

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 185 of 2001

Diljan Bibi

-Vs-

The State of West Bengal

For the Appellant : Md. Sabir Ahmed
Mr. Shraman Sarkar
Mr. T. Ahmed
Mr. Dhiman Banerjee

For the State : Mr. Joydip Roy
Ms. Sujata Das

Heard on : 04.12.2023, 03.01.2024, 17.01.2024,
22.01.2024

Judgment on : 21.03.2024

Ananya Bandyopadhyay, J.:-

1. This appeal is preferred against judgment and order dated 18.12.2000 passed by the Learned Judge Special Court (E.C. Act)-cum-Additional Sessions Judge, Cooch Behar in Sessions Trial No. 8(7)/2000 arising out of the Sessions Case No. 84 of 1998 convicting the accused for the charges under Sections 148, 325, 304/149 of the Indian Penal Code and sentencing the accused to undergo rigorous imprisonment for one year for committing offence under Section 148 of the Indian Penal Code, rigorous imprisonment for 2 years and also to pay fine of Rs. 2000/- in default to further rigorous imprisonment for 6 months for committing offence under Sections 325/149

of the Indian Penal Code and further sentencing to undergo rigorous imprisonment for 3 years for committing offence under Section 349/149 of the Indian Penal Code.

2. The prosecution case precisely states in the morning of the date of incident a quarrel ensued in between the female folk of the two families over consumption of 'gamary' tree on their land by the cow of the accused Kashem Mia. In the night at about 10:00 pm when the accused persons being their next door neighbor started to abuse them.
3. The father of the complainant Asamulla Mia went out of their house and protested. Hearing a clamor, the complaint came to the P.O. followed by brother Sirajul Mia @ Haque and found his father and brother Sirajul Mia @ Haque lying on the ground in injured condition.
4. The alleged that all the accused persons including the present appellant/accused was found to be present armed with lathi and other weapons. Later on neighbours arrived and both the injured persons were taken to Tufanganj Hospital for treatment and on that night Sirajul succumbed to his injuries.
5. Based on the complaint, Tufanganj PS. Case no. 74/97, dated 12.08.97, under Section 143/447/325/304 of the IPC, was registered. Investigation ensued which culminated in the submission of a chargesheet. Subsequently charges were framed to which the present appellant pleaded non-guilty and claimed to be tried.

6. The prosecution examined 10 witnesses and proved several documents marked exhibits 1 to 9 in their support of their case. The defence case appears to be that she has been falsely implicated in this case.
7. All the witnesses had been cross-examined and there has been no corroborative evidence, that the case was of the resulting death of Sirajul Mia in presence of the common object of such assembly and the accused was guilty of committing offence under Section 304/149 of the Indian Penal Code. The complainant made allegations in various ways but he did not see the incident in his own eyes. Further, the complaint PW-1 himself stated the facts with surmise and conjecture.
8. The defense taken on behalf of the accused that all the PWs were related and that no independent local witnesses was examined by the prosecution to support the prosecution case though admittedly there were many houses nearby and as such it was contested that an adverse interference should have been drawn against the prosecution for non-examination of those local witnesses.
9. The police seized the cloths of the deceased but were not produced in court during evidence.
10. Learned Advocate for the appellant submitted that –
 - i. The Learned Judge passed his order convicting the appellant and sentencing her with the charges as aforesaid are wholly illegal and non-application of mind.

- ii. The Learned Judge should have been considered the evidence of PW-2, PW-3, PW-4, PW-5 did not corroborate with the evidence of PW-1 in the complaint.

11. The ld. Advocate for the appellant submitted the following:-

- i. From the formal F.I.R. it was found that the incident had occurred at 10:00 p.m. which was written by PW-1 but PW-5, the injured witness categorically stated in his evidence in chief that the incident had taken place at 8/9 p.m. which was not corroborating with the formal F.I.R. The evidential value of injured eyewitness was more than any other witness so it can be said that appellant should get benefit of doubt for the discrepancy in time of occurrence of the incident.

On the other hand, PW-4 brother of the deceased stated that he returned home on the fateful day at 10:00 p.m. while both the injured persons boarded the van rickshaw so there was contradiction regarding exact time of occurrence.

- ii. During the trial prosecution examined 10 witnesses who had been interested witnesses except the Doctor and Investigating Officer and in formal F.I.R., PW-1 stated after the incident neighbors went there after hearing hue and cry but no local/neighbor had been examined as witness by the prosecution. The prosecution had deliberately refrained from examining any independent witness and conviction was based only upon the evidence of the interested witness which could not sustained in law.

- iii. PW-1 categorically stated that the said complaint was written by one Muhuri namely Nilu Chanda of Tufanganj Court. During trial the prosecution failed to examine the said Scribe of the F.I.R. The Scribe of the F.I.R. had neither been examined nor the signatures in the F.I.R. had been proved.

On the other hand, PW-7 in his cross-examination stated that he went to the place of occurrence with his close relatives but they were not examined and also the rickshaw puller was not examined. Such lacunas on the part of the prosecution were deliberate.

PW-1 claimed he was an eye witness but in evidence he stated that he reached the place just after the incident so he was not present during the incident.

PW-5 injured witness stated had some sense when he had fallen down on the ground and it was a dark night so it was not possible for him to identify every assailant.

- iv. During the evidence the investigation officer stated that the statement of the injured witness had been recorded on 20.08.1997 but the F.I.R. was lodged on 12.08.1997 and the investigating officer had not explained the unreasonable delay of 8 days.

On the other hand, it was found from evidence of the injured witness that he explained the whole incident to his son after he regained his full senses on that night but the F.I.R. was lodged on the next day and no specific reason had not been explained behind the reason of such delay.

- v. From the evidence recorded during the trial, no clothes had been produced before the Court by the investigating officer.

The alleged offending weapon had not been recovered.

- vi. PW-1 categorically stated in formal F.I.R. that he was present during the incident and he was also assaulted by assailants. On the other hand the same PW-1 stated on his evidence that he reached the place of occurrence just after the incident. This very fact was self-contradictory regarding witnessing the incident of PW-5.

Moreover, most of the evidence of the witnesses were based on hearsay evidence who learnt the incident from another person.

PW-1 being wife of the deceased stated in her evidence that she was not examined by investigation officer and she did not know who were the assailants and she found her husband and her father-in-law were lying on ground. Being a wife, she did not support the prosecution case.

- vii. PW-8, the Doctor in her cross examination stated that a person having high pressure may have internal hemorrhage and the patient party did not state to me the injury happened by weapon. If a person falls on hard and blunt substance, he may sustain such injured on the head.
- viii. The aforesaid statements coupled with the evidence adduced by the prosecution do not establish the case of the prosecution against the appellant beyond reasonable doubt. It was a settled proposition of law that the prosecution has to prove its case beyond reasonable doubt. In the instant case the prosecution has miserably failed to make out any case against the appellant beyond reasonable doubt and the benefit

should go in favour of the appellant and the order of conviction should be set aside.

ix. Failure to attribute specific role of the appellant:- PW-5 who is the injured eyewitness in his deposition has mentioned name of one assailant namely Kachin Mia. Moreover the Doctor i.e. PW-8 in her deposition has stated that soon after the incident the victims were brought by PW-5, who gave the history of assault as on 11.08.1997 the patient was assaulted by Kachem Mia and Soleman and he has not mentioned name of any other assailants. In absence of attribution of specific role and specific overt act of the appellant casts shadow on the action taken by the appellant in commission of the crime. On that score the appellant was liable to be acquitted.

12. The Ld. Advocate for the State submitted the report mentioned the death of one of the victims to be homicidal in nature. The evidence of PW-5 and the evidence of PW-9 was relied upon by the Ld. Advocate for the State assuring the presence and the action of the present appellant inflicting injuries upon the victims. It was further submitted that the prosecution was able to prove its case beyond reasonable doubt and the appeal shall be allowed.

13. A circumspection of the prosecution witnesses revealed as follows:-

i. PW-1 Ohidul Mia in his deposition stated he was a resident of village Nakkatigach P.S. Tufanganj. About 3 years back there was an incident around 10 p.m. at night. In the morning of the said date the cow of accused Kachem Mia consumed the Gamari tree standing on their land. There was an altercation in between the female folk of the two houses

over that issue. The houses of the accused persons were lying very near to their house intervened by an open space.

In that night around 10 p.m. the accused persons were found to abuse them from their houses which was audible from their house. They were abusing over the incident of the morning. Hearing such abusive words of accused persons his father Asanulla Mia went out of their house and went to the open space. Later he heard a cry of his father. His brother Sirajul Mia @ Hoque first went to that place followed by him. When he came to P.O. he found that his father and his brother were lying on the ground and many people came there. All the accused persons were found to be present there. At that time those accused person were carrying lathi and other weapons. He found bleeding injury on the head of his father and also other injuries on other parts of body.

He did not find any visible injury in the person of Sirajul Mia. The accused persons assaulted him on chest and on other parts of body with lathi. With the help of Thela he took injured father and brother to Tufanganj hospital for treatment. In that night Sirajul Mia succumbed to his injuries. His father was admitted in the hospital for treatment. He brought the information of death of his brother to their house. Over that incident he gave an ejahar at Tufanganj P.S. His complaint was written by one Muhuri named Nilu Chanda of Tufanganj Court. It was written under his instruction. It was read over to him and after knowing its contents he put his signature there upon (signature marked as Exbt.-1). The complaint was written by Nilu Chanda in his presence (marked as

Exbt.-1/1). The dead body of his brother Sirajul Mia was brought to Cooch Behar. His signature on that paper was marked as Exbt.-2. After 6/7 days his father was released from hospital. After his father returned to house from hospital he deposited his lungi and ganji at Tufanganj P.S. which were seized by Daroga under seizure list on which he put his signature was marked as Exbt.-3 after objection. At the time of admission of injured in Tufanganj hospital he had talk with a doctor and stated to him the history of assault.

- ii. In his cross-examination PW-1 stated the written complaint was written by Muhari Nilu Chanda and he put signature there upon. The contents of the said complaint were read over to him. Hearing hue and cry he came out and found that his father and younger brother were lying on the ground. It was a dark night. Certain persons of the locality also came there but after a while. The houses of Rahamat, Nagen Barman and Nalini were near their house and they also came there hearing hue and cry. The house of Gani Mia was some distance away from P.O. but he also came there. Safiul also came there after a while. He did not find the seized clothes in court.
- iii. PW-2 Sajina Bibi in her deposition stated that Sirajul Mia was her husband. Asanulla Mia was her father-in-law. On the fateful day she was in her father's house. On that day she came to father-in-law's house in the evening. At the time of assault she was sleeping in her room. After the incident of assault she came out from her house and saw that her husband was lying unconscious on the ground. She also found her

father-in-law lying on the ground with bleeding injury on his head. Both of them were admitted hospital. She could not tell who were the assailants. She was not examined by I.O.

Prosecution was permitted to declare the witness hostile.

- iv. PW-3 Mina Bibi in her deposition stated that he was wife of PW-1. PW-2 was her sister-in-law and presently living in her father's house. About 3 years ago there was an incident in their house around 10/10:30 p.m. There was a quarrel for consuming of their tree by the cow of these accused persons. In that night she was in their room with her new born baby and "did not come out from the room. She learnt that her father-in-law and Sirajul were assaulted and became unconscious and were sent to hospital from treatment. On that night Sirajul died in the hospital. After about 7 days her father-in-law returned home from hospital. She did not learn the names of the assailants either from her husband or from her father-in-law or from anybody else. Her father-in-law told that these accused persons assaulted them.
- v. In her cross-examination PW-3 stated that she was examined by police in connection with that case.
- vi. PW-4 Israjul Mia in his deposition stated that PW-1 was his elder brother. Sirajul Mia was dead. The incident occurred around 10/10:30 p.m. and at that time she was in Tufanganj town. He was a rickshaw puller. On that night he returned home around 10 p.m. On returning home he learnt that his father was half murdered and his brother was murdered. When he came to house he found that both injured were

loaded in a Thela by PW-1. He learnt that these accused persons committed the said offence. He learnt the incident from his brother, PW-1, from his mother and others. After 8/9 days his father returned home from hospital. Sirajul did not regain his sense and died in the hospital. The accused persons are close neighbours. Their house was to the North of their house.

- vii. In his cross-examination PW-4 stated that after his returning to home he found many persons already assembled there and then he accompanied PW-1 with injured to hospital.
- viii. PW-5 Asanulla Mia in his deposition stated that PW-1 was his son. Sirajul Mia was his youngest son. About 3 years ago the incident occurred. His son planted three Gamari trees on their land. The cow of the accused persons consumed two gamari trees. There was a quarrel in between women folk of two houses on that issue. He intervened and stopped the quarrel. In the night around 8/9 p.m. there was again a quarrel in between the women folk of two houses. Then he came out from his house and tried to intervene. Then accused Kashem Uddin came out and gave a blow with the lathi on his head. Accused Soleman, Dildar, Diljan Bibi and Bulu and Solemen's wife also assaulted him with lathi and dao. He sustained injuries on various part of his body including his head. He fell down on the ground. At first his son Sirajul came followed by Ahidul to save him. All the accused persons also assaulted Sirajul with lathi, dao etc. He sustained blows on chest, private parts and other parts of body and fell down on the ground. Then Ahidul and Esrajul, his

son took him and Sirajul to hospital. He had some sense at that time. However, Sirajul was unconscious. After admission in the hospital he regained his full sense. One lady doctor first came for treatment and asked him about the history of assault and he stated to her the incident and also the names of the assailants. Sirajul was lying in the next bed in the hospital. Sirajul later succumbed to his injury in hospital around 2 at night. He also narrated the incident of assault to his son Esrajul Mia. His eldest son Sahidul resided elsewhere. His Jamai Hasanuddin came to hospital in the next morning. He narrated the incident to him also. He was released from hospital after about 10/11 days. His lungi and ganji were soaked with blood and those were later handed over to Daroga.

- ix. In his cross-examination PW-5 stated that it was a moonlight night. It was around 10/10:30 p.m. At that time there was a connecting path way in between the house of mine and the accused persons. His youngest son Sirajul fell down and became unconscious. Both he and Sirajul fell down on the ground but he did not lose his sense. He raised hue and cry. His sons came but wives of sons did not come there. The P.O. was 5/7 cubits away from his house. No local persons came there at that time. His sons Ahidul (PW-1) and Esrajul (PW-4) took him and injured Sirajul to hospital in a van. At that time he did not state to his sons about the names of assailants. Accused persons were his close neighbours and he knew them by name also. After he became well he narrated the incident to his sons and others.

- x. PW-6 Hassaruddin Mia was a post occurrence witness. He deposed that after his father-in-law was brought to home from hospital his blood stained wearing apparels namely Lungi and Ganji were handed over to police. The seizure list on which he put his signature was marked Exbt.- 3/1.
- xi. In her cross-examination PW-6 stated that he did not find the seized articles in court. He met with his other brother-in-laws also at hospital. They did not state anything to him. He learnt the entire incident from his father-in-law.
- xii. PW-7 Asafuddin Rahamanin his deposition stated that PW-1 was his elder brother's son. His house was about one-fourth mile away from PW-1's house. About 3 years back an incident occurred relating to Asanulla and Sirajul. After over of the incident of assault he came to P.O. By that time the injured persons were already taken to hospital in a Thela. He learnt from the inmates of the house of Asanulla that there was a marpit in which Asanulla and Sirajul sustained serious injuries and that the condition of Sirajul was critical. On the next morning he went to Tufanganj hospital to see the injured. Sirajul already died. Asanulla was also seriously injured, but was able to talk with him. Asanulla told him the names of his assailants. Asanulla named all these accused persons as their assailants.
- xiii. In his cross-examination PW-7 stated that there were other houses also in between his house and Asanulla's house. The inmates of those houses also came there alongwith him. Their relatives namely, Aminul Islam,

Amjad Hossain, Azad Hossain, Majiruddin, Md. Sheikh, Ajid Hossain, Sumeruddin and others came there. All of them their close relations. He met with Sirajul's wife and other inmates of said house. He also learnt the incident from them. In that night he went back to his house.

- xiv. PW-8 Dr. Lipi Mandal in her deposition stated that she was a medical officer attached to Tufanganj S.D. Hospital. On 12.08.97 around 12:45 a.m. one Sirajul Hoque was brought to hospital in unconscious condition and was admitted in hospital. The patient was brought by Md. Ahidul Mia and gave history of assault as follows:

At 10:30 p.m. on 11.08.97 assaulted by Kachem Mia, Soleman etc., at village Nakkatigach. After examination of the patient she found that the patient was unconscious, not responding to painful stimulus, pulse – 120 per minute, irregular feeble, B.P. – not recordable, pupils – dilated, reacting sluggishly to light, respiratory distress ++, pallor ++. As on duty doctor she treated the said patient. As per diagnosis there was shock due to internal hemorrhage. As much as admissible she administered medical aid to patient. Patient expired at 02:10 a.m. on 12.08.97. During admission and after the death she informed the Tufanganj P.S. The bed-head ticket of patient of Sirajul Hoque prepared by on duty hospital staff in regular course of business and also contains her necessary endorsement and signature. Two pages are marked Exbt.-4 collectively.

On that date at about the same time she also examined one patient Asanulla Mia after he was admitted. She was also admitted by the patient party namely Ahidul Mia of village Nakkatigach. She was

admitted in hospital around 1 a.m. on 12.08.97. The patient gave history of assault by Kachem, Soleman, Chengtu etc. at 11 p.m. on 11.08.97. at Nakkatigach. Patient was unconscious, pulse – 102 per minute, bleeding from injury side ++, pupils – normal size reacting to light. Three lacerated injuries each about 1” X 2½” in length detected over scalp. Dorsum of left palm swollen. The patient was medically treated by him till his discharge. The patient was discharged on 19.08.97. If a person was assaulted on his head with lahti he may sustain such type of lacerated injury. The injury of swelling might have been caused by any heavy blunt weapon. There was note of removal of stitch in the bed head ticket of injured Asanulla Mia. The bed-head ticket of Asanulla was prepared by on duty hospital staff in usual course of business and also bears her relevant endorsement and signature. On admission of that patient she also informed police. The bed-head ticket and three enclosures marked exbt.- 5 collectively.

- xv. In her cross-examination PW-8 stated that a person having pressure may have internal hemorrhage. The patient or the patient party did not state weapons of assault before him. If a person falls on hard and blunt substance he may sustain those injuries on head. If a person falls on a hard and blunt substance and come to contact with one surface then usually one injury may occur.
- xvi. PW-9 Dr. M. Chakraborty in his deposition stated that he was M.O., attached to M.J.N. Hospital, Coochbehar. On 13.08.97, he was posted in same place in same capacity. He held P.M. examination of one dead body

of victim Sirajul, Male, 28 years Muslim brought from male ward of S.D. Hospital, Tufanganj and identified by constable 231 Upen N. Roy in connection with Tufanganj P.S. Case No. 74/97 dated 12.08.97. Along with dead body, he received the inquest and challan. On examination of the dead body he found the following injuries:

- a) Face was congested and swollen. Bleeding from mouth and nostrils, rigormortis was nil.
- b) $\frac{1}{2}$ " X $\frac{1}{2}$ " abrasion over the forehead on the right side above the right eyebrow.
- c) Over the parietal region on right side $\frac{1}{2}$ " X $\frac{1}{2}$ " abrasion.
- d) Over the legs 2" below the knee curved and blunt injury mark with blackened margin about 2" in length one in number in each leg.

On dissection, He found the following injuries:

- e) Haematoma in scalp underneath the skin in the right parietal region with injury of soft tissue and blood vessels & there was collection of blood inside the cranium with rupture of blood vessels of the brain water.

Death was in his opinion due to the above mentioned injuries resulting in shock and hemorrhage which was anti-mortem and homicidal in nature. He prepared P.M. report in duplicate in same carbon process. That was the carbon impression of the P.M. report duly filled & signed up by him (marked Exbt.-6).

- xvii. In his cross-examination PW-9 stated that it was not possible for him to state whether he perused the injury report at the time of conducting P.M. examination. Not a fact that there was not injury as stated by him in P.M. report. Not a fact that death was not homicidal in nature.
- xviii. PW-10 S.I. J. Rajakin his deposition stated that he was S.I. of Police attached to Kotwali P.S., Cooch Behar. On 12.08.97 he was attached to Tufanganj P.S. as S.I. of Police. S.I. Anil Kr. Ghosh was the then O/C., of Tufanganj P.S. He knew his hand writing and signature. On receipt of a written complaint from Ahidul, S.I. A.K. Ghosh started Tufanganj P.S. Case No. 74 dated 12.08.97 under Sections 143, 447, 325 and 304 of I.P.C. He endorsed the case to him for investigation. That was the formal F.I.R., duly filed up and signed by S.I. A.K. Ghosh (marked as Exbt.-7). He also made that endorsement with signature on the written complaint (marked as Exbt.-1/2). After taking up investigation he perused the F.I.R., and went to Tufanganj hospital to examine the victims. On hospital he found the dead body of the victim namely, Sirajul Mia and prepared that inquest report (marked as Exbt.-2/1). He prepared one challan of the dead body in same carbon process in duplicate. The carbon copy of said challan (marked as Exbt.-8). The dead body was sent to M.J.N. Hospital, Coochbehar for P.M. examination along a copy of inquest and challan through constable no. 231 Upendranath Roy. He visited the P.O. namely village – Nakkatigach. P.S. – Tufanganj. He prepared the sketch map

with index of the P.O. under his handwriting and signature (marked as Exbt.-9 collectively). He examined the available witnesses and recorded their statements under Section 161 Cr.P.C. He arrested the F.I.R., namely accused Kachem Mia, Tani Bibi and Bula Bibi. Later forwarded them to court. On the very first day he found injured Asanulla Mia was already admitted in hospital but he was not in a position to give any statement at that time. After over of P.M. examination he seized the wearing apparels of the deceased under that seizure list as produced by the escorting constable. That was the seizure list duly prepared and signed by him (Exbt.-3/2). On 18.08.97 he arrested accused Solemn Mia and Dildar Mia @ Chengto and produced them before court on the next day. After discharge of Asanulla from hospital he came to P.s. and he recorded his statement under Section 161 Cr.P.C., on 20.08.97. Later he collected the bed-head ticket of Sirajul and Asanulla Mia from Tufanganj hospital and also collected P.M. examination report of deceased Sirajul Mia. Later he further recorded the statements of remaining witnesses u/s 161 Cr.P.C. After completion of investigation he submitted charge-sheet against all six F.I.R., named accused persons under Sections 143,447, 325 and 304 of I.P.C.

He examined witness Sajina Bibi (PW-2). She stated to him that a cow of their neighbor Kachem Mia damaged their new gamari tree and that quarrel cropped up on that issue from the morning and that it was settled in the evening and that in the night they again started to

abuse and that her father-in-law Asanulla then came out of his house and asked them to stop and that accused persons (named) armed with lathi and dao came there and that her Bhasur Adhidul, her husband and her mother-in-law rushed there and that Kachem Mia took away dao from his daughter and assaulted her father-in-law on his head and that her husband tried to save her father-in-law but accused Solemn and his brother Dilbar started to assault him with lathi and that being assaulted her husband and father-in-law fell down on the ground being seriously injured.

- xix. In his cross-examination PW-10 stated that the case was endorsed to him on 12.08.97 at 10:45 hrs. On that day he visited the P.O. around 13:45 hours. He did not note the distance in between the house of de-facto complainant and the accused persons. The distance in between the houses of victim and accused persons was about 15 meters. In C.D. it was noted that distance of the house of victim was about 2½ meters from P.O. He did not examine Nalini Barman or Nagen Barman. He did not examine Panchayet Prodhan of the village.

14. The following sections of the Indian penal Code 1860 has been reproduced below: -

148. Rioting, armed with deadly weapon.—Whoever is guilty of rioting, being armed with a deadly weapon or with anything which, used as a weapon of offence, is likely to cause death, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

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149. Every member of unlawful assembly guilty of offence committed in prosecution of common object.—If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence.

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304. Punishment for culpable homicide not amounting to murder.—Whoever commits culpable homicide not amounting to murder, shall be punished with 1 [imprisonment for life], or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death;

or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.

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325. Punishment for voluntarily causing grievous hurt.—Whoever, except in the case provided for by section 335, voluntarily causes grievous hurt, shall be punished with imprisonment of either

description for a term which may extend to seven years, and shall also be liable to fine.

15. The PWs were related and that no independent local witnesses was examined by the prosecution to support the prosecution case though admittedly there were many houses nearby. Furthermore, the police seized the cloths of the deceased but were not produced in court during evidence. The evidence of the prosecution witnesses did not attribute any overt act to the present appellant to have injured the victims. Apart from the name of the appellant being indicated by PW-5, the involvement and presence of the appellant at the place of occurrence was not mentioned by any other eye-witness devoid of false implicating factors, prevarication, self-interest, enmity and vengeance can be considered to be sacrosanct. However, the evidence of such injured witness cannot be relied upon or considered to be trustworthy to express vague assertions without plausible adverse and culpatory motive. The specific act on the part of the appellant was not described. The offending weapon was not recovered. None of the prosecution witnesses apart from PW-5, who had instantly lost his sense recounted the presence and active participation of the appellant in the incident of assault.
16. The prosecution failed to establish the ingredients which constitute the aforesaid offences.
17. Under the facts and circumstances of the case in absence of proof of commission of the offences by the appellant beyond reasonable doubt, the prosecution has failed to prove its case and accordingly the appeal is allowed.

18. Accordingly, the instant criminal appeal stands disposed of.
19. There is no order as to costs.
20. Lower court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.
21. 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.)