

Form No: J(1)

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

Present:-

**The Hon'ble Justice Rajasekhar Mantha
And
The Hon'ble Justice Anuj Singh**

CRIMINAL APPEAL NO. 501 OF 2016

Dwijen Mondal & Anr.

v.

The State of West Bengal.

For the Appellants: Mr. Partha Sarathi Bhattacharyya

For the State: Mr. Prasun Dutta
Mr. Subrata Roy

Hearing concluded on- 8.9.2026

Judgment pronounced on- 17.09.2026

ANUJ SINGH, J.

1. The instant appeal is preferred against a Judgment and Order dated May 9, 2016, and May 10, 2016 respectively passed by the Additional District and Sessions Judge, Second Fast Track Court, Jangipur, Murshidabad, in Sessions Serial case no. 72 of 2007, Sessions Trial Case No. 1/February/08, C.I.S. Registration No. 09/14, corresponding

to G.R. No. 557/05, arising out of Farakka Police Station Case No. 114 of 2005, dated 15/7/2005, under Section 302/34 of the Indian Penal Code and Section 3/4 of the Explosives Substances Act (State of West Bengal v. Dwijen Mondal and three others). By the impugned judgment, the learned Additional Sessions Judge convicted the Appellants under Section 302 read with Section 34 of the Indian Penal Code and sentenced each of them to rigorous imprisonment for life and fine. Although five persons faced trial, the proceeding against Ramprosad Mondal abated upon his death, and Krishna Mondal and Dinesh Mondal were acquitted. The present appeal is therefore confined to the sustainability of the conviction of Dwijen Mondal and Sunil Mondal.

2. The instant case was started on the basis of a written complaint of one, Swapan Mondal (PW-1) and the defacto complainant lodged with the IC Farakka Police Station on July 15, 2005. In his complaint, the de facto complainant stated that on July 13, 2005, at about 4 pm, he heard from his house that a quarrel was taking place in the verandah of his uncle, Ganesh Mondal, on the issue of a demand for a loan made from Ganesh Mondal. On proceeding towards the courtyard of Ganesh, the complainant saw that Ganesh was refusing to extend the loan, and as a result whereof, the quarrel escalated. He saw Sunil Mondal, Dwijen Mondal, Ramprosad Mondal, Krishna Mondal, and Dinesh Mondal having bombs in their hands, and when he attempted to intervene, Sunil, Dwijen, and Ramprosad hurled three bombs one after another at Ganesh. As a result, Ganesh sustained severe bleeding injuries and collapsed. Upon hearing the explosions, the neighbours rushed to the spot. Seeing the neighbors coming, the accused persons fled. Ganesh was immediately taken to Beniagram Hospital. Given his severe physical condition, he was referred to SD Hospital, Jangipur, where he eventually succumbed to his injuries on July 14, 2005, at about 3 pm. The complaint further records that the complaint was lodged with some

delay, that is, on 15 July 2005, on account of disrupted communication overnight.

3. On the basis of the aforesaid complaint, Farakka Police Station P.S. case no. 114 of 2005, dated 15 July 2005, was registered for investigation into the offences punishable under Section 302/34 of the Indian Penal Code and Section 3/4 of the Explosive Substances Act against the aforesaid five accused persons. The said case was investigated by the police, and eventually the aforesaid five persons were charge-sheeted upon completion of the investigation of the said case. Thereafter, the case was committed to the Court of Sessions for trial. On February 1, 2008, Additional Sessions Judge, 3rd Fast Track Court, Jangipur, Murshidabad, framed charges under Section 302/34 of the Indian Penal Code and sections 3/4 of the Explosive Substances Act against all the five accused persons, who pleaded innocence and claimed to be tried.
4. During the trial, the prosecution examined 15 of the 17 charge-sheeted witnesses. Including PW-1, there were seven eyewitnesses, namely, Sukumar Mondal (PW-2), Bijayanti Mondal (PW-3, the deceased's wife), Haren Mondal (PW4), Sanjay Mondal (PW8), Dulal Mondal, PW-5, and Montu Mondal (PW-13). The postmortem was conducted by Dr. Ashis Kumar Mukherjee (PW11), who opined that the death was due to antemortem injuries because of explosion and was 'probably homicidal' in nature. In course of the trial, the accused Ramprosad Mondal died, and the case against him abated.

Evidence adduced by the prosecution

5. The prosecution examined fifteen witnesses to prove its case. PW-1, Swapan Mondal, the de facto complainant and nephew of the deceased deposed that on July 13, 2005 at about 4 p.m, Sunil Mondal, Dwijen

Mondal and Krishna Mondal hurled bombs at Ganesh Mondal on the village road at Hossainpur, while Dinesh Mondal and Ramprosad Mondal, armed with *hansuas*, prevented others from approaching him. He further deposed that Ganesh was initially taken to Beniagram BPHC and thereafter to Jangipur Hospital, where he eventually succumbed to his injuries. The written complaint scribed by Samar Sheikh at the dictation of PW-1, was marked as Exhibit 1. In cross-examination, PW-1 admitted that although his house was situated nearby he had not heard the explosions from his house. He further admitted that he reached the police station at about noon but the complaint was lodged at about 5 p.m. after discussion with his relatives. He also stated that the police visited the place of occurrence two days after the incident and did not find any bloodstains at the place of occurrence. In cross-examination, he stated that he had heard Ganesh saying that he would not give the money. Of some significance is his further statement that he had disclosed the names of the assailants to the doctor at Beniagram BPHC and also to Tanmoy Babu, a police officer of Farakka Police Station who came to the hospital even before the FIR was lodged.

6. PW-2, Sukumar Mondal deposed that upon hearing a commotion, he came out and saw the accused persons armed with bombs, etc. According to him, Sunil, Dwijen and Krishna hurled bombs at Ganesh causing him to fall. PW-2 accompanied Ganesh to Beniagram BPHC and thereafter to Jangipur Hospital. In cross-examination he stated that he had heard Ganesh saying that he would not give the money.

7. PW-3, Baijayanti Mondal, the wife of the deceased stated that the accused persons had demanded *dadán* money from her husband on the preceding day. According to her, on the date of occurrence the accused entered into a scuffle with Ganesh, dragged him to a vacant place near the house and Sunil, Dwijen and Krishna thereafter hurled bombs at him, while Ramprosad and Dinesh stood armed with lathis.

She raised an alarm. Thereafter neighbours came and took Ganesh to hospital. In cross-examination, she stated that she had been cooking inside the house immediately before the occurrence, did not accompany Ganesh to the hospital and narrated the incident to the police only after his death.

8. PW-4, Haren Mondal, and PW-12, Bikash Mondal also claimed to have witnessed the occurrence. PW-4 attributed the throwing of bombs to Sunil, Krishna and Ramprosad and stated that the place of occurrence was the road in front of Ganpati Mondal's house. PW-12 deposed about the dispute over *dadan* money and also stated that he had witnessed the accused throwing bombs at Ganesh. Both witnesses admitted in cross-examination that they had never been examined by the Investigating Officer and were narrating their version of the occurrence before the Court for the first time.
9. PW-5, Dulal Mondal and PW-8, Sanjoy Mondal, stated that the throwing of bombs was by Sunil, Dwijen and Krishna, and deposed that the remaining accused persons stood with lathis. PW-8 described the sequence of the attack by stating that Sunil threw the first bomb, followed by Dwijen and Krishna. In cross-examination however, PW-8 admitted that he had not stated before the Investigating Officer that Sunil had hurled the bomb.
10. PW-6 did not support the prosecution case regarding the circumstances in which Ganesh had died. PW-7, Ganapati Mondal, was not an eyewitness to the actual assault. He stated that after hearing three explosions, he came out and saw the five accused running away. In cross-examination, he admitted that he had not told the Investigating Officer that he had seen the accused fleeing. PW-13, Montu Mondal

similarly came out after hearing an explosion and found Ganesh lying injured. He accompanied Ganesh to Beniagram BPHC and thereafter to Jangipur Hospital.

11. PW-11, Dr. Asis Kumar Mukherjee conducted the post-mortem examination on July 15, 2005. He found bruises, abrasions and lacerations over the left forearm and elbow, a large injured area over the left flank, multiple haematomas over the left kidney, torn mesentery of the intestines and collection of blood in the peritoneal cavity. The post-mortem report was marked as Exhibit 5. In his opinion, death was caused by shock resulting from ante-mortem injuries, 'most probably' caused by explosives. In cross-examination, he stated that the deceased had received treatment, including saline and blood transfusion, before the post-mortem examination.
12. The remaining witnesses were formal witnesses. PW-9, Home Guard Shibram Majumder, took the dead body to the hospital morgue and identified it before the doctor. PW-10, Sub-Inspector Anil Kumar Chatterjee, received the written complaint and prepared the formal FIR, marked as Exhibit 4. PW-14, ASI Pijush Mistry, conducted the inquest, prepared the inquest report and dead body challan, marked as Exhibits 2 and Exhibit 3 respectively. In cross-examination, PW-14 admitted that apart from Dwijen Mondal the names of the other accused were not recorded in the inquest report.
13. PW-15, Manik Lal Dey took over the investigation on July 4, 2006. He completed the investigation and submitted the charge-sheet under Sections 302/34 IPC and Sections 3 and 4 of the Explosive Substances Act. He admitted that he had neither visited the place of occurrence nor examined any witness and had only completed the formalities before submitting the chargesheet.

Documentary exhibits adduced by the prosecution

14. The written complaint lodged by PW-1, Swapan Mondal at Farakka Police Station on July 15, 2005 was scribed by Samar Sheikh at his dictation and was marked as **Exhibit 1**, while the receiving endorsement on the same was proved by PW-10, Sub-Inspector Anil Kumar Chatterjee and marked as **Exhibit 1/1**. On the basis of the complaint, PW-10 prepared and signed the formal First Information Report which was marked as **Exhibit 4**.
15. PW-14, ASI Pijush Mistry conducted the Surathal over the body of Ganesh Mondal and prepared the inquest report which was marked as **Exhibit 2** in the presence of Kartick Mondal, Sukumar Mondal and Shibu Mondal. He admitted that except for Dwijen Mondal, the names of the other accused were not recorded therein. The dead body challan prepared by him for sending the body to the Jangipur S.D. Hospital morgue was marked as **Exhibit 3**. Pursuant thereto PW-9, a Home Guard took the dead body to morgue and identified it before the doctor. PW-11, Dr. Asis Kumar Mukherjee proved the postmortem report which was marked as **Exhibit 5**. The postmortem recorded several injuries over the left forearm, elbow and flank, multiple haematomas over the left kidney, torn intestinal mesentery and profuse blood in the peritoneal cavity. He opined that death resulted from shock arising out of ante-mortem injuries most probably caused by the explosion of explosives.

Findings of the Trial Court

16. By the judgment and order dated May 9 and 10, 2016, respectively, the trial Court considered the evidence of 15 prosecution witnesses, the defence case regarding delay in lodging the FIR, contradictions regarding the identity of the accused persons, non seizure of the deceased's clothes and bomb remnants, and non-examination of the Investigating Officer and rejected the same. The Trial

Court held that the delay had been satisfactorily explained and that the discrepancies were not of such a nature as to dilute the otherwise credible oral and medical evidence.

17. The Trial Court found that PW-1, PW-2, PW-3, PW-5 and PW-8 had consistently deposed the bombs were hurled by Sunil Mondal and Dwijen Mondal, whereas the evidence regarding the role of Krishna Mondal and Dinesh Mondal was not sufficient to establish either a specific overt act or common intention. Krishna Mondal and Dinesh Mondal were, therefore given the benefit of doubt and acquitted. The Trial Court further acquitted all the accused of the charges under Sections 3 and 4 of the Explosive Substances Act in view of the non-seizure of any explosive substance either from the accused or from the place of occurrence.

18. The Trial Court ultimately held that Sunil Mondal and Dwijen Mondal, acting in furtherance of their common intention, had hurled bombs at Ganesh Mondal and thereby caused his death. Each appellant was accordingly convicted under Section 302 read with Section 34 IPC and sentenced to rigorous imprisonment for life and a fine of Rs. 10,000/-, with rigorous imprisonment for a further period of one year, in default of payment of fine. The period of detention already undergone was directed to be set off in accordance with law.

Analysis of evidence

The homicidal nature of death

19. Swapan Mondal, PW1 stated that on July 13, 2005 at about 4pm he heard some quarrel going on with Ganesh Mondal along with some other persons relating to demand of loan. He saw appellants having bomb in their hand and one after another they hurled three bombs on the deceased. He was taken to the hospital but on 14.07.05 at about 3 pm Ganesh died. Thereafter, the post-mortem examination was conducted, and the medical evidence records injuries on the person of

the deceased and opined that the death was “most probably” homicidal and resulted from shock arising out of injuries sustained by him. The medical evidence is hence consistent with the prosecution case that the deceased suffered serious injuries in the alleged bomb attack and subsequently died as a result thereof.

20. The defense has placed considerable reliance on the expression “most probably” mentioned in the medical report, which cannot be read in isolation, as it requires expression of opinion on the nature and cause of death from the injuries found during examination. The question as to whether the death was homicidal was required to be determined by the court upon a cumulative assessment of the medical and oral evidence. In the present case, the medical evidence does not contradict the prosecution version. On the contrary, the medical evidence of the existence of injuries and the resulting death substantially corroborate to what the eyewitnesses who deposed about the fight which led to the bomb attack.

21. It is trite law that the value of medical evidence is ordinarily only corroborative. In **Solanki Chimanbhai Ukabhai v. State of Gujarat, (1983) 2 SCC 174, in para 13**, the Supreme Court held that:

“13. Ordinarily, the value of medical evidence is only corroborative. It proves that the injuries could have been caused in the manner alleged and nothing more. The use which the defence can make of the medical evidence is to prove that the injuries could not possibly have been caused in the manner alleged and thereby discredit the eye-witnesses. Unless, however the medical evidence in its turn goes so far that it completely rules out all possibilities whatsoever of injuries taking place in the manner alleged by eyewitnesses, the testimony of the eye-witnesses cannot be thrown out on the ground of alleged inconsistency between it and the medical evidence.”

22. In the case at hand, the post-mortem report shows that the lacerations were intimately mixed with each other there was torn intestine, and profuse peritoneal haemorrhage. This shows that there is no conflict between the oral testimony and the medical evidence, rather the medical evidence is entirely compatible, and corroborate the oral evidence of a close-range bomb explosion. This goes on to establish and prove the fact that the death of Ganesh Mondal was homicidal in nature, and not accidental or suicidal.

The identity of the accused

23. The accused are Sunil Mondal and Dwijen Mondal, who hurled bombs at the deceased, are established by the statements of eyewitness PW-1, PW-2, PW-3, PW-5, and PW-8. They have identified both the accused in dock and have consistently deposed that it was Sunil, Dwijen and Krishna Mondal who hurled bombs at Ganesh Mondal. PW-3, the widow of the deceased, has further stated the motive behind the incident. That a day before the incident, the accused demanded loan from the deceased, and upon refusal to grant it, on the date of the incident, they dragged the deceased to a vacant place near the house and then threw bombs, aiming at the deceased.

24. In **Dalip Singh v. State of Punjab, AIR 1953 SC 364, in para 24**, the Supreme Court had held that –

“24. A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and

there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth. However, we are not attempting any sweeping generalisation. Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts."

25. In the present case, the accused has not laid down any such foundation, either through cross-examination or otherwise, that are falsely being implicated by the witnesses. There is no evidence adduced to suggest that PW-1 or PW-3 had any animus against Sunil Mondal or Dwijen Mondal to falsely accuse them of the charges. The fact that the witnesses have not been specific about Krishna Mondal and Dinesh Mondal in their deposition, itself negates that there was any design of false implication of the appellants.

The direct oral evidence of the assault

26. The eyewitnesses have consistently deposed that the accused persons hurled bombs at the deceased leading him to sustain severe bleeding injuries and fall to the ground, that the accused fled when neighbours came to the scene by the sound of the explosions, and that the deceased was initially taken to Beniagram Hospital and thereafter referred to S.D. Hospital, Jangipur, where he succumbed to his injuries. In ***Vadivelu Thevar v. State of Madras*, AIR 1957 SC 614**, the Supreme Court classified oral evidence into three categories namely, wholly reliable, wholly unreliable, and neither wholly reliable nor wholly unreliable. Section 134 of the Evidence Act lays down no particular number of witnesses for proof of a fact. It is the quality, and not the

quantity, of evidence that is determinative. Tested against these principles, the evidence of PW-1, PW-2, PW-3, PW-5 and PW-8 gives clinching evidence relating to the assault by the Appellants and upon scrutiny inspires confidence.

The defence case

A. Delay in lodging the FIR

27. The Learned Advocate for the appellants has strenuously argued that the delay of two days between the occurrence on 13.07.2005 and the lodging of the FIR on 15.07.2005, and then the further gap of some hours between the complainant's arrival at the police station and the actual recording of the complaint must be seen fatal to the prosecution case.

28. The general principle of law with regard to delay in lodging of FIR is that an unreasoned and unexplained delay in lodging an FIR can be fatal to the case of prosecution. It is the case of the prosecution that the deceased was not immediately available for the recording of a first hand account of the incident, because he had to be removed for urgent medical treatment. Firstly to Beniagram Hospital, and thereafter to SD Hospital, Jangipur, situated at about sixteen kilometres from the Police Station, where he succumbed to his injuries on July 14, 2005. It has further emerged from the complainant's evidence that intimation of the death of the deceased did not reach the village until the following morning as the communications were disrupted, and thus the complaint the lodged the same day at 16:15 hours.

29. Similar to the case at hand, in ***Ravi Kumar v. State of Punjab***, **Criminal Appeal No. 377 of 2005, decided on March 4, 2005**, the

injured was taken first to a Primary Health Centre, thereafter to the Civil Hospital and ultimately to the P.G.I. where he succumbed to his injuries. In those circumstances, the Supreme Court held that the delay in lodging the FIR was satisfactorily explained, since the immediate concern of the family was to secure medical treatment and save the life of the injured.

30. The circumstances of the present case are not different. Immediately after the occurrence, Ganesh Mondal was taken for treatment, first to Beniagram Hospital and thereafter to S.D. Hospital, Jangipur, where he subsequently died. The evidence further indicates that information regarding his death reached the village only on the following morning, whereupon the complaint was lodged on the same day. If this sequence is seen, the delay stands reasonably explained and does not by itself render the prosecution case unreliable.

B. Alleged contradictions

31. Learned Advocate for the appellants has highlighted the following contradictions: (a) that the written complaint named Sunil, Dwijen and Ramprosad as the three who hurled the bombs, whereas the complainant himself in his evidence named Sunil, Dwijen and Krishna; (b) that PW-2, PW-3 and PW-5 also named Sunil, Dwijen and Krishna, whereas PW-4 named Sunil, Krishna and Ramprosad; (c) contradictions as to whether the occurrence took place on the road, near the house, or at a vacant place near the house; and (d) that several witnesses could not recall the exact date, month or year of the incident when deposing year later. It has been contended that these are not ordinary lapses of memory but material contradictions going to the very identity of the accused.

32. It is trite law that there are always normal and minor discrepancies found in the deposition of witnesses, and such minor variations are considered to be hallmark of truth.

33. In **State of Rajasthan v. Kalki, (1981) 2 SCC 752, in para 8**, the Supreme Court held that –

“8. ... In the depositions of witnesses there are always normal discrepancies however honest and truthful they may be. These discrepancies are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of the occurrence, and the like. Material discrepancies are those which are not normal, and not expected of a normal person...”

(Emphasis supplied)

34. Moreover, in **State of Uttar Pradesh v. MK Anthony, (1985) 1 SCC 505, in para 10**, the Supreme Court held that –

“10. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the court to scrutinise the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case, hyper-technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not

ordinarily permit rejection of the evidence as a whole... Even honest and truthful witnesses may differ in some details unrelated to the main incident because power of observation, retention and reproduction differ with individuals.”

(Emphasis supplied)

35. We are not impressed with the argument of the Learned Advocate for the appellants. In our view, based on the analysis of the aforementioned precedents, the contradictions, as argued by the appellants, are minor contradictions, and do not shake the testimonies of the witnesses as regards to the core of the matter, and do not warrant rejection of the otherwise cogent, consistent and reliable testimonies of the witnesses. The eyewitnesses (PW-1, PW-2, PW-3, PW-5, and PW-8) consistently named the appellants in their evidence. Hence, the core of the matter with regards to these two appellants was intact throughout.

36. Now, the contradictions as to whether the third accused was Krishna Mondal or Ramprosad Mondal, alongside the consistent names of Sunil and Dwijen, is something that does not affect the case at hand. Moreover, due to this discrepancy in the third accused's name, the trial court, correctly in the view of this Court, extended the benefit of doubt to Krishna Mondal since his name did not appear in the original written complaint and the overt act attributed to him was not uniform across the witnesses. Nonetheless, Sunil Mondal and Dwijen Mondal were named with no such inconsistency by five out of seven witnesses who were examined on such point. Hence, the consistency as to the two convicted appellants cannot be diminished because of the contradiction concerning the third co-accused.

37. Next contradiction as to the precise spot of occurrence that whether it happened on the road, near the courtyard, or at a vacant

place a short distance from the house of the deceased, falls well within the class of discrepancy contemplated in *M.K. Anthony (supra)*, since all the witnesses place the incident within the same small physical area, namely Ganesh Mondal's home opening onto the village road. No witness has described a location in such a way that creates doubt in our mind as to the place of occurrence.

38. Similarly, the inability of PW-4, PW-5, PW-12 and PW-13 to state the precise date, month or year of an occurrence they witnessed several years prior to their deposition is not that important and does not detract from their consistent evidence on the fact and manner of the assault itself.

C. Non-seizure of the remnants of the bomb and the wearing apparel of the deceased, and non-examination of the original investigating officer.

39. It is not in dispute that the investigating agency did not seize the remnants of the explosive or the wearing apparel of the deceased during the investigation, and that the Investigating Officer, who initially took up the investigation, Sub-Inspector Tanmoy Ghosh, was not examined, the prosecution having relied rather on the evidence of PW-15, who took over the investigation at a later stage and filed the charge-sheet. These are, without doubt, lapses on the part of the investigating agency, and this Court does not wish to be understood as condoning them; however, it is a well-settled principle of law that a defective or negligent investigation is not, by itself, a ground for acquittal of the accused where there exists credible evidence against the accused. In **Karnel Singh v. State of Madhya Pradesh, (1995) 5 SCC 518, in para 5**, the Supreme Court held that –

“5. ... In cases of defective investigation the court has to be circumspect in evaluating the evidence but it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the investigating officer if the investigation is designedly defective...”

40. Further, in **Ram Bali v. State of Uttar Pradesh, (2004) 10 SCC 598, in para 12**, the Supreme Court placed reliance on **Karnel Singh (supra)** and held that it is not correct to acquit an accused solely due to defective investigation.

41. With respect to the issue of non-examination of the Investigating Officer, it has been held by the Supreme Court in **Rajesh Yadav v. State of Uttar Pradesh, (2022) 12 SCC 200, para 27**, that the evidence of Investigating Officer is not indispensable, and even assuming that the IO has not deposed before the court, an accused is not entitled to acquittal, when other incriminating evidence exists. Furthermore, in **Lahu Kamlakar Patil v. State of Maharashtra, (2013) 6 SCC 417, in para 18**, the Supreme Court observed that –

“18. ...It is an accepted principle that non-examination of the investigating officer is not fatal to the prosecution case. In Behari Prasad v. State of Bihar [(1996) 2 SCC 317 : 1996 SCC (Cri) 271] , this Court has stated that non-examination of the investigating officer is not fatal to the prosecution case, especially, when no prejudice is likely to be suffered by the accused. In Bahadur Naik v. State of Bihar [(2000) 9 SCC 153 : 2000 SCC (Cri) 1186] , it has been opined that when no material contradictions have been brought out, then non-examination of the investigating officer as a witness for the prosecution is of no consequence and under such circumstances, no prejudice is caused to the accused. It is worthy to note that neither the trial Judge nor the High Court has delved into the issue of non-examination of the investigating officer...”

42. The evidence does not disclose independent acts committed separately by each accused. Sunil and Dwijen went to the deceased together, armed themselves with the same lethal means, selected the same victim and successively hurled bombs at him in the course of one continuous assault. Their concerted conduct before, during and after the occurrence establishes that the criminal acts attributed to them were committed in furtherance of a shared intention to cause the death of Ganesh Mondal and hence their conviction under section 34 IPC is also sustainable.
43. Thus, since, in the present case, there exist other credible evidence, the defective investigation by the investigating agency and non-examination of the first Investigating Officer is not fatal to the case of prosecution, and the accused cannot be acquitted on the basis of these factors. We are, therefore, of the view that these lapses, while regrettable, do not, on the facts of the matter in hand, undermine the credibility of the prosecution's story.
44. We accordingly find no ground to interfere with the conviction of the appellants under Section 302 read with Section 34 IPC or with the sentence imposed upon them. The appeal is, therefore, dismissed, and the judgment of conviction dated May 9, 2016 and the order of sentence dated May 10, 2016 are affirmed.
45. The period of detention already undergone by the appellants in connection with the present case shall be set off in accordance with Section 428 CrPC. The appellants who are in custody, shall continue to serve the sentence in accordance with law.

46. Let the lower court records, together with a copy of this judgment, be transmitted to the learned Trial Court forthwith for information and necessary action.

47. Urgent certified copy of this judgment, if applied for, shall be made available to the parties upon compliance with due formalities.

I agree.

(Rajasekhar Mantha, J.)

(Anuj Singh, J.)