

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

Before:

The Hon'ble Justice Ananda Kumar Mukherjee

C.R.A. 506 of 2004

Jagannath Tudu & Ors.

Vs.

The State of West Bengal.

For the Appellants:

Mr. Somnath Banerjee, Adv.
Mr. Pronojit Roy, Adv.

For the State:

Mr. Binay Kumar Panda, Adv.
Mr. S. Mahapatra, Adv.

Heard on :

11.04.2022.

Judgment on:

24.06.2022.

Ananda Kumar Mukherjee, J. :-

1. This appeal has been filed under section 374 (2) of the Code of Criminal Procedure, 1973 assailing the impugned judgment and order dated 29.7.2004 passed by Learned Additional Sessions Judge, 3rd Court, Bankura in Sessions Case No. 16 (11) of 2001 corresponding to Sessions Trial No. 1(4) of 2002, convicting the appellants for commission of offence punishable under section 448, 326 and 307 read with section 34 of the Indian Penal Code and sentenced them to suffer rigorous imprisonment for five years each and pay a fine of Rs. 1000/- each in default to suffer rigorous imprisonment for a period of six

months for the offence punishable under section 307 of IPC and to a sentence of rigorous imprisonment for six months each and to pay a fine of Rs. 500 each in default to suffer rigorous imprisonment for three months each for the offence punishable under section 448 of the Indian Penal Code with a further direction that both the sentences shall run concurrently.

2. Instant case arose out of Indpur Police Station Case No. 32 of 1999 dated 21.12.1999, on the basis of an FIR lodged by Adari Mandi, the wife of the injured person. In nutshell, the facts disclosed in the FIR is that on 20.12.1999 at about 10 P.M at Village Kharbari accused Nabin Tudu called her husband from bed and as soon as her husband went out of the house Laxmiram Tudu assaulted her husband on the left side of his head with an axe as a result he suffered bleeding injury and fell down. The de-facto complainant raised alarm. At the relevant time Laxmiram Tudu was again about to assault her husband but she held Laxmiram firmly. The axe fell from hand and injured the left leg of her husband. Adari Mandi tried to rescue her husband, when Jagannath Tudu the other accused pulled her away and again tried to assault her husband. At the relevant time co-villagers arrived and all the three accused persons ran away from their courtyard. Jiban Mandi was then taken to the police station by the de-facto complainant and other villagers from where he was sent to Indpur Primary Health Centre. The doctor medically treated her husband and referred him to Gobindonagar Hospital at Bankura where he was admitted in a serious and unconscious condition.

3. Police investigated into the FIR case, examine witnesses, seized weapon of assault and submitted charge sheet against the three accused persons under sections 448, 449, 326, 307/ 34 of the Indian Penal Code.

4. Appellants were called upon to answer the charge framed under four heads:

“That you, on or about the 20.12.99 at day of 22.00 hours at Kharbari, P.S. Indpur, Dist. Bankura, committed house trespass by entering into the building in the possession of Adari Mandi, w/o. Jiban Mandi, of Vill. Kharbari, used as a human dwelling with intent to commit an offence of criminal trespass and house trespass with a common intention.”

“That you, on or about the same accused. Committed house trespass by entering into the building in possession of the above-named persons used as human dwelling in order to commit the offence of murder punishable with death with a common intention.”

“That you, on or about the same accused at the same place voluntarily caused grievous hurt to Jiban Mandi by means of the instruments i.e. axe and Lathi which are the instrument for cutting and assaulting respectively with a common intention.”

“That you, the same accused, on day and same place causing hurt by axe and Lathi. Such intention and under such circumstances that if by that act you had caused the death of said Jiban Mandi, you would have been guilty of murder with a common intention.”

5. In order to prove the aforesaid charge prosecution has examined thirteen witnesses in all. Adari Mandi, the wife of the injured has been examined as PW-1, Jiban Mandi the injured has been examined as PW-7, and two witnesses who claimed to have witnessed the occurrence are Ananda Mandi (PW-5) and Madan Hembram (PW-10). Suresh Mandi (PW-2), Bharat Murmu (PW-4), Rati Mandi (PW-6), Mukanda Tudu (PW-8), are the witnesses who reached the place of occurrence soon after the incident and witnessed the injured person with bleeding injuries on his head. PW-2 and PW-3 are the seizure witnesses of the weapon of assault seized by the Investigation Officer. S.I Amiya Kumar Das (PW-9) is the Recording Officer who receives the written complaint and registered Indpur Police Case No. 32 of 1999 dated 21.12.1999 under section 448, 326/34 of IPC. Dr. Biswanath Mukherjee (PW-12) is the Visiting Surgeon of Bankura Sammilani Medical College & Hospital who medically treated Jiban Mandi, admitted under him as Indoor patient. S.I. Shiba Prasad Singha (PW-13) is the Investigating Officer of the case who submitted charge sheet after holding investigation. Prosecution has produced several documents which have been marked as Exhibit 1 to Exhibit 7. The written complaint lodged as FIR has been marked as Exhibit 1, formal FIR as Exhibit 3, seizure list as Exhibit 2/3, Copy of G.D No. 594 dated 21.12.1999 as Exhibit 4, Original Medical Papers of Jiban Mandi have been produced as Exhibit 5, Letter of Medical Officer Indpur as Exhibit 5/1, Outdoor Ticket as Exhibit 5/3, Consent Letter as Exhibit 5/2, report and brief history of Head Injury as Exhibit 5/5, Bed Head Ticket as Exhibit 5/6, Discharge Certificate as Exhibit 5/7, OPD patient ticket

of Jiban Mandi is produced as Exhibit 6/1, Report of C.T Scan as Exhibit 6/2, X-Ray Report as Exhibit 6/3 and certified copy of judgment in Case No. 10 C of 2000 passed by learned Judicial Magistrate, Khatra is produced as Exhibit 7.

6. Mr. Banerjee, learned advocate for the appellants argued that the accused appellant have been falsely implicated in this case due to political rivalry. It is contented that there are cases and counter cases between the accused persons and Jiban Mandi. As a retaliation this case has been initiated on the basis of a delayed FIR. Learned advocate for the appellants submitted that the evidence of the prosecution witnesses have contradicted the case disclosed in the FIR. Furthermore, there is no independent witness to support the story of alleged assault of Jiban Mandi by the appellants. Learned advocate for the appellants referring to the contents of the FIR submitted that in the FIR it is stated that Nabin Tudu called Jiban Mandi the husband of PW-1 and when he came out, he was assaulted with axe on his head by Laxmiram Tudu. When Jiban Mandi suffered bleeding injury on his head and fell down, the wife of the injured tried to rescue him by stopping Laxmiram Tudu from further assaulting him. It is disclosed in the FIR that Jagannath Tudu pulled away the wife of Jiban Mandi and tried to cause death to him when co-villagers arrived. Traversing the evidence of PW-1, it is argued that she has given out a different story in her evidence where she deposed that the accused persons arrived in front of their house and called her husband. When he did not go out from the house, they entered the house and Laxmiram hit Jiban Mandi with axe on the left side of his head. As a result he sustained bleeding injuries. The witness

deposed that Jagannath hit him with Lathi and accused Nabin also assaulted her husband with Lathi. Learned advocate for the appellant pointing out the contradiction in the evidence with FIR and argued that there is no story in the FIR that Jagannath and Nabin assaulted Jiban Mandi.

7. It is also argued, referring to the evidence of PW-7 that he deposed that Jagannath held a Lathi and Nabin caught hold of him while Laxmiram assaulted him with an axe and Jagannath also assaulted him with Lathi. It is argued that there is no case in the FIR about Jagannath assaulting Jiban Mandi with Lathi or Nabin catching hold of Jiban Mandi at the time the others were engaged in assaulting him. It is further contended that PW-7 has not been examined by the Investigating Officer and his statement made before the court for the first time is not acceptable. Regarding to the evidence of the alleged eye witnesses, Ananda Mandi (PW-5) and Madan Hembram (PW-10), learned advocate argued that both these witnesses claimed to have been present at the time of occurrence and witnessed the incident, but the Investigating Officer in his cross examination have deposed that witness Ananda Mandi did not state to him that Laxmiram assaulted Jiban with axe or Jagannath hit him with Lathi or Nabin caught hold of him. The Investigating Officer also stated in his cross examination that Madan Hembram did not state to him that Laxmiram assaulted Jiban or he came to know about the incident from Adari Mandi. Learned advocate for the appellants submitted that the prosecution case is riddled with major contradictions which would give rise to suspicion about the veracity of the occurrence. Referring to the medical evidence, learned advocate

for the appellant argued that the doctors who examined the injured person have not adduced any evidence in court. Therefore, production of documents like Bed Head Ticket or injury report will not help of prosecution to prove the nature of injury sustained by Jiban Mandi. It is argued that the impugned judgment is not based upon legal evidence as such the same is liable to be set aside and the appellants acquitted from the case.

8. Mr. Panda, learned advocate for the State argued that the evidence adduced by the prosecution witnesses is consistent and trustworthy in nature. It is submitted that the injured person and his wife are the prime witnesses in this case who have disclosed the manner in which the incident took place and the involvement of the accused persons, who in a concerted manner and with common intention to cause death to Jiban Mandi assaulted him on his head, a vital part of his body with the help of sharp cutting weapon like axe. It is argued that when a case is reported and thereafter related by different persons, minor discrepancies and contradictions are bound to occur which are hallmark of truth. On a clear reading of all the evidence adduced by prosecution witnesses it would invariably be established that the accused Laxmiram assaulted Jiban Mandi with axe in the courtyard of his house on the night of 20.12.1999 at Village Kharbari. The assault took place with the aid and assistants of two other accused persons Jagannath Tudu who assaulted the injured with Lathi and Nabin Tudu who called up Jiban Mandi at his house also held him when the others were assaulting him. It is argued on behalf of the prosecution that though the medical documents have not been proved by

the doctors who medically treated the injured person at Bankura and P.G Hospital, Calcutta, there is sufficient evidence on record to prove that due to such assault on his head Jiban Mandi ran a risk of his life and he had to undergo medical treatment for more than 20 days. Relying on the evidence of PW-12, Dr. Biswanath Mukherjee, it is submitted that the witness stated that on 21.12.1999 when he was a Visiting Surgeon at Bankura Sammilani Medical College & Hospital, a patient named Jiban Mandi was admitted under him as a Indoor patient and he treated him for head injury of grievous nature for a period from 21.12.1999 to 11.1.2000. The discharge certificate of Jiban Mandi has been admitted in evidence as Exhibit 5/7. The said document is a public document issued from Bankura Sammilani Medical College & Hospital on 11.1.2000. It reveals that Jiban Mandi was under treatment in the hospital from 21.12.1999 to 11.1.2000. The discharge certificate also shows that there was fracture of parietal bone. Learned advocate for the State summing up his argument submitted the evidence of injured persons has been supported by co-villagers who rushed to the place of occurrence on hearing the alarm raised by Adari the wife of the injured. Witnesses have stated that they saw the accused persons leaving the place of occurrence with the weapon of assault. It is urged that prosecution has able to prove the guilt against the accused persons beyond shadow of doubt and in the impugned judgment the learned trial judge has laid due emphasis upon the evidence adduced in the case and unerringly reached a conclusion that the accused persons are guilty for the offence of committing criminal trespass into the house of Jiban Mandi and are also guilty

of inflicting grievous injury on him which is of such grave nature which could have caused death to him. It is submitted that there is no incongruity in the impugned judgment and the appeal is liable to be dismissed.

9. The genesis of the prosecution case can be traced to the written complaint lodged by Adari Mandi at Indpur Police Station lodged on the following day. From the evidence of PW-1, it appears that the complaint was written out by Laxmiram and PW-1 put his signature on the petition. The document has been marked as Exhibit 1. The object of FIR is to disclose the commission of a cognizable offence. Since the FIR was not written out by PW-1 there might be some lacuna in description of the offence. Furthermore, the contents of the FIR only laid the foundation of the case but the prosecution case cannot be said to be proved by proving the FIR. A case has to be considered on the basis of the evidence adduced by the witnesses. It is undisputed that the FIR discloses an occurrence of 20.12.1999 which took place at about 10:00 P.M at the house of Jiban Mandi at village Kharbari. On that night Laxmiram Tudu, Jagannath Tudu and Nabin Tudu went to the house of Jiban and called for Jiban Mandi. In the FIR it is stated that Jiban Mandi was in his bed at the relevant time. It can well be assumed that in the month of December, late at night a person usually retires to his bed in villages. The accused persons therefore went to the house of Jiban Mandi with an ulterior motive of assaulting him in severe manner. The FIR discloses that as soon as Jiban Mandi went out of house, Laxmiram Tudu assaulted him violently on the left side of his head with an axe. As a result Jiban Mandi

sustained profuse bleeding injuries and fell down. The natural reaction of the wife was to raise alarm and to save her husband. In the FIR it is stated that she started shouting as Laxmiram was about to assault him again. It is also stated that Jiban Mandi pulled away Adari from her husband and tried to murder him but the co-villagers reached the place on hearing the alarm.

10. On traversing the evidence on record I find that PW-7 the injured person who is the best witnesses in this case has supported the prosecution story stating that on that night at about 10:00 P.M when he was in his house with his wife, accused Laxmiram, Jagannath and Nabin called him but he did not go out from his house then Laxmiram having a axe, Jagannath holding lathi assaulted him. Laxmiram hit him on the left side on his head and Jagannath assaulted with Lathi. It is also deposed that Nabin had caught hold of him at the time of assault. Due to such assault PW-7 sustained bleeding injury and fell down. He became senseless and regained his consensus at Gobindonagar Hospital. PW-7 deposed that he was admitted at Bankura Hospital for 20 to 25 and then was admitted at hospital in Calcutta for four months. Jiban Mandi also identified his assailants in court. In course of cross examination the witness stated that he was not interrogated by police and he did not state to police that Laxmiram assaulted him with axe and Jagannath hit him on Lathi and Nabin caught hold of him the witness denied that a police case was initiated against him for assaulting Jagannath.

11. The other eye witness to the occurrence is PW-1 who deposed that Jagannath, Nabin and Laxmiram came to their house and called her husband.

After calling him thrice when her husband did not go out from the house, the accused persons entered the house and accused Laxmiram assaulted him on the left side of his head with axe which resulted in bleeding injury. She further deposed that Jagannath hit her husband with lathi and accused Nabin also assaulted her husband with lathi. She raised alarm and on hearing her hue and cry other persons assembled there and helped her to take her husband to Indpur Police Station and from there to Indpur Primary Health Centre. Her husband was then referred to Bankura Sammilani Medical College & Hospital where he was admitted and then taken to P.G. Hospital, Calcutta for treatment. From her cross examination it emerged that on the night of occurrence she did not lodge the FIR at the police station. They went to Indpur Primary Health Centre. The FIR was lodged on the next day at 3:00 P.M. The circumstances clearly indicate that as PW-1 was engaged with medical treatment and caring of her husband, she did not have time to lodge the FIR. At the relevant time her husband was unconscious and regained his sense at the hospital after few days. Under such facts and circumstances learned Trial Judge has rightly disbelieved the G.D Exhibit 4 said to have been lodged at the instant of Jiban Mandi. Therefore, the said G.D registered at the police station at an earlier instance cannot be treated as the FIR of this case.

12. PW-2 Suresh Mandi, a Co-villager deposed that the occurrence took place on 20.12.1999 at 10:00 P.M on that date accused persons went to the house of Jiban Mandi and PW-2 heard from Adari Mandi that her husband was assaulted by the accused. PW-2 has stated that he saw bleeding injury on the

head of Jiban Mandi who was taken to the hospital. PW-2 is a witness of seizure of one axe and one lathi from the house of Jagannath. He identified his signature on the seizure list as Exhibit 2/1. The witness deposed that he has not examined by police and the weapons of assault seized in his presence were not produced in court for identification. The testimony of PW-2 supports the prosecution case that Jiban sustained head injury due to assault.

13. PW-3 Mahindra Mandi deposed that on that night on hearing hue and cry he went to the house of Jiban Mandi and found him with bleeding head injury. PW-3 is another seizure witness of the axe and lathi which were seized from the house of Jagannath. The witness identified his signature as Exhibit 2/2. In cross examination it appears that the witness is related to Jiban Mandi and he was also examined by police. The evidence of PW-3 appears to be reliable so far as the bleeding injury sustained by Jiban Mandi on his head and seizure of the weapon of assault. The evidence of PW-3 does not disclose as to who inflicted the injuries on the injured person.

14. PW-4 Bharat Murmu deposed that on that night at about 10:00 P.M while he was gossiping in his sitting room, he heard a hue and cry from the house to Jiban Mandi and he went to his house and found Jiban Mandi lying in the courtyard of his house in a unconscious condition. Injury was found on the left side of his head. The witness also deposed that he saw Laxmiram with an axe and Jagannath with a lathi fleeing away from the place. The witness stated in his cross examination that he did not state to the Investigating Officer that he saw accused Laxmiram with the axe and Jagannath with lathi. The

witness admitted that he and the accused persons belong to different political party. The evidence of the witness also lends support to the fact that Jiban had sustained injury on the left side of his head. It therefore, appears to me that PW-2, PW-3 and PW-4 reached the house of Jiban Mandi immediately after the occurrence and found Jiban Mandi lying in the courtyard of the house with bleeding injuries on the head. There is no denial in the cross examination of this witnesses that no such occurrence took place or that Jiban Mandi did not suffer bleeding head injury.

15. PW-5 and PW-10 are witnesses who claim to have reached the place of occurrence and found Laxmiram, Jagannath and Nabin engaged in assaulting Jiban. In cross examination PW-5 stated that he disclosed to police that Laxmiram assaulted Jiban with axe and Jagannath hit him with lathi and Nabin caught hold of him.

16. PW-10 also claim to have witness the occurrence he deposed that on hearing an alarm raised by Adari (PW-1) shouting 'Marche Marche' at once he rushed to the house of Adari and saw Laxmiram assaulting Jiban on his head with axe. Jiban sustained bleeding injury and loss his sense, Jagannath and Nabin were present there with Laxmiram. Jagannath held a lathi and Nabin caught hold of Jiban when Laxmiram hit him on his head. The house of PW-10 is only 50 feet away from the house of the victim. The witnesses also identify the accused persons in court. In cross examination witness stated that on hearing the alarm raised by Adari he went to their house and saw Laxmiram assaulting Jiban. He also stated to police that he saw the accused and came to

know about the incident from Adari. The Investigating Officer in his cross examination reveal that Ananda Mandi and Madan Hembram did not state to him that Laxmiram assaulted Jiban with axe. He deposed that PW-5 did not disclose to him that Jagannath hit Jiban with a lathi and Nabin caught hold of him and that PW-10 did not disclosed to him that he came to know about incident from Adari.

17. On close scrutiny of the evidence on record it transpires that the injured person PW-7 has categorically stated that on the night of occurrence he was assaulted by Laxmiram on his head with an axe and at the relevant time Jagannath held a lathi and Nabin caught hold of him. The witness also implicated Jagannath by stating that Jagannath also assaulted him with lathi. The evidence has been corroborated by the evidence of his wife who has examined as PW-1. At the time of occurrence Adari (PW-1) was present in the house and she also describe how Laxmiram assaulted with the axe resulting in bleeding injury on the left side of head of her husband. She also stated that Jagannath hit her husband with lathi. While PW-7 stated that Nabin caught hold of him at the time of assault, PW-1 deposed that Nabin also assaulted her husband with lathi. Some discrepancies emerge from the evidence of PW-1 and PW-7 but the same are minor in nature and are unable to dislodge the major story that the accused persons committed criminal trespass into the house of Jiban Mandi on 20.12.1999 at about 10:30 P.M and in furtherance of common intention Laxmiram caused voluntarily caused grievous hurt by inflicting bleeding injury on the left side of head of Jiban Mandi.

18. It would be worthwhile to rely upon the decision of the Hon'ble Supreme Court of India in the case of **Jarnail Singh Vs. State of Punjab (2009) 9 SCC 719**, where the Apex court reiterated the special evidentiary status accorded to the testimony of an injured witness. Deposition of an injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies, for the reason that his presence on the scene stands established in case it is proved that he suffered the injury during the said incident.

The testimony of the injured witness is accorded a special status in law. This is as a consequence of fact that the injury to the witness is an inbuilt guarantee of his presence at the scene of the crime and because the witness will not want to let his actual assailant go unpunished merely to falsely implicate a third party for the commission of the offence. Thus, the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies therein. The evidence of PW-7 and PW-1 are therefore found cogent and consistent and inspires confidence in the prosecution story.

19. PW-5 and PW-10 claim to have witness the occurrence and stated that they had seen the accused Laxmiram inflicting the blow on the vital part of his head with axe, Jagannath Mandi assaulted him with lathi and Nabin Tudu caught hold of Jiban at the time of assault, thereby disabling him from stopping such assault. This evidence of PW-5 and PW-10 were controverted in course of cross examination of PW-13, the Investigating Officer who stated that

PW-5 and PW-10 did not make any such statement before him at the time of investigation. Since PW-5 and PW-10 did not state such occurrence to the Investigating Officer, it cannot be relied upon as sacrosanct and have no legal implication.

20. PW-1, PW-2 and PW-3 are witness of seizure of the weapon of assault. But it appears that in course of their examination the seized weapon were not produced for their identification in court. The evidence of PW-2, PW-3, PW-4, PW-6 and PW-8 goes to prove that they reached the place of occurrence immediately after the incident and found Jiban Mandi lying in his house in injured condition.

21. Upon considering the gamut of evidence on record it would emerge that on the date of occurrence Jiban Mandi was inflicted severe blows on his head with dangerous weapon of assault by accused Laxmiram Mandi and in this act, he was accompanied and assisted by Jagannath Mandi and Nabin Mandi who were the only two persons to follow him in furtherance of common intention of causing death to Jiban Mandi by such assault. The overt acts of Jagannath Tudu and Nabin Tudu in relation to the assault is also clear from the evidence of PW-1 and PW-7.

22. The medical documents have not been properly admitted in evidence by the examining doctor. Non examination of doctor does not help the prosecution to prove the nature of injury caused, the weapons of assaults used and the statements made by the patient or the patient party before the doctor as to the persons who have caused such injuries. In the instant case PW-12 Dr.

Biswanath Mukherjee, has been examined. He has deposed that the injured person was admitted at Bankura Sammilani Medical College & Hospital on the night of 21.12.1999 as a patient under him and Jiban Mandi was admitted with a story of grievous head injury. The witness stated that the patient was admitted in the hospital from 21.12.1999 to 11.1.2000, that is for a period for more than 20 days. The cross examination of the witness was declined. Therefore, I have no hesitation to place reliance upon the evidence of PW-12 so far as the nature of injury was caused. According to section 320 of the Indian Penal Code, the definition of grievous hurt includes any hurt which endangers life or which causes the sufferer to be during the space of 20 days in severe bodily pain or unable to follow his ordinary pursuits. Therefore, the injury suffered by the victim which rendered him unable to follow his ordinary pursuits for more than 20 days was grievous hurt. It is also evidence from such testimony of the doctor that the injured person had suffered grievous head injury. Such injury was sufficient to cause death and endanger his life. No case has been suggested by the defence that such injury sustained by Jiban Mandi are self inflicted. Therefore, the accused appellants were involved in inflicting such injury and aiding the same by their overt acts are guilty for the offence punishable under section 307 of the Indian Penal Code. The discharge certificate of the injured person produced before this court and marked as Exhibit 5/7 also lends support to the fact that Jiban Mandi was admitted in the hospital for more than 20 days.

23. Instant case is based upon direct evidence and there is no reason to disbelieve the clear narrations of PW-1 and PW-7. It emerges from the evidence on record that there is an inimical relation between the accused appellants and the injured persons for which there are cases and countered cases between them. A certified copy of the judgment has been placed before the Trial Court as Exhibit 7 in connection with Case No. 10 C of 2000 of the Court of Learned Judicial Magistrate, Khatra. The case was initiated by Jagannath Tudu against Jiban Mandi, Shiboram Tudu, Dhabol Tudu, Shibdas Tudu, Mukanda Tudu, Bharat Murmu, Shivu Mandi and Madan Hembram.

24. In the said case learned Magistrate held that the injuries sustained by Jiban Mandi the accused in that case have not been explained by the complainant as such the case filed against the accused person was dismissed and Jiban Mandi and others were acquitted.

25. This present case has been filed by PW-1 Adari Mandi, wife of Jiban Mandi. In course of cross examination of the witnesses, specially PW-1 and PW-7 no suggestion were put to them that PW-7 was the aggressor in occurrence or that the injury was self inflicted. It is a well settled principle that enmity is a double edged weapon which cuts both ways. Just as it could be a ground for false implication, it could be treated as motive for offence. Under the foregoing circumstances discussed above I find the evidence of PW-1 and PW-7 trustworthy and reliable, beyond reproach.

26. While considering the evidence discussed above, some inconsistencies and contradictions appeared. However, it would be pertinent to advert to the

guiding principles enunciated by the Hon'ble Apex Court in the case of **Israr Vs. State of Uttar Pradesh; AIR 2005 SCC 249**, where it has been observed that, "if a major portion of evidence is found to be deficient, in case residue is sufficient to prove the guilt of the accused, his conviction can be maintained notwithstanding acquittal of a number of other co-accused person. Falsity of a particular material witness or material particulars could not ruined it from the beginning to end. The maxim 'falsus in uno falsus in omnibus' has no application in India, and witnesses cannot be branded as 'liar'. This maxim is a merely a rule of caution."

27. In the present case there are some lacuna in investigation. It appears that the injured person who was admitted in the hospital for a long period was not examined by police. The medical documents were not seized from the hospital and the doctors from the hospital of Calcutta and the doctors who medically treated the victim at Calcutta Hospital were not cited as witness. In the case of **State of West Bengal Vs. Mir Mohammad Omar; (2000) SCC (Cri) page 1516**, it was held that "if offenders are acquitted only on account of flows or defects in investigation, the cause of criminal justice becomes the victim. Efforts should be made to see that criminal justice is salvaged despite such defects in investigation. Court should bear in mind that the time constraints of the police officers in the present system, ill equipped machinery they have to cope with and the traditional apathy of respectable persons to come forward for giving evidence in criminal cases which are realities the police force have to be confronted with while conducting investigation." In the case of **State of U.P.**

Vs. Jagdeo; (2003) SCC (cri) 351, it was further held that mere faulty investigation cannot be a ground for acquittal of accused.

28. Having considered the evidence led by prosecution, I find that the evidence of the injured persons and his wife is trustworthy and telling in nature. In my opinion there is no infirmity in the judgment. Therefore, I find no reason to interfere with the impugned judgment of conviction and sentence of the three accused/appellants for the offence under section 448 and 307/34 of IPC. The sentenced passed against the appellant/accused does not appear excessive. The offence of Section 326/34 IPC has also been proved against the accused but no separate sentence has been passed for the said offence as it contributes to the offence under section 307 of IPC. Accordingly the impugned judgment of conviction and sentence is affirmed and the appeal is dismissed.

29. Interim order if any stands vacated. Let a copy of this judgment along with LCR be sent to Learned Additional Sessions Judge, 3rd Court, Bankura, for information and for execution of sentence within one month.

30. Urgent Photostat certified copy of this judgment, be supplied to the parties if applied for, maintaining all formalities.

(Ananda Kumar Mukherjee, J.)