, PW 11 Choudhury Azahar Ali and also the depositions of official witnesses. According to him there is no iota of doubt that the deceased was killed by Baladeb Paul by firing on the left ear of the deceased and at the time of incident the said convict was being accompanied by other convicts after forming an unlawful assembly with

the common object to murder Naimuddin Khan. Mr. Roy further submitted that several witnesses of the prosecution were declared hostile but the deposition of other witnesses clearly show the involvement of the convict on death row and other convicts. When an unlawful assembly with an illegal object gheraoed the deceased and one of them opened fire upon the deceased, each and every member of that unlawful assembly with the common object is liable for the same punishment. However, all the vital witnesses excepting the hostile witnesses, named the present petitioner as the person who opened the fire by his gun, and he was rightly convicted and this Court may confirm the death sentence if it finds that the guidelines of the Hon'ble Apex Court in this regard have been duly followed; otherwise, the death sentence may be commuted to life imprisonment.

- 2.** Learned Senior Counsel Mr. Bhattacharyya, appearing for the convict Baladeb Paul, submitted that the impugned judgment is not sustainable in law since the framing of charge was not properly done for the offences allegedly committed by the death row convict. He has strong belief that the death sentence is not sustainable in the eyes of law since several guidelines issued by the Hon'ble Supreme Court regarding imposition of death penalty were not at all discussed in the relevant judgments. Learned Counsel pointed out several defects in the impugned judgment. From the formal FIR it transpires that the timing of filing FIR on 09.12.2011 is shown at 11.35 Hrs. as well as at 14.05 Hrs. although the alleged incident occurred on 09.12.2011 around 11.00 am. Both the GDs as mentioned in the formal FIR are

missing. There was no cross-examination on this issue. The inquest report shows that the witnesses who were allegedly present at the spot of occurrence, stated before the Inquest Officer that unknown persons opened fire on the deceased and as a result of which the death occurred. Mr. Bhattacharyya further submitted that if the witnesses knew the names of the assailants, why the same was not narrated before the Officer conducting the inquest report. He also submitted that not a single independent witness supported the prosecution case. Four local witnesses were declared hostile. PW 3 being one of the prime witnesses did not support the prosecution case. Although PW 6 stated that he was also injured, there was no injury report to that effect. From the depositions of PW 7 and PW 8, it appears that there were a number of people armed with firearms but not a single firearm was recovered. It was also argued by Mr. Bhattacharyya that neither any weapon was recovered nor any ballistic report was received during trial. Mr. Bhattacharyya relied upon the following judgments regarding his contention.

- i) **Anil vs. State of Maharashtra** reported in **(2013) 12 SCC 441** relied on **paragraphs 2, 3, 9, 10, 12, 13.**
- ii) **Sadananda Mondal vs. State of West Bengal** reported in **(2013) 15 SCC 293** relied on **paragraphs 2, 3, 4, 5, 12 to 15.**
- iii) **Ram Laxman vs. State of Rajasthan** reported in **(2016) 12 SCC 389** relied on **paragraphs 3,4,7,8.**

- iv) **Javed Masood and Another vs. State of Rajasthan** reported in **(2010) 3 SCC 538** relied on **paragraphs 3 to 9, 11, 12, 16 to 19, 22 to 24.**
- v) **Ram Singh vs. State of Uttar Pradesh** reported in **(2024) 4 SCC 208** relied on paragraphs **4, 5, 13, 13.1, 13.2, 13.3, 14, 14.1, 15, 15.1, 16 to 23, 27 to 31, 38, 39.**
- vi) **Manoj and Others vs. State of Madhya Pradesh** reported in **(2023) 2 SCC 353** relied on **paragraphs 248 to 252.**

3. Mr. Bhattacharyya drew our attention to the deposition of PW 18 Sakkhi Gopal Ghosh, the first Investigating Officer who stated in cross-examination that none of the witnesses mentioned names of the assailants during investigation under Section 174 of Cr.P.C.
4. Mr. Bhattacharyya also argued that from the statement of PW 7, it will be found that after about 25 minutes of the incident the police personnel of Goghat Police Station reached the spot and took the victim Naimuddin to Arambagh Hospital and it is also proved from the deposition of PW 6 Sairaf Ali that after half an hour of the incident police personnel came to the spot and picked up Naimuddin and took him to the hospital.
5. PW 8 Kajal Roy stated in his examination-in-chief that after about half an hour police came to the spot, and then police went to the spot where Naimuddin was lying with bleeding injuries and thereafter Police personnel took Naimuddin in their van to Arambagh Hospital. PW 3 and PW 8 did not state the name of any assailant in the inquest report. On the contrary PW 1 (FIR maker) in her cross-examination

stated that after discussion with local leaders of the Trinamool Congress Party including Kajal Roy and his friend, the written complaint was drafted.

- 6.** The learned counsel has also drawn our attention to the deposition of PW 11 wherein he stated that after demise of Naimuddin a big rally took place and after the said rally there was a discussion that the persons who killed Naimuddin shall be punished in accordance with law and how it should be effected.
- 7.** PW 6, PW 7 and PW 8 stated that they were attacked by the accused persons/convicts but no injury report was filed to substantiate their claim.
- 8.** It was also submitted that the place of occurrence of the crime could not be ascertained and therefore, when the place of occurrence was not proved beyond doubt then other circumstances are hardly sufficient to establish the guilt of the accused. There are serious contradictions in the ocular evidence and the medical evidence. There is certain contradictory medical evidence in the evidence of the prosecution. In her cross-examination PW 14 has deposed that they were not confirmed about the actual cause of death of the deceased.
- 9.** According to PW 15 Dr. Nirmalya Roy, the post mortem report is an incomplete one. There is no chemical analysis of the stomach content, brain, nail, hair and skin around the wound, liver, lung and kidney, etc. in the FSL Report. There is also no comment about the bullet. Therefore, in view of this report, it is not possible for him to form any final opinion which they reserved in their Post Mortem Report. If the

version of the prosecution witnesses is to be believed then Naimuddin was sitting and Baladeb Pal was standing in a very close range. Therefore, the trajectory of the shot would be from a height downwards. In this regard, Mr. Bhattacharyya has drawn the attention of this Court to the deposition of the PW12 medical officer who stated that if the gun shot injury is done in a straight way then the entry point of the said gun shot injury must be circular in shape. But if the gun shot injury is done in an angular way then the entry point of the said gunshot injury must be Pear seed in shape.

10. PW 12 has deposed that as per their report they did not find circular shape and pear seed injury. The investigation was not properly done as per the argument of the learned counsel of the defence. There are several loopholes. According to Mr. Bhattacharyya the death sentence should not be confirmed in view of such lacuna in the investigation as well as in the judgment under challenge.

Court's view

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11. In **Machhi Singh and Others vs. State of Punjab, reported in (1983) 3 SCC 470** the Hon'ble Apex Court has been pleased to lay down certain guidelines for the Trial Judges to consider before imposition of death penalty upon the convict. In para 38 of the said decision the Hon'ble Apex Court has been pleased to discuss the case law of **Bachan Singh vs. State of Punjab (1980) 2 SCC 684** and has been pleased to observe that the following propositions emerge from Bachan Singh (supra):-

“ i) The extreme penalty of death need not be inflicted except in gravest cases of extreme culpability.

(ii) Before opting for the death penalty the circumstances of the “offender” also requires to be taken into consideration along with the circumstances of the “crime”.

(iii) Life imprisonment is the rule and death sentence is an exception. In other words death sentence must be imposed only when life imprisonment appears to be an altogether inadequate punishment having regard to the relevant circumstances of the crime, and provided, and only provided, the option to impose sentence of imprisonment for life cannot be conscientiously exercised having regard to the nature and circumstances of the crime and all the relevant circumstances.

(iv) A balance-sheet of aggravating and mitigating circumstances has to be drawn up and in doing so the mitigating circumstances have to be accorded full weightage and a just balance has to be struck between the aggravating and the mitigating circumstances before the option is exercised.”

12. In **Ramnaresh and others vs. State of Chhattisgarh** reported in **(2012) 4 Supreme Court Cases 257**, the Hon’ble Supreme Court

has been pleased to quote the observation of the Hon'ble Apex Court in **State of Maharashtra vs. Goraksha Ambaji Adsul** reported in [(2011) 7 SCC 437] in the following words:

“The language of Section 354(3) CrPC demonstrates the legislative concern and the conditions which need to be satisfied prior to imposition of death penalty. The words, ‘in the case of sentence of death, the special reasons for such sentence’ unambiguously demonstrate the command of the legislature that such reasons have to be recorded for imposing the punishment of death sentence. This is how the concept of the rarest of the rare cases has emerged in law. Viewed from that angle, both the legislative provisions and judicial pronouncements are ad idem in law. The death penalty should be imposed in the rarest of rare cases and that too for special reasons to be recorded. To put it simply, a death sentence is not a rule but an exception. Even the exception must satisfy the pre-requisites contemplated under Section 354(3) CrPC in light of the dictum of the court in Bachan Singh’s Case” (supra).

13. In the majority decision of **Bachan Singh Vs. State of Punjab** reported in (1980) 2 SCC 684, the Hon'ble Supreme Court has dealt

with the mitigating circumstances which may assist the learned Trial Judge in deciding the quantum of sentence. Para 206 of the said decision is profitable for recollecting the observation of the Hon'ble Supreme Court:-

“206. Dr. Chitale has suggested these mitigating factors:

Mitigating circumstances:- In the exercise of its discretion in the above cases, the court shall take into account the following circumstances:-

(1) That the offence was committed under the influence of extreme mental or emotional disturbance.

(2) The age of the accused. If the accused is young or old, he shall not be sentenced to death.

(3) The probability that the accused would not commit criminal acts of violence as would constitute a continuing threat to society.

(4) The probability that the accused can be reformed and rehabilitated.

The State shall by evidence prove that the accused does not satisfy the conditions (3) and (4) above.

(5) That in the facts and circumstances of the case the accused believed that he was morally justified in committing the offence.

(6) That the accused acted under the duress or domination of another person.

(7) That the condition of the accused showed that he was mentally defective and that the said defect impaired his capacity to appreciate the criminality of his conduct.”

14. In **Manoj & Ors. Vs. State of Madhya Pradesh** reported in **(2023) 2 SCC 353** the Hon'ble supreme Court has dealt with the practical guidelines for assisting the Learned Trial Judges to consider the mitigating circumstances where the Learned Trial Courts are prone to inflict death sentence. Paras 248 to 250 are quoted herein below for the purpose of understanding the present law of the land which mandates that the learned Trial Courts should consider those prerequisites before imposing death sentence upon any convict:-

“248. There is urgent need to ensure that mitigating circumstances are considered at the trial stage, to avoid slipping into a retributive response to the brutality of the crime, as is noticeably the situation in a majority of cases reaching the appellate stage.

249. To do this, the trial court must elicit information from the accused and the State, both. The State, must-for an offence carrying capital punishment at the appropriate stage, produce material which is preferably collected

beforehand, before the Sessions Court disclosing psychiatric and psychological evaluation of the accused. This will help establish proximity (in terms of timeline), to the accused person's frame of mind (or mental illness, if any) at the time of committing the crime and offer guidance on mitigating factors (1), (5), (6) and (7) spelled out in Bachan Singh. Even for the other factors of (3) and (4) an onus placed squarely on the State-conducting this form of psychiatric and psychological evaluation close on the heels of commission of the offence, will provide a baseline for the appellate courts to use for comparison i.e. to evaluate the progress of the accused towards reformation, achieved during the incarceration period.

250. Next, the State, must in a time-bound manner, collect additional information pertaining to the accused. An illustrative, but not exhaustive list is as follows:

(a) Age

(b) Early family background (siblings, protection of parents, any history of violence or neglect)

(c) Present family background (surviving family members, whether married, has children, etc.)

(d) Type and level of education

(e) Socio-economic background (including conditions of poverty or deprivation, if any)

(f) Criminal antecedents (details of offence and whether convicted, sentence served, if any)

(g) Income and the kind of employment (whether none, or temporary or permanent, etc.);

(h) Other factors such as history of unstable social behaviour, or mental or psychological ailment(s), alienation of the individual (with reasons, if any), etc.

This information should mandatorily be available to the trial court, at the sentencing stage. The accused too, should be given the same opportunity to produce evidence in rebuttal, towards establishing all mitigating circumstances.”

- 15.** From the impugned judgment it appears that the learned Trial Judge at the time of sentencing the convict considered the following judgments:- **(1) Bachan Singh Vs. State of Punjab** reported in **(1980) 2 SCC 684**, **Machhi Singh V. State of Punjab** reported in **(1983) 3 SCC 470**, **(3) Ravji@ Ram Chandra V. State of Rajasthan** reported in **(1996) 2 SCC 175**, **(4) Swamy Shradhananda V. State of Karnataka** reported in **(2008) 13 SCC 767**, **(5) Santosh Kumar Satishbhushan Bariyar V. State of Maharashtra** reported in **(2009)**

6 SCC 498, (6) Sangeet and another V. State of Haryana reported in **(2013) 2 SCC 452** and **(7) Shankar Kisanrao Khade V. State of Maharashtra** reported in **(2013) 5 SCC 546**.

16. There is no discussion in respect of the judgment of **Manoj & Ors. (supra)** in the four corners of the impugned judgment. There is no whisper that steps were taken from the side of the Learned Trial Judge to comply with the directions contained in the said judgments reported in **(2023) 2 SCC 353** in letter and spirit. In deciding the quantum of sentence the learned Trial Judge did not feel it proper to receive the relevant report/inputs as indicated in the said judgment rather he relied upon his own personal assessment of the factors for consideration in this regard. Therefore, we have no hesitation to say that the guidelines as mentioned in the decision of **Manoj & Ors. (supra)** were not followed and therefore the learned Trial Court passed the order of sentence without eliciting relevant information from the accused and the State as indicated in the paragraph 249 of the aforesaid decision. The said direction is mandatorily to be followed by the learned Trial Court at the sentencing stage and that being not done, we have no hesitation to hold that the process of sentencing the convict Baldeb Paul to suffer death sentence is based on an inappropriate application of judicial mind and, therefore, such process of sentencing cannot be allowed to stand. Moreover, there is no clear observation in the judgment as to why life imprisonment will not be an adequate punishment for Baladeb Paul.

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17. Having said so, let us see whether the conviction of the appellant convict Baldeb Paul is sustainable in the eyes of law or not. At the very outset it would be apposite to mention that while convicting an accused, the learned Trial Court should not be guided by his personal opinion or belief. The sacred duty upon the Learned Trial Judge in a criminal case is to see whether the prosecution is able to bring home charges against the accused beyond all sorts of reasonable doubt. In deciding a case there may be personal feeling of a concerned Judge that in all probabilities the accused is the actual culprit but such personal belief has no place in the criminal jurisprudence unless the guilt of such accused is proved by producing reliable and convincing evidence to such an extent that the complicity of the accused in committing the crime is incompatible with his plea of innocence. In other words, the complicity or involvement of the accused is to be proved by the prosecution in such a manner that there cannot be a second view for his innocence. Therefore, the only duty of the Learned Trial Court is to see whether the case against the accused has been proved by the prosecution beyond all sorts of reasonable doubt or not. If there are lacuna in upholding such solemn principle, the learned Trial Court is duty bound to acquit the accused, irrespective of its personal belief or opinion.

18. Let us see how the evidence has been scanned by the Learned Trial Judge. The record discloses that PW1 Tahera Begum, the wife of the deceased, PW 3 Harun Ali Rashid, the elder brother of the deceased were not present at the spot at the time of the incident and they had come to know about the incident from one Kajol Ray being PW 8. PW 2 Ashok Kumar Dey and PW4 Kanailal Dey were declared hostile and in their examination in chief they did not confirm that the convict Baladeb Pal fired the deceased. PW 5 did not say that it was Baladeb Pal who shot at the deceased. PW 6 Sk. Sairaf Ali, PW 7 Samir Malik, PW8 Kajol Roy deposed that it was Baladeb who shot at the deceased Naimuddin. PW9 Fotik Malik and PW10 Nausar Ali did not say that Baladeb pal shot at Naimuddin. PW11 deposed that Baladeb pal fired Naimuddin from his back. Therefore, although PW 6 Sk. Sairaf Ali, PW7 Samir Malik, PW8 Kajol Kr. Ray and PW11 Chaudhury Azar Ali deposed that they saw Baladeb Pal to open fire at Naimuddin, PW1, PW2, PW3, PW4 and PW5 did not say that Baladeb Pal opened fire on Naimuddin. In spite of such deposition the learned Trial Judge has astonishingly made following observations under the heading discussion on arguments:-*“In the instant case, each and every prosecution witnesses comprising from PW1 to PW11 clearly deposed that they saw A1 (Baladeb Pal) and other accused persons with fired arms and other offending weapons in their hands, at the time of incident and such witnesses clearly deposed that A1 (Baladeb Pal) shot the victim on his head and other accused persons were firing in the air after A1 (Baladeb Pal) shot the victim”* (emphasis added). Such

observation goes to show that the learned Trial Judge did not apply his mind since it is clear from the deposition of PW1 to PW5 and also PW 9 and PW 10 that they did not say that they witnessed Baladeb Pal to shoot the victim on his head.

- 19.** It is also found that the Learned Trial Judge at the time of scanning the evidence of PW4 has made the following observation in the judgment as follows:-

“Thus, from the evidence of PW4, it is seen that PW4 even though he initially admitted that he was present at the spot with the victim but intentionally refused to bring out true facts before the Court for which he was declared hostile by the prosecution and during cross-examination by the prosecution, it is seen that PW4 corroborated his evidence-in-chief during his cross-examination and corroborated the fact that at the time of firing by Al to victim, PW4 was present there and PW4 saw the incident with his own eyes but did not depose the same in his evidence-in-chief and it is settled that if a witness is declared hostile, his evidence cannot be ignored in its entirety (as discussed in paragraph no. 44 of this judgment with referred citation) and such evidence given during hostile stage is not fatal to the prosecution and based

upon such facts, the denial of several facts by PW4 during his cross-examination by the prosecution at a hostile stage cannot be ignored by the Court in toto and as such, evidence of PW4 sustains while deposed during hostile stage and as such, it can be safely concluded that PW4 was present with the victim at the time of incident when A1 shot victim and PW4 being the retired teacher of the school was present with the victim at the time of incident, who was an eye-witness to the incident.

- 20.** Now for better understanding the issue I would like to quote the actual deposition of PW4 which was taken before the learned Trial Judge on 16.01.2018 which is as follows:-

Chief examination of PW- 4 (Csw-4) namely Kanailal Dey starts today on 16.01.2018

I am a resident of Bally under Goghat PS. I am a retired teacher of high school. On 09.12.2011, he was acquainted with Noimuddin since deceased. On that day i.e 09.12.11 I went Sheora High School and bazar of Shaura, on reaching to the school one person namely Noimuddin since deceased requested me to fill up the nomination papers, out of his request I was filling up the nomination papers. It was

about 11.00 a.m. I was filling those nomination papers on the ground of school on sitting there.

Suddenly, I heard a sound of firing and I found that Noimuddin was lying on the ground out of that firing. Noimuddin was sitting just beside to me at that time. At such lying on the ground out of firing of Noimuddin, I left that place. I did not see who fired that. It was haatbar that is why some persons who were also filing up nomination papers and other person were present there, I did not know them. I had no talking with other persons on the spot.

*I was not examined by the police out of such incident. **(witness declared hostile and permitted to cross-examine)** xxx by the prosecution.*

- 21.** From the comparative study of the observation of the learned Judge and the actual deposition of PW4 I find that nowhere in his deposition the PW4 has stated that Baldeb Paul fired at Naimuddin. There was no whisper in the said deposition that Baldeb Paul was also present at the spot. In spite of such substantive piece of evidence, the learned Trial Judge has made an observation to the effect “*as such, it can be safely concluded that PW4 was present with the victim at the time of incident when a1 (Baladeb Pal) shot victim and PW4 being the*

retired teacher of the school was present with the victim at the time of incident, who was an eye witness to the incident”., it appears that the learned trial Judge has inserted many words stating that PW4 was present when accused Baldeb Paul shot the victim. This cannot be done by the learned Trial Judge even if such a witness is declared as hostile. That part of the evidence of hostile witness can be considered which he has deposed before the learned Trial Court during his examination but the learned Trial Judge can neither infer from any conclusion nor insert his findings by putting words in the mouth of the said witness. In this regard the learned Trial Judge has misread the relevant reported judgment which he indicated in the relevant portion of his judgment.

22. The defence had raised the issue that although the FIR and the materials on record suggested that all the persons accompanying the deceased sustained injuries neither any medical report nor any other evidence was brought on record to show that actually they had sustained any injury. No incriminating article of such assault, such as, Lathi, Tangi etc. was recovered and seized during the investigation. The Learned Trial Judge has dealt with the said issue by giving his personal assessment once again. In this regard, the relevant para in the judgment is quoted herein below:-

“Ld. Advocate for the accused persons submitted that most of the prosecution witnesses deposed that the accused persons assaulted them but during evidence there is no scrap of paper of any medical treatment of

any of the injured witnesses and as such the evidence of these witnesses cannot be taken to be correct. As regards this submission, this Court does not agree with such submission, as assault word, being used in ordinary parlance by an ordinary person, differs from the legal definition of assault, as usually assault does not mean grievous injury to a person and in the instant case, the prosecution witnesses deposed of being hit by lathi, tangi etc. etc. which even if done, and if any one sustains such assault, it would result in a body pain etc. for which generally a person takes a medicine of a pain killer medicine or antibiotic medicine, without consulting any Doctor which practice is prevalent in the common minds of each and every person residing in the villages and even in urban locality.”

23. The above observations show that the Learned Judge has tried to mitigate the palpable lacuna on the part of the investigating agency in this regard.

24. The defence had also taken the plea that neither any arm nor bullet was recovered from the place of occurrence which were used by the accused persons other than Baladeb Paul, no attempt was taken to seize any of the alleged arms from the possession of the accused persons. If they opened fire in the air there must be some empty cartridges in the field but not a single empty cartridge was recovered and seized during the investigation. This plea of defence was not at all

discussed by the Learned Judge in his judgment. There is no whisper as to why such arms, ammunitions were not recovered. It is also found that the arms alleged to have been used by the appellant Baladeb Paul in shooting the deceased were not recovered. Accordingly, no FSL report could be prepared. This vital omission, discrepancy in the prosecution case was not dealt with by the Learned Trial Judge in his judgement. He has discussed several judgments stating that all those lacuna are minor discrepancies and such minor discrepancies do not hit at the root of the prosecution case. But in our view this lacuna on the part of the investigating agency is very serious in nature. Not every kind of discrepancy may cost the prosecution case, but when there were allegations that 50/60 persons came with fire arms and opened fire in the air to frighten the nearby people, why there should not be any seizure of such empty cartridges and fire arms from the possession of the accused persons. Not a single firearm was recovered from any of the convicts including the appellant Baladeb Paul. It is true that initially Baladeb Paul absconded but that does not mean that after he was brought to the course of Justice, the Investigating Officer will remain idle. This serious issue was not taken into account by the Learned Trial Judge in deciding the fate of the case of the convicts/appellants.

25. As per the prosecution case, there are several eye witnesses namely PW 6 Sk. Sairaf Ali, PW 7 Samir Malik, PW 8 Kajal Kumar Roy and PW 11 Choudhury Azahar Ali, who deposed before the Court that they saw Baladeb Paul open fire on Naimuddin. If that be so, let us

peruse the evidence of those witnesses for the purpose of ascertaining whether such evidence could be relied upon by the Learned Judge in convicting the accused Baladeb Paul. PW 6 has stated that when they were filling up the forms some miscreants namely Baladeb Paul, Sahadeb Paul, Tapan Kha, Swpan Roy, Asit Ghosh (Uday), Santosh Pandit, Akhtar Chowdhury, Asit Singha Roy, Gajan Paramanick, Nakul Diger (Barun Diger), Sita Ram Paul, Tapan Chowdhury (Chowdhury Kamrul Alam) suddenly came to the spot and attacked them. At that time, Baladeb Paul shot Naimuddin at his left ear and Naimuddin fell down on the ground. In his cross examination, he stated Baladeb Paul shot Naimuddin from a close distance, that is just behind him in a sitting position from the back side. Baladeb Paul shot him by firing one time. Other miscreants also used their firearms on firing in the air.

26. Although the above deposition of Sk. Sairaf Ali is very much pertinent for the prosecution, it appears that none of the other prosecution witnesses has deposed that Sk. Sairaf Ali was present with Naimuddin at the spot on the date of occurrence. However, several witnesses including PW 8 Kajol Kumar Roy have stated that Sourav Ali, Samir Malik, Sk. Nausar Ali, Fatik Malik, Sk. Abdul Selim was also with them in front of the school where the incident occurred. The PW 10 Sk. Nausar Ali and PW 11 Chaudhury Azahar Ali had deposed that Kajol Kumar Roy, Sourav Mondal, Naimuddin were writing something on the eastern side of the school on the fateful day. It appears from the record that none of the said witnesses have stated

before this court that Sk. Sairaf Ali was present with the deceased along with others on the fateful day and time. The said witnesses namely PW 8 Kajol Kumar Roy, PW 10 Sk. Nausar Ali, PW 11 Chowdhury Ajahar Ali were examined on 9th August, 2018 when they disclosed the name of one Sourav Mondal as one of the companions of the deceased Sk. Naimuddin on the relevant day. It appears from the record although Sk. Sairaf Ali was examined on 23rd March, 2018 and was cross-examined on 16th November, 2018 he never disclosed that he was also known as Sourav Mondal. It appears from the record that on 16.11.2018 after cross-examination of Sk. Sairaf Ali was over he was asked by the Court as to whether he was also known as Sourav Mondal or not since the learned Public Prosecutor had given his name in the witness attendance sheet as Sourav Mondal. The court recorded that on being asked the witness Sk. Sairaf Ali stated on dock that he was also known as Sourav and Sourav Mondal in the locality. In his cross-examination thereafter he stated that previously he never stated that he was known as Sourav Mondal. It appears that such alleged clarification of Sk. Sairaf Ali on 16th November, 2018 took place after the deposition of PW 8, PW 10 and PW 11 on 9th August, 2018 was over and such clarification was propelled by the Learned Public Prosecutor in Trial Court when he named in the hazira slip of the witness on 16.11.2018 as Sourav Mondal instead of Sk. Sairaf Ali. Nowhere in the charge sheet or any other material it is shown that Sourav Mondal and Sk. Sairaf Ali was one and the same person who witnessed the incident. However, after the evidence of PW 8, PW 10

and PW 11 disclosed the presence of one Sourav Mondal, PW 6 Sk. Sairaf Ali claimed that he was that Sourav Mondal which was indicated in the deposition of PW 8, PW 10 and PW 11. As the identity of Sk. Sairaf Ali is in dispute, it is very difficult to rely upon his deposition, since PW 11 had already mentioned that Sourav Mondal had affiliation with one of the political parties to which the deceased belonged.

27. PW 8 Kajol Kumar Roy had deposed that on 09.12.2011 he along with Naimuddin went to the concerned school for the purpose of filing nomination papers. Thereafter when they were engaged in filling the same, 50 persons surrounded them and started assaulting them. He has also stated that Baladeb Paul fired Naimuddin at his left side of the neck. Apart from him there was Sk. Abdul Safik, Nakul Diger, Saheb Pal, Sahadeb Pal, Tapas Kha, Swapan Roy, Sitaram Pal, Asit Singha, Santosh Pandit, Chaudhury Mehebab Hossian, Chowdury Kamrul Alam @ Topa, Chowdhury Aktharul Haque @ Akthar, Barun Diger, Asit Ghosh were also carrying fire arms in their hands.

28. Sk. Sairaf Ali being PW 6 has stated during his cross-examination that Baladeb Paul, Sahadeb Pal, Nakul Diger, Tapas Kha, Santosh Pandit were carrying revolvers and the other miscreants were with weapons like lathi, rod, tangi etc. Therefore, there is a serious discrepancy between the version of PW 6 and PW 8 in this regard. The presence of PW 6 on the spot at the relevant time is doubtful.

29. PW 8 has further stated that Sourav Ali, Samir Malik, Sk. Nausar Ali, Fatik Malik, Abdul Selim were also with them. In his

cross-examination he stated that the miscreants also assaulted them. Now whether the deposition of PW 8 can be relied upon or not, we have to scrutinise the Inquest Report under Section 174 Cr.P.C. PW 8 had also signed the said Inquest Report. Only signatures of the witnesses on the inquest report were marked as Exhibits. PW 19, Inspector Prashanta Chatterjee, the second Investigating Officer, has stated in his cross-examination that none of the witnesses in the Inquest Report named the assailants of the deceased. Rather, the said witnesses reported to the officer conducting the Inquest on the dead body that unknown miscreants made the gunshot. It is not clear that if PW 8 knew that Baladeb Paul fired Naimuddin from the back side, what prevented him from narrating the same before the concerned officer conducting inquest on the body of the deceased on 09.12.2011 at 13.30 hours. It is also found that the another witness being PW 3 who derived his knowledge that Naimuddin was fired at by Baladeb Paul, from PW8 Kajol Kumar Roy, did not state anything regarding the involvement of the convict Baladeb Paul as the sole assailant. The Learned Trial Judge did not deal with this vital issue in his judgment. PW 8 has denied the suggestion in his cross-examination that he did not disclose to the police at the time of inquest that unknown miscreants murdered Naimuddin. In other words, the prosecution wants to show that Naimuddin had informed the officer holding the inquest about the names of the assailant but that was not recorded by the inquest officer. If that be so, the inquest officer namely, Satya Barik should have been examined on that issue. But the record shows

that Satya Barik was not examined and the inquest report was not admitted in evidence and marked as exhibit. Apart from the signatures of the witnesses appearing in the said report, nothing in the said report was admitted in evidence. The instant issue was also not examined by the Learned Trial Judge in its proper perspective. The prosecution has, in fact, withheld the contents of the inquest report to be admissible in the eye of law.

30. The Learned Trial Judge should have drawn adverse inference against the prosecution for withholding the contents of the Inquest Report to be admissible in evidence. PW 7 Samir Malik has alleged that he was present at the time of incident and he saw Baladev Pal shoot Naimuddin from his front side at his left ear. The presence of Samir Malik was not confirmed by the deposition of PW 10, PW 11 and PW 6. There is no material on record apart from the deposition of PW 8 that Samir Malik was present at the time of incident. PW 11 has stated that on the relevant date he found Baladeb Paul shot Naimuddin at the back side of his head and thereafter Naimuddin fell down on the ground. In his cross-examination he has stated that after the demise of Naimuddin a big rally/prosession took place at the locality and even in that rally the higher leaders of TMC party visited the place and participated at that rally. After the said rally there was a discussion that the persons who killed Naimuddin shall be punished in accordance with law and how it should be effected. He further stated in his cross-examination that in that meeting it was decided that PW 11 will depose before the Court which he stated in his

examination-in-chief. This statement in the cross-examination does not show that PW 11 Chowdhury Azahar Ali was an independent witness. He is an active member of the political party to which the PW 7, PW 8, PW 6 belonged. Therefore, as the matter involved murder of a political personnel, the deposition of other political personnel should be taken into consideration with much caution and circumspection. But the Learned Trial Judge has failed to consider that no independent witness supported the prosecution case and the Learned Trial Judge has pronounced his judgment on the basis of the evidence of such political personnel, who cannot be said to be independent witnesses by any stretch of imagination.

31. At page nos. 6 and 7 of the judgment the learned Trial Judge has mentioned in a tabular form the list of exhibits from the side of prosecution and they were as follows:-

Sl. No.	Exhibit Number	Description
1.	Exhibit 1	Written complaint.
2.	Exhibit 1/1	Endorsement on written complaint with signature and seal of PW 18.
3.	Exhibit 2	Seizure List dated 10.07.2023.
4.	Exhibit 2(a)	Signature of PW 1 on seizure list dated 10.07.2013.
5.	Exhibit 2/2	Signature of PW 16 on seizure list

		dated 10.07.2013.
6.	Exhibit 2/3	Signature of PW 17 on seizure list dated 10.07.2013.
7.	Exhibit 3/a	Signature of PW 3 on inquest report.
8.	Exhibit 3/b	Signature of PW 8 on inquest report.
9.	Exhibit 4/a to Exhibit 4/d	Signatures of PW 3 on statement u/s 164 Cr.P.C.
10.	Exhibit 5/a to Exhibit 5/d	Signatures of PW 8 on statement u/s 164 Cr.P.C.
11.	Exhibit 6	Post Mortem Report of the victim.
12.	Exhibit 6/1	Signature of PW 14 on Post Mortem Report.
13.	Exhibit 6/2	Signature of PW 15 on Post Mortem Report.
14.	Exhibit 7	Carbon process of Dead Body Challan.
15.	Exhibit 8	F.S.L report.
16.	Exhibit 9	Formal FIR.
17.	Exhibit 10	Seizure list dated 09.12.2011.

18.	Exhibit 11 and 11/1	Rough Sketch Map of P.O with Index.
19.	Exhibit 12	Seizure list dates 09.12.2011 prepared by Satya Barik.
20.	Exhibit 13	Carbon copy of forwarding letters to FSL, Kolkata of bullet head & other items, comprising of 4 pages.

32. It appears that from page no. 52 of the judgment the Learned Trial Judge has mentioned as follows:-

“Exhibit 3 is the Inquest Report which was held on the date of incident at 13.30 hrs. which inquest was held immediately after filing of the complaint.”

33. It appears that there is no Exhibit 3 in the list of exhibits of prosecution. Although the signature of PW 3 and the signature of PW 8 on the Inquest Report have been marked as Exhibits 3a and 3b respectively and although the contents of the said Inquest Report were not admitted in evidence, the learned Trial Judge has proceeded to dispose of the case as if the Inquest Report has been marked as Exhibit 3. We have already mentioned that the Officer who conducted the Inquest Report namely Satya Barik was not examined by the prosecution. If the contents of the inquest report were not admitted in evidence how the Learned Trial Judge can record that the Inquest

Report has been marked as Exhibit 3 and the same was held immediately after filing of the complaint.

34. Similar is the situation in case of the statement of PW 3 recorded under Section 164 Cr.P.C. Although the Magistrate was not called as a witness and his deposition was not recorded, the learned Trial Judge proceeded to dispose of the matter holding that the statement under Section 164 Cr.P.C. has been marked as Exhibit 4. From the list of Exhibits of the prosecution, it appears that there is no such Exhibit 4 mentioned in the said list at page nos. 6 and 7. Only the signatures of PW 3 on the statement under Section 164 Cr.P.C. was marked as Exhibit 4a to Exhibit 4d. It is also found that although the concerned Magistrate was not examined before the learned Trial Judge at the time of trial, the statement of PW 8 before the learned Magistrate recorded under Section 164 Cr.P.C. was shown in Page No. 52 of the judgment as Exhibit 5 but actually there is no Exhibit 5 in the list of exhibits of prosecution as mentioned above. Only the signatures of PW 8 on the statement under section 164 Cr.P.C. were marked as Exhibit 5a to Exhibit 5d. In spite of the fact that the two statements of PW 3 and PW 8 recorded under Section 164 Cr.P.C. were not proved by producing the concerned Judicial Magistrate or Magistrates before the learned Trial Court, and the contents of the said statements of the witnesses under Section 164 Cr.P.C., were not admitted in accordance with law, the Learned Trial Judge has proceeded to hold that PW 3 and PW 8 narrated the entire incident to the learned Magistrate and it is seen that Exhibit 4 and Exhibit 5 (not

mentioned in the Exhibit list) corroborated the evidence of such witness in all respects. We have gone through the original Trial Court record and examined the same and found that there is no. Ext. 3, Ext. 4, Ext. 5 as depicted by the learned Trial Judge. This is a clear non-application of mind and dereliction of duties entrusted upon a Judicial Officer.

35. In view of the above discussion, it is found that there are several loopholes in the prosecution case and they are as follows:-

- i) *No independent witness supported the prosecution case; the prosecution has relied upon some interested witnesses in convicting the accused Baldeb Pal.*
- ii) *No recovery of the weapon was done by the investigating officer.*
- iii) *The gun/revolver which the convict Baldeb Pal was alleged to have used at the time of commission of offence was neither seized nor sent to forensic laboratory for analysis to pin point that the said convict made the gunshot upon the victim Naimuddin.*
- iv) *The contents of the inquest report were withheld by the prosecution and were not made admissible in the evidence.*
- v) *The doctor who recovered the bullet from the body of the deceased had deposed that the bullet shown to him during trial was not recovered from the body of the victim.*
- vi) *The FIR was sent to the concerned police station more than three hours after the incident via a relative of the defacto complainant.*
- vii) *PW19, the second investigating officer has stated that none of the witnesses in the inquest report name Baladeb Pal as the assailant*

of the deceased. It is not clear if the witnesses to the said inquest report knew that Baladeb Pal fired Naimuddin from the back side, which prevented them from narrating the same before the concerned officer conducting the inquest report.

- viii) No injury report for the assault upon the witnesses apart from the deceased and no weapon in that regard was seized by the investigating officer.*
- ix) The GDs mentioned in the formal FIR are not brought on record to lend support to the prosecution case,*
- x) Four local witnesses declined to support the prosecution case,*
- xi) No ballistic report was received during the trial.*
- xii) The contents of statements under Section 164 Cr.P.C were not admitted in evidence but the learned Judge relied upon its unexhibited contents.*
- xiii) Non-production of Judicial Magistrates who recorded the statements under Section 164 Cr.P.C.*

36. In view of such deficiencies in the prosecution case, we are constrained to hold that conviction upon the death row convict Baladeb Paul is not at all sustainable. The prosecution has relied upon the evidence of interested witnesses only and there is no corroborative piece of evidence to support such deposition of the said witnesses. In view of the above, the order of sentence of death as imposed upon Baladeb Paul is hereby not confirmed and the order of death sentence in connection with the case being **ST Case No. 1(7) 2016 /S.C. Case No. 95 of 2015 (CIS – 03 of 2016)** is hereby **set**

aside. Hence, Death Reference being No. 08 of 2025 fails. Moreover, the conviction order passed in the said judgment is hereby also set aside. **CRA (DB) 272 of 2025** filed by Baldeb Paul against the judgment of conviction and sentence is hereby **allowed** and the impugned judgment convicting appellant Baldeb Paul is hereby set aside. The appellant Baldeb Paul be released at once if not wanted in any other case.

37. Although the learned Public Prosecutor submitted that learned Additional District and Sessions Judge, who authored the impugned judgment requires training at Judicial Academy, we think that the Court room is the best place for acquiring knowledge and guidance for a Judicial Officer. However, in view of the fact that the learned Additional District and Sessions Judge who passed the impugned judgment of conviction dated 23.06.2025 and order of sentence dated 24.06.2025 in connection with the S.T. Case No. 01 (07) 2016 (S.C. Case No. 95 of 2015) of the Learned Court of Additional District and Sessions Judge, 1st Court, Arambagh at Hooghly, had committed some basic and elementary mistakes, it would be appropriate to place a copy of the instant judgment along with a copy of the impugned judgment before the Hon'ble Chief Justice of High Court at Calcutta for deciding whether or not corrective measures are required to be taken for guidance of the learned Additional District and Sessions Judge as aforesaid.

38. Let a copy of this judgment be sent to the concerned Additional District and Sessions Judge wherever he is posted now, in a sealed cover for his guidance. The learned Registrar General, High Court at Calcutta is requested to send a copy of the judgment to the concerned learned Additional District and Sessions Judge in a confidential sealed cover immediately.

39. Let a copy of this judgment along with the Trial Court Records be sent to the Learned Court below.

40. Urgent photostat certified copies of this Judgment, if applied for, be supplied to the parties on compliance of all necessary formalities.

I agree.

(APURBA SINHA RAY, J.)

(ARIJIT BANERJEE, J.)

Arijit Banerjee, J. :-

- 1.** I have had the advantage of reading the detailed judgement of my esteemed brother. I am in complete agreement with my brother that this appeal deserves to be allowed and the death reference needs to be rejected.
- 2.** It is elementary that the prosecution is required to establish the charges brought against an accused person by adducing cogent evidence. There is no space for suppositions, speculations or conjectures. It is the duty of the Court trying an accused for a criminal offence to ensure that a conviction is ordered only when the

Court is satisfied beyond reasonable doubt about the guilt of the accused on the basis of documentary and oral evidence, admissible in law. The graver the charge, the greater the caution that the Court must exercise obviously because the consequences by way of punishment become harsher with the gravity of the charge.

3. I am disappointed to note that in the present case, the learned Trial Court has failed to discharge its duty judiciously. There are inconsistencies galore in the evidence recorded by the various prosecution witnesses and errors legion in the impugned judgement as noted in the leading judgment of my learned brother. Statements recorded under Section 164 Cr. P.C, before learned Magistrates have been admitted in evidence without the concerned Magistrates being examined. Although the prosecution witnesses say that several of the accused persons were carrying firearms and opened fire in the air to frighten the people in the immediate vicinity, there is no seizure of empty cartridges or the like from the place of occurrence. The offending firearm with which the appellant allegedly killed the victim, was never seized. The forensic doctor, when shown the bullet allegedly recovered from the body of the victim, deposed that the bullet was not the same as the one he had extracted from the dead body of the victim. Although the prosecution witnesses talk of several people being injured by the accused persons with various kinds of weapons like stick, knife, tongi etc., there is no seizure of any such offending weapon. There is no injury report in respect of such allegedly injured victims. There is confusion about the exact place of occurrence. The

case indisputably has a political overtone and all the witnesses on whose depositions the learned Trial Judge relied, are interested witnesses.

4. In a nutshell, there are huge gaps and gaping holes in the prosecution case, as well as in the judgment and order under appeal. My learned brother, towards the end of the judgment that he has authored, has tabulated the more glaring defects in the impugned judgment and order and to avoid prolixity I refrain from repeating the same. In my considered view, the learned Trial Judge has erred to a considerable extent in appreciating the facts and circumstances of the case and in assimilating the evidence on record. I have no doubt in my mind that this is not a case where the prosecution can be said to have brought home the charges against the appellant, beyond reasonable doubt.
5. Even assuming that the learned Judge rightly convicted the appellant, imposition of death penalty on the appellant was wholly unwarranted. One may note that **Section 354(3) of the Code of Criminal Procedure, 1973**, provides as follows:-

“354 (3)- When the conviction is for an offence punishable with death or, in the alternative, with imprisonment for life or imprisonment for a term of years, the judgment shall state the reasons for the sentence awarded, and, in the case of sentence of death, the special reasons for such sentence.”

6. The learned Trial Judge has not recorded the special reasons for imposing death sentence. There is no discussion as to why

imprisonment for life would not be adequate punishment in the facts and circumstances of the case. It is not stated as to why the alleged offence shocked the conscience of the learned Judge to such an extent that he found nothing short of the ultimate punishment of death to be commensurate with the crime. This is apart from the fact that the learned Judge was completely oblivious of the mandatory directions of the Hon'ble Supreme Court in paragraph 250 of the judgment in the case of ***Manoj v. State of M.P., (Supra)***.

7. Thus, even if I had upheld the conviction of the appellant, I would have commuted the death sentence in view of non-compliance with the directions in ***Manoj's case, (Supra)***, and also because I have no doubt in my mind that this is not one of those rarest of rare cases which calls for imposition of capital punishment. However, this is of academic interest, since I am in agreement with my learned brother that the appellant's conviction cannot be sustained and the appeal should be allowed.

I agree.

(APURBA SINHA RAY, J.)

(ARIJIT BANERJEE, J.)