

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 116 of 2009

Dinesh Bairagi

-Vs-

The State of West Bengal

For the Appellant : Mr. Souradeep Dutt
(Amicus Curiae)

For the State : Ms. Faria Hossain,
Mr. Sandip Chakraborty

Heard on : 05.01.2024

Judgment on : 14.03.2024

Ananya Bandyopadhyay, J.:-

1. This appeal is preferred against the judgment and order dated 20.12.2008 and 22.12.2008 passed by the Learned Additional Sessions Judge, Fast Track 3rd Court, Diamond Harbour, South 24 – Parganas, in S.T. No. 7 (9)04/S.C. No. 12(1)03, thereby convicted under Sections 326/307 of the Indian Penal Code and sentenced him to suffer rigorous imprisonment for 7 years and to pay a fine of Rs.1,000/-, in default, to suffer rigorous imprisonment for one month for the offence punishable under Section 326 of the Indian Penal Code and he was further sentenced to suffer rigorous imprisonment for 7 years and to pay a fine of Rs.1,000/-, in default, to suffer

rigorous imprisonment for one month for the offence punishable under Section 307 of the Indian Penal Code. However, both the sentences imposed were directed to run concurrently.

2. The case for the prosecution in brief, inter alia, was that on 18.05.2002 at about 11:45 hours, one Sikha Bairagi (PW-1) lodged a written complaint with the Mandirbazar Police Station alleging that on 15.05.2002 at about 6:00 a.m., her father Nirapada Bairagi (PW-2) was coming from a pond after washing his hands and face and at that time present appellant along with Debdas Bairagi and Raju Das attacked her father with iron rod and sharp cutting weapon and as a result her father sustained bleeding injury and fell down on the ground. It was further alleged that the present appellant assaulted PW-2 on his head and face with iron rod, Raju Das and Debdas Bairagi assaulted PW-2 with sharp cutting weapon in his hands. It was further alleged that seeing the alleged incident Bablu Bairagi (PW-4) and Joyanta Bairagi (PW-5) who went to rescue PW-2, were also assaulted by the accused with lathi, broken bottle and vojali in their stomach and back portion of their body and they also sustained bleeding injury. Other accused persons namely Nakul Mistry, Nirmal Mistry and Tapan Mistry also assisted the accused persons when villagers came to the alleged place of occurrence, all the accused persons fled away. PW-1 took PW-2 to the police station first and subsequently taken to Diamond Harbour Hospital and from there to Calcutta for treatment.
3. On the basis of the above complaint of PW-1, Mandirbazar Police Station started Mandirbazar P.S. Case No. 39 dated 18.05.2002 under Sections

325/326/34 of the Indian Penal Code against the present appellant and six others.

4. After completion of investigation, PW-17 submitted charge-sheet before the Learned Sub-Divisional Judicial Magistrate, Diamond Harbour vide charge-sheet No. 44 dated 19.07.2002 under Sections 325/326/307/34 of the Indian Penal Code against the present appellant and six others.
5. Charges were framed on 21.09.2004 under Sections 323 of the Indian Penal Code, 326 of the Indian Penal Code and under Section 307 of the Indian Penal Code against the present appellant and six others and the same was read over and explained to each of them to which each of them pleaded not guilty and claimed to be tried.
6. During trial prosecution examined as many as 17 witnesses besides documentary evidences to prove their case but the defence did not adduce any witness.
7. The Learned Additional Sessions Judge, Fast Track Court, Diamond Harbour, South 24-Parganas, by the judgment and order dated 20.12.2008 and 22.12.2008, found the present appellant guilty under Sections 326/307 of the Indian Penal Code and convicted him of the said charges and sentenced him to suffer rigorous imprisonment for seven years and to pay a fine of Rs.1,000/-, in default, to suffer further rigorous imprisonment for one month for the offence punishable under Section 326 of the Indian Penal Code and he was further sentenced to suffer rigorous imprisonment for seven years and to pay a fine of Rs.1,000/-, in default, to suffer rigorous imprisonment for one month for the offence punishable under Section 307 of

the Indian Penal Code, however, both the sentences were directed to run concurrently. Six other accused persons who faced trial were found not guilty of the charges levelled against them and were acquitted accordingly.

8. The Learned Amicus Curiae submitted as follows:-

- i. Since the complaint was lodged by PW-1 Sikha Bairagi on 18.05.2002 and the incident allegedly occurred on 15.05.2002 and PW-1 also stated in the evidence in-chief that they went to the police station on 15.05.2002 but did not lodge any complaint, the occurrence of the alleged incident was doubtful.
- ii. In the instant case, the charges had been framed on 21.09.2004 without mentioning the time and the place of occurrence and as such the appellant was seriously prejudiced and there was gross failure of justice had been occasioned and relied on the decision cited in (AIR 1924 CAL 323).
- iii. Seized weapon as alleged was neither sent to forensic lab nor referred to doctor – PW-1 had stated in the complaint as well as in the evidence that PW-2, i.e. the victim, suffered injuries which were caused by iron rod, broken bottles, vojali and chopper but as per the seizure list (Ext. 2/1) one iron rod and few pieces broken glasses and one blood stained lungi were seized from the house of PW-1, i.e. Sikha Bairagi on 18.05.2002 after few days of incident, those articles were never sent to forensic lab and never referred to the medical doctors i.e. PW-11, PW-12, PW-13 and PW-14 to ascertain whether injuries so caused can be caused by those

weapons and injuries alleged to have been caused on the face/mandible region may be caused by fall on rough surface and it was also not proved from the evidence whether those articles were by the appellant.

- iv. The prosecution examined total 17 witnesses to prove their cases and out of 17 witnesses, total 11 witnesses i.e. PW-1, PW-2, PW-3, PW-4, PW-5, PW-7, PW-8, PW-9, PW-10, PW-12 were the relatives. These witnesses were interested witnesses who were very much interested in securing the conviction of the present appellant as the mother of the present appellant had filed a criminal case where all these witnesses were arrayed as neighbours/villagers assembled. There the accused persons fled from the spot but none of those persons were examined by the prosecution which put serious doubt regarding the story of assault by the present appellant on the PW-2.
- v. The version of the interested witnesses becomes more doubtful as the cross-examination of PW-17 i.e. the investigating officer clearly discarded the evidences of those witnesses and put serious doubt on the version interested witnesses and it depicted that those witnesses deposed against the present appellant at the time of evidences after about 3 years which they never told to the investigating officer at the time of recording of their statement and it transpired from the cross-examination of PW-1 that only because the mother of the present appellant had filed a criminal

case the name of present appellant was taken up everywhere by the interested witness.

- vi. The law is well settled by the Hon'ble Supreme Court that the realities or truth apart, the fundamental and the basic presumption in the administration of criminal law and justice delivery system is the innocence of the alleged accused and till the charges are proved beyond reasonable doubt on the basis of clear, cogent, credible or unimpeachable evidence, the question of indicting or punishing an accused does not arise, merely carried away by heinous nature of the crime or the gruesome manner in which it was found to have been committed. Mere suspicion, however, strong or probably it may be is no effective substitute for the legal proof required to substantiate the charge of commission of a crime and grave the charge is greater should be the standard of proof required. Courts dealing with mental distance between 'may be true' and 'must be true' and this basic and a golden rule only helps to maintain the vital distinction between 'conjectures' and 'sure conclusions' to be arrived at on the touchstone of a dispassionate judicial scrutiny based upon a complete and comprehensive appreciation of all features of the case as well as the quality and the credibility of the evidence brought on record.
(AIR 2002 SC 3206)

- 9. The Learned Advocate for the State submitted that the delay in filing the complaint was explained to the extent to be involved in the treatment of the

injured victims. The General Diary filed earlier did not depict any instant of previous enmity between the parties. The evidence of the injured witnesses PW-4 and PW-5 fortified the medical evidence with regard to injury reports and state of hospitalization as endorsed by the evidence of PW-11, PW-13, PW-14 and PW-15.

10. The Learned Advocate for the State further submitted that the corroboration, oral testimony and medical report created the foundation of the prosecution case irrespective of the independent witnesses which would not vitiate the same.

11. A circumspection of the prosecution witnesses revealed as follows:

- i. PW-1 in her deposition stated that their house was contiguous intervened by the house of Ratan Bairagi and Debdas Bairagi. The incident occurred on 15.05.2002 at about 6 a.m., Wednesday, while her father Nirapada Bairagi was returning house after washing his hand from their esmali tank and suddenly Dinesh Bairagi, Debdas Baigari, Raju Das (son-in-law of Ramprasad Bairagi) attacked him. Dinesh had an iron rod in his hand. He voluntarily caused hurt to her father with the said iron rod on his head, hand, mouth and eyes. Accused Debdas Bairagi assaulted her father on his right hand by means of a sharp cutting weapon. Accused Raju Das voluntarily caused hurt to her father on both his hands by means of a broken bottle. Latika Bairagi, her contiguous neighbor, she raised hue and cry at a distance of 15/20 cubits from the place of occurrence. On her hue and cry her brother Bapi Bairagi and cousin brothers namely Bablu and Jayanta Bairagi

rushed to the place of occurrence with a view to rescue her father. When they tried to rescue her father then accused Debdas Bairagi chopped on the belly of Bapi Bairagi by means of a broken Thums-Up bottle. Accused Raju Das also voluntarily caused hurt on the back of her brother Bapi by means of a broken bottle for which he sustained bleeding injuries on his back. On their clamour the contiguous neighbours rushed to the place of occurrence. Nokul Mistry, Nirmal Mistry, Tapan Mistry and Parimal Mistry rushed to the place of occurrence with lathi and spade and chased them. As a result of such assault, her father sustained bleeding injuries on his mouth and head. Her father also sustained injuries on his right arm and his left hand and his right arm and left hand entirely fractured. Her full brother and two cousin brothers sustained bleeding injuries on their persons due to such assault by means of broken Thums-Up bottle. Herself with the assistance of the neighbourers brought her father including two other injured persons to Mandir Bazar P.S. by means of ambulance. Thereafter, as per instruction of the O.C., Mandir Bazar P.S., she shifted all the injured to S.D. Hospital, D. Harbour for their medical treatment. Her full brother including two cousin brothers were admitted at S.D. Hospital, D. Harbour. Her father was taken into operation theatre and thereafter doctor advised her to shift her father to M.R. Bangur Hospital, Calcutta for better medical treatment. As per advice of M.O., she shifted her father to M.R. Bangur Hospital, Calcutta for treatment. The hospital authority of M.R. Bangur Hospital declined

to admit her father as his physical condition was serious and there was no seat for admission. They advised her to shift her father to any other Government Hospital. Thereafter, she brought her father to National Medical College and Hospital for treatment. The hospital authority of N.M.C. and Hospital, Calcutta refused to admit her father as his condition was precarious. Therefore, she brought her father to N.R.S. Medical College and Hospital for treatment. Her father was refused to be admitted there and he was taken to Medical College & Hospital, Calcutta. They also refused to admit her father as his condition was precarious. She was compelled to return to D. Harbour Hospital with her injured father on the selfsame night. Her father was at the floor of D. Harbour Hospital and he was transferred to Medical College and Hospital, Calcutta on the next date as per advice of M.O., S.D. Hospital, D. Harbour. Her father remained there from 16.05.2002 to 21.05.2002. Subsequently, he was continuously treated at K.R. Ambedkar Dental Medical College and Hospital for about two months. He was also medically treated at Nagendra Kalitara Nurshing Home (Sankar Nursing Home) at Joynagar- Majilpur. Her father was admitted at the said nursing home on and from 21.05.2002 to 30.05.2002. Previously, the accused persons on several occasions threatened her father including her brother for which they lodged a G.D. Entry being No. 71/2002 dated 02.05.2002 at Mandir Bazar P.S. She lodged a written complaint to Mandir Bazar P.S. on 18.05.2002. On 15.05.2002 she orally reported the incident to the O.C., Mandir Bazar P.S. and she was busy with the

treatment of her father, brother and cousin brothers for which there was a delay in the matter of lodging written complaint to P.S. One Biswanath Haldar @ Bishu was the scribe of the written complaint. It was written under her dictation. After knowing the contents of the complaint she put her signature thereon. That was the said written complaint which was marked Exhibit-1. I.O. seized iron rod measuring about 3 feet near the place of occurrence in presence of herself and Rupkumar Bairagi against a seizure list including some broken piece of bottle and one lungi stained of blood belonged to her father. She was one of the witnesses to the seizure list. She identified her signature appearing on the seizure list which was marked Exhibit-2. PW-1 identified the seized articles in open court which are marked Mat Exhibits I, II, III respectively. During cross-examination PW-1 stated Smt. Shobarani Bairagi filed a counter case against her father and others with regard to the incident occurred on the date of incident at about 6 a.m. in order to demolish their case. She could not say as to whether she filed a counter case against her father and others on 17.05.2002. It was a fact that except that except herself including Latika Bairagi, Bablu Bairagi and Jayanta Bairagi the remaining CS witnesses of this case were the accused of the counter case. C.S. witness Putul Bairagi and Bapi Bairagi were her full brothers. C.S. witness Rupkumar Bairagi, Jayanta Bairagi and Bablu Bairagi were her cousin brothers. C.S. witness Rajballav Mistry was the son of the cousin brothers of her father. C.S. witness Alok Bairagi and Putul

Bairagi were also her cousin brothers. Latika Bairagi was the cousin aunt of her father. She looked after all the pending cases on behalf of her father as he was an aged person. It was fact that accused Dinesh Bairagi filed a title suit being no. 2/03 against Rupkumar Bairagi, Nirapada Bairagi, Chitiram Bairagi, Lakhan Bairagi and Renupada Bairagi after the alleged occurrence. That title suit was still pending for disposal. The house of Shobarani Bairagi was the southern side of the tank which was contiguous western side of their house. The house of Shobarani was the south facing. There was no danga land in between the house of Shobarani and esmali tank. There was a vacant danga land behind the house of Shobarani Bairagi. Not a fact that on the relevant date and time of incident her father including others who were the accused in the counter case were tried to construct a pathway forcibly in the land of Shobarani Bairagi. Not a fact that they entered into their house through the danga land southern side of the house of Shobarani Bairagi. She had no knowledge about kilometer. Adityapur Primary School was at a walking distance of 1^{1/2} minutes from the house of danga land of Shobarani Bairagi. Her house was at Bairagipara, Adityapur at its eastern side. All the C.S. witnesses were her surrounding neighbours. She could not say how many people used to reside at Adityapur village. There were approximately 800 villagers at Adityapur and Rudrapur village. She was graduate. She was unmarried. She was connected with CPI(M) party. She could not say the political colour of the accused persons. It was a fact that it had not

been mentioned in the F.I.R. that Bapi Bairagi rushed to the spot after hearing her hue and cry. She had no recollection as to whether she had mentioned in the F.I.R. that all the accused assaulted Bapi Bairagi. Latika Bairagi at first saw the incident and raised alarm. She also raised alarm on hearing the alarm of Latika Bairagi. It was a fact that on her alarm except the family members of Bairagi family none of the neighbours rushed to the spot. She did not know as to whether accused Dinesh Bairagi, Debdas Bairagi, Jaba Das, her husband and Shobarani Bairagi sustained any injury and they went to P.S. She did not know as to whether the villagers took Dinesh Bairagi, Debdas Bairagi, Jaba Das, her husband and Shobarani Bairagi to B.P.H.C. for treatment. She did not know as to whether the villagers took Dinesh Bairagi, Debdas Bairagi and other injured to hospital in presence of the police personnel. On 15.05.2002 her father was not admitted to any Calcutta based hospital and he was admitted at Calcutta Medical College and Hospital on 16.05.2002. She could not say the actual time when her father was admitted to Calcutta Medical College and Hospital. She signed the hospital admission register. She had no recollection as to whether she had mentioned in the F.I.R. that accused Raju Das assaulted Jayanta Bairagi by means of a broken Thumps-Up bottle. She had no recollection as to whether She had mentioned in the F.I.R. that accused Debdas Bairagi assaulted Bablu Bairagi by means of a broken bottle.

It was a fact that accused Nokul Mistry, Parimal Mistry, Nirmal Mistry and Tapan Mistry never assaulted none but they chased her father and brothers. Not a fact that she did not mention in the F.I. R. that her father was admitted to Sankar Nursing Home, Joynagar-Majilpur for his treatment. She was interrogated by the I.O. on 18.05.2002. She did not state to the I.O. that accused Raju Das assaulted her father Nirapada Bairagi by means of a broken Thums-up bottle. She had no recollection as to whether she has stated to the I.O. that accused Raju Das assaulted Bablu Bairagi by means of a broken Thums-up bottle. She did not know as to whether there was any pathway near their present house. She could not say the plot no. in their esmali tank and danga land. Their property has not been amicably partitioned between its co-sharer by means and bounds. It was not a fact that she did not mention in the F.I.R. that the teeth of my father was fractured. She did not state to the I.O. that the teeth of my father was fractured due to assault of accused persons.

- ii. PW-2 in his deposition stated that accused Dinesh Bairagi and Debdas Bairagi were his contiguous neighbourer intervened by one house. Accused Raju Das was the brother-in-law of accused Dinesh Bairagi. The incident occurred on 15.05.2002, Wednesday at about 06:00 a.m. On the relevant date and hour of incident he was returning house after washing hand and mouth from their esmali tank and during his way to dwelling house accused Dinesh Bairagi, Debdas Bairagi, Raju Das suddenly attacked him with lathi, broken bottle, iron rod and sword.

Accused Dinesh Bairagi assaulted him by means of an iron rod on his head and other organ of his body continuously. As a result of such assault he sustained injuries on his head, mouth, cheek, left hand and neck. Accused Raju Das assaulted him by means of a broken bottle of his right hand. Accused Dinesh Bairagi instructed Debdas Bairagi to assault him as he was a son of dishonest mother. As per instruction of Dinesh Bairagi accused Debdas Bairagi assaulted him by means of a sword on his right hand. As such he sustained bleeding injuries on his right hand. His teeth, both hands were fractured due to assault of Dinesh Bairagi by means of iron rod. He raised hue and cry "save him, save him". On his hue and cry Jayanta and Bablu and his son Bapi Bairagi rushed to the spot with a view to rescue him. After their arrival at the P.O. accused Raju Das voluntarily caused hurt on the back and thigh of Bablu Bairagi by means of a broken bottle. Accused Debdas Bairagi assaulted Bapi Bairagi on his back by means of a broken bottle. Accused Raju das also voluntarily caused hurt to Jayanta Bairagi on his back by means of a broken bottle. As a result of assault by Dinesh Bairagi his teeth and gum were dislocated. All the (7) accused persons are present in court for identification. Accused Nokul Mistry, Parimal Mistry, Nirmal Mistry, Tapan Mistry chased them but they never assaulted them. Accused Nokul Mistry and others assumed that he expired and they told each other to leave. As a result of assault he fell down on the ground. His aughter Shikha Bairagi and other family members were crying by saying "master died, master died". Accused

Dinesh Bairagi fled away from the P.O. after fell down his iron rod at the P.O. He was taken into Mandir Bazar P.S. first after putting a new lungi. His lungi was stained with blood. Darogababu advised to admit him at S.D. Hospital, Diamond Harbour first. He was taken to S.D. Hospital, Diamond Harbour for treatment including his son and two nephews. He was referred to M.R. Bangur Hospital. His son and both the nephew were admitted at S.D. Hospital, Diamond Harbour. Hospital authority refused to admit him as his condition was precarious. He was admitted to medical college and hospital, Calcutta and remained there for the about 5/6 days. He was also admitted Sankar Nursing Home, Joynagar-Majilpur for about 8 days. He was subsequently medically treated at K.R. Ambedkar Medical College and Hospital, Calcutta for about three months as outdoor patient. He was examined by the I.O. PW-2 identified the seized iron rod, blood stained lungi and broken pieces of bottle in open court which had already been marked as Material Exhibits I, II and III. PW-2 during his cross-examination stated that his father were three brothers. There was a civil suit in respect of the said pathway and such civil suit is still pending. He was a retired school teacher and a pension holder. There was no dispute in between themselves and the accused persons with regard to land issue. Smt. Shobarani Bairagi was his aunt. Shobarani Bairagi filed a written complaint against himself and (13) others and on the basis of such written complaint a police case had been started. He was on court bail in that police case and the said case was still pending in that court for

disposal. He could not say as to whether Plot No. 167 belonged to Shobarani Bairagi. Shobarani Bairagi had a danga land contiguous to the south of the esmali tank. PW-2 in his cross-examination further stated that accused Dinesh Bairagi and Debdas Bairagi were his own cousin brothers. The father of Dinesh was dead. He could not say the actual year when he expired. He was not the karta of Bairagi family. He never partitioned the properties of his uncle between his legal heirs. He did not know as to whether the incriminating articles which were used at the time of occurrence were handed over to the police. He also handed over his blood stained wearing apparel to the police. He did not know as to whether blood-stained wearing apparel of Bapi, Jayanta and Bablu were handed over to the police. They also sustained bleeding injuries on their person. He could not say the length of iron rod which was used at the time of alleged occurrence including the length of the sword. He could not say the length of the Thumps-Up bottle which was used as weapon at the time of assault. He was taken to P.S. He was not capable to say anything at that point of time though he had sense. He was not capable to say anything when he was remained at Calcutta Medical College & Hospital. He could speak normally even after six days at Calcutta Medical College & Hospital. He remained at Calcutta Medical College & Hospital for about six days and he was released after expiry of six days. His daughter daughter Sikha Bairagi was present in court ejlas that day. He could not say how many days his son and nephew were remained at SD Hospital, D. Harbour.

- iii. PW-3 Latika Bairagi stated in her examination-in-chief that the incident occurred since three and seven months back Wednesday at about 6:00 a.m.. That day was Akhaitrita. On the relevant date and time, she was cleaning utensils at Chanapukur ghat on the northern side. She heard a 'holla' from the southern side from the Chanapukur. She had seen that Dinesh Bairagi assaulting Nirapada Bairagi by means of an iron rod on his head, face and different parts of body. Nirapada Bairagi tried to save himself by hand.
- iv. During cross-examination PW-3 stated she heard that Sova Rani Bairagi filed a criminal case against Nirapada Bairagi and his relatives. She had not seen any injury on the person of Dinesh Bairagi. Deb Das Bairagi and others on the date of incident.
- v. PW-4 Bablu Bairagi stated in his evidence that he knew PW-2 Nirapada Bairagi and the accused persons of his village. The incident took place on 15.05.02 Wednesday at about 6 A.M. approximately. On the relevant date and hour, he was sitting at their verandah after waking up. He suddenly heard a shouting from the side of Chanapukur. He rushed to the place of occurrence and found that Nirapada Bairagi was lying there on bleeding injury. He also found that accused Deb Das Bairagi assaulting Nirapada Bairagi by means of a broken bottle. He resisted Deb Das Bairagi then accused Raju Das and Deb Das Bairagi chased him. Accused Deb Das Bairagi pushed a part of broken bottle on his belly and thereafter twisted the same. Accused Dinesh Bairagi tried to assault him by means of an iron rod but he saved himself. Accused

Parimal Mistry also chased him with a bamboo lathi. As a result of such assault, he sustained bleeding injury on his belly. Sikha Bairagi (PW-1) and some villagers took him to the Sankar Nursing Home, Joynagar by a van rickshaw. After giving primary treatment he was referred to Diamond Harbour S. D. Hospital for better treatment. He was admitted at S.D. Hospital on the date of incident. He remained there for about 8 days. All the accused persons were present in Court ejlash (identified). He was interrogated by the I.O. about the incident.

- vi. During cross-examination PW-4 stated that it was a fact that Sova Rani Bairagi filed a criminal case against him and 13 others. He was on court bail in that criminal case and that case was pending for disposal before the court.
- vii. PW-5 Jayanta Bairagi stated in his evidence that he knew PW-2 and all the accused persons who were present in court ejlas were his contiguous neighbours. The alleged incident took place on 15.05.02 at about 6:00 A.M. On the relevant date and time he was taking preparation for nature's call and on hearing hue and cry of Sikha Bairagi (PW-1) they rushed near Chanapukur. He found accused Raju Das and Debdas Bairagi assaulting Bapi Bairagi by means of broken bottle and also twisting the same on the back of Bapi Bairagi. Nirapada Bairagi (PW-2) was lying on the bank of Chanapukur on bleeding condition and accused Dinesh Bairagi assaulting Nirapada Bairagi by means of iron rod on his head, face and different parts of body. He tried to rescue Nirapada Bairagi and then accused Raju Das assaulted him

by means of a broken bottle on his belly. He sustained bleeding injuries on his belly and sat down there. Accused Nakul Mistry, Nirmal Mistry, Parimal Mistry, Tapan Mistry rushed to the place of occurrence with lathis in their hand. They were taken to Sankar Nursing Home at Joynagar for treatment. After primary treatment, they came to Mandirbazar P.S. in an ambulance. Mandirbazar P.S. referred them to S.D. Hospital, Diamond Harbour for better treatment. They were admitted to S.D. Hospital, Diamond Harbour and he remained there for about 8 days. He was interrogated by the I.O. All the accused persons whose names he had stated in his deposition were present in Court ejlas (identified).

- viii. The evidence of PW-6, PW-7, PW-8, PW-9 and PW-10 corroborated the evidence of PW-1, PW-2, PW-3, PW-4 and PW-5.
- ix. PW-11 Dr. Jafar Ali stated in his examination-in-chief that he was attached to S.D. Hospital, Diamond Harbour as Medical Officer on 15.05.02. He examined one patient named Bapi Bairagi of village Adityapur as indoor patient. The patient was admitted on 15.05.02 and was discharged on 22.05.02. The cause of admission was injury sustained by an assault. The discharge certificate of patient Bapi Bairagi was marked as Exhibit-3. He also examined Bablu Bairagi of Adityapur village. The patient was admitted at S.D. Hospital, Diamond Harbour on 15.05.02 and was discharged on 22.05.02. The cause of the admission was injury as a result of assault. The discharge certificate of patient Bablu Bairagi was marked as Exhibit-4. He also examined

Joyanta Bairagi of Adityapur village who was admitted to hospital on 15.05.02 and was discharged on 22.05.02. The cause of admission was injury due to assault. The discharge certificate of patient Joyanta Bairagi was marked as Exhibit-5. He issued those discharge certificates in favour of the patients.

- x. PW-11 Dr. Jafar Ali stated in his further examination-in-chief on recall that on 15.02.02 he examined the patient Bapi Bairagi of village Adityapur at S.D. Hospital, D. Harbour as indoor patient. Bed head ticket and treatment sheet of Bapi Bairagi was marked Exhibit-7 and 7/1 respectively. He examined Bablu Bairagi of Adityapur village at S.D. Hospital, D. Harbour as an indoor patient. The patient was under his treatment. Bed head ticket and treatment sheet of patient Bablu Bairagi were marked as Exhibit-8 and 8/1 respectively. Patient Joyanta Bairagi was also admitted at S.D. Hospital, D. Harbour and he was under his treatment. Bed head ticket and treatment sheet of patient Joyanta Bairagi were marked Exhibits-9 and 9/1 respectively. All the three patients sustained sharp cut injuries on their person as noted by the Emergency Medical Officer in the treatment sheet. During cross-examination, PW-11 stated that record of in-patient was also known as bed head ticket.
- xi. PW-12 Bapi Bairagi stated in his examination-in-chief that the incident occurred on 15.05.02 at about 06:05/06:10 A.M. On the relevant date and time he was washing his teeth standing near big tank. Suddenly he heard a shouting from his house. After hearing the shouting he rushed

towards his house and found that accused Dinesh Bairagi was assaulting his father Nirapada Bairagi by means of an iron rod on his head and cheek and on his right hand near the bank of Chanapukur. He told accused Dinesh Bairagi as to why he was assaulting his father and also tried to rescue his father. Thereafter Raju Das frequently assaulted him on his back by means of Thumps Up bottle. Accused Debdas Bairagi also assaulted him by means of a small size knife on his thigh. As a result of such assault, he sustained profuse bleeding injury. Bablu Bairagi and Joyanta Bairagi appeared on the scene and they tried to rescue them. Rajballav Bairagi, Pulak Bairagi and Alok Bairagi took him to Sankar Nursing Home Joynagar on a van rickshaw. Doctor attached to Sankar Nursing Home referred him to S.D. Hospital, D. Harbour on a hired ambulance as his condition was serious. He remained at S.D. Hospital, D. Harbour for 8 days. He had stated the above fact to the I.O. during investigation.

- xii. During cross-examination, PW-12 stated that he read upto Class – IX. Nirapada Bairagi was his father. He including his father and others were the accused in a case which was initiated on the complaint of Sovarani Bairagi. After arriving at the spot, he noticed that his father was writhing in pain and lying on the spot. His father was lying on his back on the ground.
- xiii. PW-13/ Dr. S.P. Roy in his deposition stated that he was attached to Snakar Nursing Home, Joynagar, Majilpur as Medical Officer. On 22.05.2002 he was attached to same Nursing Home with the same

capacity. On that date he examined one Nirapada Bairagi aged about 72 years who was brought by Sikha Bairagi of Adityapur village, P.S.-Mandirbazar. The said Nirapada Bairagi was remained at Sankar Nursing Home from 22.05.2002 to 30.05.2002. No medical treatment was done at Sankar Nursing Home in respect of Nirapada Bairagi except dressing of wounds was done. The patient sustained multiple injuries with fracture mandible. The patient was treated at Govt. Hospital. The discharge certificate duly written and signed by him in respect of Nirapada Bairagi. Discharge certificate was marked Ext.-6. Dr. C.R. Mondal assisted him at the time of dressing of dressing.

- xiv. PW-14/Dr. M. Ghose in his deposition stated that he was attached to A.R. Ahmed Dental College and Hospital as M.O. On 21.05.2002 he was attached to the same hospital with the same capacity. He examined one Nirapada Bairagi at Dental College and Hospital on 13.07.2002 and 18.07.2002. The patient was also treated by specialist doctor attached to their Dental College and Hospital. He prescribed some medicine to the patient after perusal of the pathological test report. On examination he found the following injuries:-

a. Parasymphyseal fracture.

The out-door tickets of patient Nirapada Bairagi marked exhibits-10 and 10/1.

- xv. During cross-examination PW-14 stated that the age of the patient had been mentioned in the out-door ticket as 72 years. The patient did not

make any complaint as to how he sustained injury nor he disclosed the name of the assailant during medical examination by him. He did not examine the patient Nirapada Bairagi on 21.05.2002, nor did he examine the patient on 16.05.2002. Police never seized those out-door tickets from their hospital.

- xvi. PW-15/Dr. A. Rahaed stated at the time of deposition he was attached to Medical College and Hospital as Associate Professor, Department of Surgery. ON 16.05.2002 he was attached to the same hospital as Assistant Professor, Department of Surgery. The patient Nirapada Bairagi was admitted under him at Medical College and Hospital from 16.05.2002 to 21.05.2002. The patient was discharged from hospital on 21.05.2002 and he was suffering from multiple homicidal injury and fracture mandible. Dr. Suranjan Halder, P.G.T. issued the discharge certificate as he was under him as trainee. PW-15 also knew the signature and hand writing of Dr. S. Halder who was trainee under PW-15. Discharge certificate dated 21.05.2002 is marked exhibit-11.
- xvii. PW-17 Shadhin Kr. Mondal stated in his examination-in-chief that he was retired Sub Inspector of Police. On 15.05.02 he was posted at Mandirbazar P.S. A.S.I Keshab Prasad Singh was also posted in the said place along with him. PW-17 knew his hand writing. The formal F.I.R drawn up by him was marked Exhibit-13. The case was endorsed to him for investigation. During investigation, he prepared a rough sketch map with index. The rough sketch with index were marked Exhibit-14 collectively. He seized one iron rod, some broken glasses and one blood

stained lungi under a proper seizure list. The said seizure list was marked Exhibit-2/1. The said seized articles which were already exhibited as Mat-III. He examined the witnesses and arrested one of the accused persons. He collected injury report and ultimately submitted charge-sheet.

- xviii. She had not stated he assaulted with a Thumps Up bottle. Nirapada Bairagi did not tell him that Debdas instructed him to assault the victim. Nirapada did not tell him that he was assaulted by a broken glass. Nirapada did not tell him that Debdas had sword in his hand. Nirapada told him that he sustained bleeding injury but did not tell him that he had sustained injury in his chest and neck. He also did not tell him that his teeth was broken. Latika Bairagi did not tell him that the accused Dinesh assaulted Nirapada Bairagi in his face and different parts of his body. She also did not tell him that Nirapada Bairagi shouted saying “banchao, banchao”. She also did not tell him that immediately she rushed to her house and called her family members. Bablu did not tell him that after hearing the shouting he came at Chanapukur. He did not tell her that Bablu assaulted the victim with a broken glass in the lower part of stomach. Bablu also did not tell him that the accused Dineah chased him with an iron rod to assault him. Bablu did not tell him that initially he was treated at Sankarpur Nursing Home. Joyanta did not tell him that the villagers took him to Sankarpur Nursing Home for medical treatment. Joyanta did not tell him that he was sent by the police of Mandirbazar P.S. to D. Harbour

hospital for better medical treatment. Rajbhallav did not tell him that Bapi Bairagi had come to rescue Nirapada Bairagi. He also did not tell him that Raju Das assaulted Bapi with broken glass. He also did not tell him that Debdas assaulted Nirapada with a vojali. Alope Bairagi did not tell him that he heard shouting from Nirapada's house. He also did not tell him that Joyanta assaulted Raju with a broken glass in his stomach. Rupkumar did not tell him that 'gondogole' took place in Chanapukur. Putul also did not tell him that a 'gondogole' took place in Chanapukur. She also did not tell him that Dinesh Bairagi assaulted Nirapada with an iron rod. She also did not tell him that Raju Das assaulted Bapi with a broken glass. She also did not tell him that Nirmal Mistry, Parimal Mistry and Tapan Mistry came with lathi. Pulak Bairagi did not tell him that he heard shouting from Chanapukur. Pulak Bairagi did not tell him that Dinesh assaulted Nirapada on his head and face. He also did not tell him that Debdas assaulted Bablu with a broken glass in his stomach. He also did not tell him that Raju assaulted Joyanta in his stomach with a broken glass. He also did not tell him that Bablu and villagers took Nirapada to a nursing home. He prepared a sketch map after going in the place of occurrence.

12. Though the ingredients to constitute an offence under Section 326 of the Indian Penal Code had been established in terms of the injuries to be depicted as grievous supplemented by consequential hospitalization.
13. Moreover, the appellant had the intention and knowledge to cause injuries to the victim namely father of the PW-1 whom accused persons at one point of

time considered to be dead and left the spot. Injury inflicted by an iron rod and broken bottle of “Thums Up” at the vital organ of the body would have resulted in the death of the victims and can indubitably analyzed to bear the intent to cause an extreme physical hurt which would evidently cause their death. The appellants were aware that the weapons used to inflict injury being so deadly can without any iota or any suspicion cause death of a person.

14. The Learned Trial Court has rightly found the appellant guilty of the offence and this Court is not inclined to interfere with the same.
15. In view of the above discussions, the instant criminal appeal is dismissed.
16. There is no order as to costs.
17. I record my appreciation for the able assistance rendered by Mr. Souradeep Dutt, Learned Advocate as Amicus Curiae in disposing of the appeal.
18. Lower court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.
19. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)