

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 510 of 2001

**Prafulla Barman @ Roy
-Vs-
The State**

Amicus Curiae : Mr. Rajeswar Chakraborty

For the State : Mr. S.G. Mukherji
Ms. Faria Hossian
Mr. Anand Keshari

Heard on : 28.06.2023, 07.07.2023, 05.10.2023

Judgment on : 08.01.2024

Ananya Bandyopadhyay, J.:-

1. This appeal is preferred against the judgment and order dated 04.09.2001 passed by the Learned Additional Sessions Judge, Cooch Behar in Sessions Trial No. 4(6) of 2000 arising out of Sessions Case No. 37 of 1991 convicting the appellant under Sections 307/323/324 of the Indian Penal Code and sentencing him to suffer rigorous imprisonment for 5 years and to pay a fine of Rs. 2500/- in default to suffer simple imprisonment for 1 year for the offence punishable under Section 307 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for 1 year and also to pay a fine of Rs. 1000/- in default to suffer simple imprisonment for 6 months for the

offence punishable under Section 324 of the Indian Penal Code and further sentenced to suffer rigorous imprisonment for 6 months and also to pay a fine of Rs. 500/- in default to suffer simple imprisonment for 3 months for the offence punishable under Section 323 of the Indian Penal Code and all the sentences will run concurrently.

2. The prosecution case emanated on the basis of a complaint which inter alia stated that on 15.03.1988 at about 3 P.M. when the complainant was cleaning the courtyard, her younger brother Ranjit attempted to kick her. Her father protested to such an act of her brother and abused him. Her father further told her brother to consider who was elder and who was younger. On hearing that her maternal Uncle Prafulla Barman @ Roy came out and warned them. Thereafter at about 8 P.M. said Prafulla Barman @ Roy came to the house of the complainant and asked her to come out of her room. Thereafter Prafulla assaulted the complainant with an iron rod on her right leg. Prafulla also assaulted her mother with that iron rod on her left hand as well as a knife. At that time her grandfather came to rescue and was assaulted on his leg with rod by Prafulla. Her father tried to flee, but Prafulla eventually caught him and stabbed on his back and belly with a knife. As a result, her father fell on the ground. Other persons came to spot being attracted by hue and cry and they took her father to hospital.
3. On the basis of the said written complaint Dinhata P.S. Case No. 19 dated 15.03.1988 was registered.
4. Investigation progressed and on completion charge-sheet was submitted against the above named appellant/accused person under Sections

307/323/324 and 325 of the Indian Penal Code, 1860. Charges were framed to which the petitioner pleaded not guilty and claimed to be tried.

5. The prosecution cited 11 witnesses and executed certain documents.

6. The Learned Amicus Curiae for the appellant submitted that :-

- i. The Learned Trial Court ought to have considered that the PW-1 i.e. one of the victims was assaulted by a sharp cutting weapon (though the injury report of PW-1 has not been exhibited) so the offence does not come within the ambit of Section 323 of the Indian Penal Code, 1860.
- ii. To prove a case under Section 323 of the Indian Penal Code, 1860 the victim must be examined by the Medical Officer. However in this case the victims (PW-1 and PW-2) have not been examined by a Medical Officer. So the case under Section 323 of the Indian Penal Code, 1860 does not lie against the above-named appellant/accused person.
- iii. There was a family dispute between the family of the victim and the family of the accused person over the boundary resulting into an altercation and scuffling whereby the victim PW-9 fell on the ground and sustained injury.
- iv. From the deposition of most of the witnesses apart from the victims and the accused person, other villagers assembled at the place of occurrence. However independent witnesses were not examined. The witnesses adduced by the prosecution were closely related to the family of the complainant. Though the Learned Trial Court

considered the PW-3 i.e. rickshaw-puller as an independent witness but he was also closely related to the family of the complainant and the deposition of PW-3 revealed him to be a close relative of the family of the victim.

- v. PW-6 i.e. the Medical Officer deposed to have examined the victim Khitish Chandra Roy i.e. PW-9 who was injured by a sharp cutting article, however its nature was not mentioned in the report.
- vi. It appeared from the F.I.R. that the accused used the iron rod and a weapon like knife but that iron rod and the weapon like knife were not sent for forensic examination nor any report of the forensic expert had been examined.
- vii. The Learned Trial Court ought to have considered that the F.I.R. was lodged by complainant at 23.05 hours on 15.3.1988. The incident took place on the same date at about 20.00 hours. It was suspicious that the injured victim instead of going to the hospital went to the police station.
- viii. PW-1 deposed that *"My father sustained bleeding injury and his wearing appears were stained with blood"* but these wearing apparels were not exhibited.
- ix. It has been considered by the Learned Trial Court that PW-3 is an independent witness, who in reality was a relative of the complainant.
- x. The Learned Trial Court held that the PW-6 stated that the victim Khitish Roy stated to have been assaulted by the accused. However

revealed the deposition that the name of accused was not mentioned by Khitish Roy (victim) before the doctor examined him at that time.

- xi. The deposition of PW-6 (Doctor) disclosed that the patient was shifted to M.J.N. Hospital, Cooch Behar from the hospital of Dinhata. No report was submitted by the doctor of M.J.N. Hospital where the victim was admitted for about 58/59 days.
 - xii. Even the evidence of doctors who found incised wound on the body of the injured is inconsistent with the allegation of assault with buttom which would result in lacerated wound.
 - xiii. The appellant happened to be a relative of the complainant and her family members and as such a brother of PW-2 i.e. the mother of the complainant i.e. PW-1, who was also one of the injured persons. No motive had been assigned by the prosecution for commission of the alleged offence.
7. The appellant stated that no complaint was lodged by any of the witnesses when the earlier incident took place on 15th September, 1988 at 3 P.M.
 8. PW-1 was assaulted with an iron rod on her right leg on September 15, 1988 at 8 P.M. However, the written complaint was lodged by P.W-1 on the same day at 11:05 P.M. and instead of going to hospital, she went to the police station. Therefore, it raises a doubt as to whether at all PW-1 was assaulted by the appellant in the mode and manner as described by the prosecution.
 9. PW-1 and PW-2 were assaulted with a sharp cutting iron rod, so the offence does not come within the ambit of Section 323 of the Indian Penal Code.

10. Both the PW-1 and PW-2 received bleeding injuries and were treated by doctors but there were no Injury Reports of PW-1 and PW-2 on record to show that they were treated by any doctor after the incident and the same were also seized by the Investigating Officer, therefore, the Learned Trial Court has erred in convicting the appellant under Section 323 of the Indian Penal Code.

11. Manner as to how PW-9, Khitish Chandra Roy (father of PW-1/Complainant) received injuries on his person :-

- i. As per written complaint- *“Seeing this my father tried to run away, but Prafulla ran after my father and caught him and struck on his back and belly with the knife”.*
- ii. As per the evidences of PW-1, the complainant and PW-2, the mother of the complainant/wife of PW-9- *“Then my father tried to rescue my mother. As a result, the accused stabbed him on the belly and shoulder”.*
“My husband came to rescue me. The accused also stabbed my husband on his shoulder and belly”
- iii. As per evidence of PW-9 himself –*“On hearing the sound I came to the spot and my daughter, Aparna narrated the incident to me. On seeing me Prafulla assaulted me on my left chest with a dagger and gave another blow on my left shoulder.”*

12. There had been discrepancies regarding the injuries to have been inflicted.

- i. As per the written complaint: PW-9 received stabbing injuries on his back and belly by a knife.
- ii. As per the evidence of PW-1, PW-2, PW-4, PW-7 and PW-8, PW-9 received bleeding injuries on his shoulder and belly by a knife.
- iii. As per evidence of PW-9 himself: he received injuries on his chest and shoulder.
- iv. As per the evidence of PW-6 (Doctor) who treated PW-9 observed the following two injuries –
 - a. One penetrating injury on the left side of the chest.
 - b. Sharp cutting incised wound on the left deltoid (shoulder) region

PW-6 did not find any injury on the belly or on the back of PW-9 and as a result it casts a shadow of doubt as to whether at all PW-1, PW-2, PW-4, PW-7 and PW-8 were eye-witnesses to the incident or not. Therefore, the Learned Trial Court has erred in relying upon the versions of the prosecution witnesses.

13. The knife (offending weapon) was not seized by PW-11 (Investigating Officer). The Investigating Officer had seized only the iron rod but PW-9 was not assaulted by the same.

As per the evidence of PW-5 *“I came to know that Khitish fall down a sharp cutting ‘fala’ at the time of incident. There was scuffling in between*

Prafulla's father and Khitish and as a result Khitish fall down on a 'fala' and sustained injury".

Moreover, PW-6 in his cross examination stated *"This type of injury may be caused if a person falls upon a sharp cutting articles"*.

However, as the knife (offending weapon) was not seized by PW-11 (Investigating Officer), the nature of the offending weapon could not be ascertained as well as the link to connect the appellant with the alleged offence could not be established.

14. PW-9 was examined by the Investigating Officer on March 24, 1988 i.e. 9 days after the date of incident.

15. The Investigating Officer seized one Dying Declaration (Exbt. 7) of PW-9. However, none of the witnesses stated anything about the said dying declaration. PW-6 who treated PW-9 also did not state anything about the dying declaration and he was also not examined by the Investigating Officer. The Investigation Officer also seized the blood-stained mud and the wearing apparels of PW-9 but the same were not sent for FSL and thereby, it could not be ascertained as to whether the same was of PW-9 or not.

16. Only one adjacent neighbour was examined by the prosecution and later on, he was declared hostile. Apart from PW-5, no other neighbours were examined by the prosecution.

17. As per the evidence of PW-2: *"There was ill feeling in between our family and the family of the accused person over the issue of land"*.

Again as per the evidence of PW-5: *“There was a land dispute in between Prafulla and Kshitish”*. Therefore, false implication of the appellant by PW-9 cannot be ruled out completely.

18. The witnesses deposed almost after a long gap of 12 years. PW-1, PW-4, PW-7 and PW-8 were aged about 13 years, 10 years, 15 years and 12 years at the time of incident respectively. It was however strange that in spite of deposing after 12 years, how these witnesses could narrate such minute details of the incident.
19. There were several omissions, contradictions and exaggerations by and between the witnesses and they had subsequently tried to develop a case in order to secure the conviction of the appellant. Therefore, their versions cannot be safely relied upon.
20. The Learned Advocate for the State submitted that the presence of injured witnesses and their testimony are sufficient to prove the prosecution case in absence of any independent witness. Moreover the evidence of the injured witnesses corroborated with the medical evidence with regard to the injuries inflicted on the vital organs of the body. No discrepancy could be attributed to the place of occurrence, the time and the flow of events. Minor lapses on the part of the investigating agency do not affect the prosecution case where its crux remains buttressed. The instant appeal shall be dismissed accordingly.
21. A circumspection of the prosecution witnesses revealed as follows:

- i. PW-1 stated that PW-9 was her father and the appellant was her maternal uncle. On 15.3.1988 around 3 p.m., PW-1 was cleaning the courtyard of her residence, and her younger brother, PW-4 hurled abuse at her. Which prompted her father to comment on such abusive language expressing anguish upon the nature of the language used. During this period, the appellant was occupied with the preparation of food within a kitchen area, situated in proximity of the residence of PW-1. This situation escalated into a verbal exchange between the appellant and PW-9, primarily concerning the comments made by PW-9. Subsequently, the appellant threatened PW-9. Further, on the evening of the same day, at about 8 p.m., the appellant asked PW-9 to exit her room. PW-1, following this request, also proceeded to leave her room. In the ensuing events, the appellant aggressively approached PW-1, with aid of a sharp, iron rod as a weapon, inflicted in an injury on her leg. This action prompted PW-1 to raise an alarm. PW-2, identified as the mother of PW-1, emerged from the room in response to the commotion and consequently, she too was subjected to an assault by the appellant with the same iron rod, causing an injury on her left hand accompanied with bleeding. In an attempt to intervene and protect his wife, PW-9 was subsequently attacked by the appellant, who inflicted stab wounds on PW-9's abdomen and shoulder, leading to bleeding injuries and blood-stained wearing apparels. Pursuant to the incident, the appellant absconded from the scene. The commotion resulted in the gathering of local villagers at

- the place of occurrence. These villagers facilitated the transportation of PW-9 to Dinhata Hospital. Due to the severity of his injuries, PW-9 was later transferred from Dinhata Hospital to M.J.N. Hospital in Cooch Behar, where he underwent medical treatment for a duration of 59 days. In response to these events, PW-1 initiated a formal complaint at the local police station. This complaint was marked as Ext.1, with PW-1's signature identified as Ext.1/1. The police subsequently executed a seizure of PW-9's blood-stained wearing apparels, which was marked as Ext.2.
- ii. During cross-examination, PW-1 clarified that the residences of PW-1 and the appellant were contiguous, with no fencing. PW-1 also disclosed that the appellant's father was similarly assaulted with an iron rod, resulting in injuries accompanied by bleeding. PW-1 negated the allegation that her family members had engaged in any forceful attempt to expel the appellant from their land.
 - iii. PW-2, who identified PW-1 as her daughter and PW-9 as her husband, deposed that approximately 12 to 13 years prior, an incident occurred involving their son, PW-4, and daughter, PW-1. PW-4 was consuming his meal while PW-1 was engaged in cleaning the courtyard, during which some debris inadvertently fell onto PW-4's meal. This led to PW-4 addressing PW-1 using language of an abusive nature, an act that prompted PW-9 to comment on such usage of language. The appellant, in response to PW-9's remarks, initiated a dispute with the members of PW-2's family. This initial confrontation

transpired at approximately 3pm. The situation escalated later that evening, around 8pm, when the appellant assaulted PW-1 with a sharp, cutting rod. Subsequently, the appellant directed his aggression towards PW-2, employing a knife to inflict an injury on her left hand, resulting in bleeding. In an attempt to intervene and provide assistance, PW-9, approached the scene, only to be assaulted by the appellant who inflicted stab wounds on his stomach and shoulder, causing bleeding injuries. Thereafter, the father of the appellant arrived in order to diffuse the situation. However, he too became a victim of the appellant's aggression, sustaining a head injury by an iron rod, which led to bleeding. The ensuing chaos and distress prompted PW-2 and others to raise an alarm, culminating in the gathering of local villagers at the scene of the incident. PW-2 recounted the events to the villagers, who then facilitated the transport of PW-9 to Dinhata Hospital. After initial treatment, PW-9 was transferred to M.J.N. Hospital for a prolonged medical stay of approximately two months. PW-2 also received medical attention at Dinhata Hospital. In the course of the investigation, the police conducted a visit to PW-2's residence, where she was examined by the Investigating Officer. The police executed a seizure of PW-9's garments, and PW-2's signature on the seizure list was recorded as Ext.2/1. Additionally, the police collected samples of blood-stained earth, documented under a separate seizure list, marked as Ext.4.

- iv. During cross-examination, PW-2 acknowledged the existence of a land-sharing arrangement between her family and the appellant's family, a situation that had given rise to animosity. She refuted any suggestion that a physical scuffle leading to PW-9's fall and sustaining injuries thereby.
- v. PW-3, a rickshaw puller, provided testimony regarding his role in transporting the injured victim, PW-9, to Dinhata Hospital. PW-3 recounted that during the journey, he observed injuries on PW-9, specifically noting bleeding from the shoulder and stomach regions. It was during this transport that PW-9 imparted to PW-3 the information that the appellant had inflicted these stab wounds upon him.
- vi. Upon cross-examination, PW-3 further elaborated on his familiarity with both PW-9 and the appellant. He disclosed that PW-9 was not only his neighbor but also shared a common courtyard with the appellant.
- vii. PW-4 stated that PW-9 was his father and PW-1 was his sister. He recounted that on 15.3.1980, a verbal altercation occurred between him and his sister, PW-1, concerning an issue related to his meal. During this altercation, PW-4 admitted of utilizing abusive language to PW-1, an action that prompted a comment from their father, PW-9. This comment subsequently led to the appellant's intervention and protest. This interaction converted into a quarrel between PW-9 and the appellant, centering on the comment made by PW-9, and

culminated in the appellant issuing threats. PW-4 further detailed later that evening, at approximately 8 p.m., the appellant returned and summoned his sister, PW-1, to step outside her room. Upon her compliance, the appellant immediately perpetrated an assault on PW-1 using an iron rod. This incident prompted PW-4's parents to emerge from their room, resulting in the appellant assaulting his mother, inflicting an injury on her left hand, and attacking his father, causing injuries to his stomach and shoulder. The ensuing commotion led to PW-4 and others, raising an alarm, attracting many villagers to the scene, after which the appellant fled. Subsequently, PW-9 was transported to Dinhata Hospital via rickshaw and later admitted to a hospital in Cooch Behar for a duration of two months.

- viii. During cross-examination, PW-4 clarified that the quarrel between his father, PW-9, and the appellant lasted approximately half an hour, and no villagers were present at the time. He acknowledged that this incident was not reported to any authorities, including the Panchayat Pradhan. The altercation that transpired at 8pm, according to PW-4, continued for about an hour. He identified PW-3 and PW-5 as witnesses present at the scene during the 8pm incident. PW-4 also specified that he was 10 years old at the time of the incident. Additionally, he refuted the suggestion that his father's bleeding injury was a result of an accidental fall onto a sharp object known as a "fala".

- ix. PW-5, who was acquainted with PW-9, stated that upon hearing the commotion and cries emanating from PW-9's house, he proceeded to the location and there, he observed PW-9 suffering from bleeding injuries located on his stomach and shoulder. However, the prosecution declared PW-5 as a hostile witness.
- x. During the cross-examination, PW-5 divulged additional details pertinent to the case. He acknowledged the existence of a land dispute between the appellant and PW-9, which may have been a contributing factor to the altercation. PW-5 also testified to have seen an injury on the head of the appellant's father, as well as injuries on the appellant's body. He mentioned that, according to his understanding, PW-9 had sustained bleeding injury as a result of falling onto a sharp cutting object known as a "fala" during a physical altercation involving the appellant's father and PW-9. Furthermore, PW-5 conveyed information he had received, which indicated that it was PW-9 who initially assaulted both the appellant and the appellant's father.
- xi. PW-6, the doctor, testified regarding the treatment administered to PW-9 at Dinhata Hospital on 15.3.1988. PW-6 provided medical attention to PW-9, who had sustained injuries. He examined the injuries on PW-9 and opined that:-

"1. One penetrating injury on the left side of the chest 3" below x 2" x lateral to the left nipple about 1" in length. Fat is coming out of penetrating wound.

2. Sharp cutting incised wound on the left deltoid region about $\frac{1}{2}$ " x $\frac{1}{2}$ " x $\frac{1}{2}$ ".

The condition of the patient was grave and for that reason the patient was shifted to emergency unit of that hospital. After this type of injury reaches to the heart then the patient may die. On seeing the condition of the patient he was shifted to M.J.N. Hospital in Cooch Behar."

The injury report was marked as Ext.5.

- xii. During cross-examination, PW-6 acknowledged the possibility that the type of injuries observed on PW-9 could be consistent with injuries sustained from a fall onto sharp cutting objects. However, PW-6 also noted that PW-9 had disclosed to him that these injuries were a result of an assault by the appellant. Additionally, PW-6 confirmed that PW-9 was brought to the hospital by PW-3.
- xiii. PW-7 identified PW-9 as her father and recounted that, while PW-1, her sister, was cleaning the courtyard, PW-4, her brother, was consuming his meal. During this time, an incident occurred wherein some material accidentally fell onto PW-4's meal, leading him to use abusive language towards PW-1. This incident elicited a comment from their father, PW-9, which subsequently sparked a quarrel between the appellant and PW-9, centered on the comment made by PW-9. During such confrontation, the appellant reportedly issued a threat towards her father.
- xiv. PW-7 further detailed that at 8 pm on the same day, the appellant returned, this time armed with an iron rod. The appellant called out

to PW-1, and upon her emergence, he assaulted her with the iron rod. This action prompted PW-7's mother to intervene in an effort to protect PW-1, which resulted in the appellant assaulting her as well, on her left hand. Following this, PW-9 was also attacked by the appellant, sustaining injuries on his left shoulder and stomach. Additionally, PW-7 reported that the appellant's father attempted to intercede and was subsequently assaulted by the appellant. Thereafter, PW-9 was initially taken to Dinhata Hospital and then transferred to Cooch Behar Hospital by ambulance.

However, during cross-examination, PW-7 provided significant clarification by stating that, there was no altercation between the appellant and her father at 3pm.

- xv. PW-8 stated that PW-9 was her father and PW-1 was her sister. She narrated the incident that took place at 3 pm. Her deposition was corroborated by PW-1, PW-2, PW-4 and PW-7.
- xvi. PW-9, the injured victim and the father of PW-1, PW-4, PW-7 and PW-8, and the husband of PW-2, recounted that on 15.3.1988, at 3pm, a verbal altercation occurred involving his children. This incident began when his son inadvertently kicked a bamboo stick being used by his daughter for cleaning, leading to a slap from PW-1 to PW-4. PW-9 intervened, admonishing his son and drawing a comparison between his behavior and that of the appellant, which resulted in the appellant entering the courtyard and issuing threats towards PW-9.

- xvii. The situation escalated later that evening, around 8pm, when the appellant reappeared and physically assaulted his daughter with an iron rod. The commotion attracted the attention of the appellant's father, and upon PW-9's arrival at the scene, he was informed of the assault by PW-1. Subsequently, PW-9 himself became a target of the appellant's aggression, sustaining injuries from a dagger to his left chest and shoulder. This incident prompted PW-9 to alert the surrounding community, leading to a gathering of villagers at the scene. PW-9 then relayed the events to the villagers, after which he was transported first to Dinhata Hospital and subsequently to M.J.N. Hospital, necessitating a hospital stay of 58 days. Additionally, the appellant's violent actions extended to the assault of PW-2 and his own father, both of whom incurred injuries.
- xviii. During cross-examination, PW-9 acknowledged the frequent verbal altercations among his children. He further stated that he had heard about the alleged injury sustained by the father of the appellant.
- xix. PW-11, an officer posted at Dinhata police station on 15.3.1988, cited his duties which included reviewing of the case diary and visiting the place of occurrence, where he prepared a sketch map with an index. He examined the witnesses and recorded their statements under Section 161 of the Cr.P.C. PW-11 seized an iron rod which was involved in the incident, under a seizure list marked as Ext.6. He also collected blood-stained earth marked as Ext.3/1 and the victim's clothing marked as Ext.2/2. He recorded the dying declaration of the

- victim, marked as Ext.7. Upon his transfer on 31.5.1988, PW-11 handed over the case diary to the O.C. of the Dinhata police station, ensuring continuity in the investigation.
- xx. During cross-examination, PW-11 stated that he recorded the victim's statement on 24.03.1988, which suggested a delay between the date incident date and the recording of the statement. The sketch map prepared by PW-11 was not found in the case diary, raising questions about the documentation of the crime scene. He did not seize an injury report of PW-2, nor did he seize any knife. The seized clothing was not sent to the F.S.L., a lapse in the investigation as forensic analysis could provide crucial evidence. He did not examine PW-6, the doctor who treated the victim, missing an opportunity to corroborate medical evidence with the evidence of the other witnesses.

22. Section 307 of the Indian Penal Code states as follows:

“Attempt to murder.- *Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to [imprisonment for life], or to such punishment as is hereinbefore mentioned.*

Attempts by life-convicts.- *[When any person offending under this section is under sentence of [imprisonment for life], he may, if hurt is caused, be punished with death.]*

Illustrations

(a) A shoots at Z with intention to kill him, under such circumstances that, if death ensued A would be guilty of murder. A is liable to punishment under this section.

(b) A, with the intention of causing the death of a child of tender years, exposes it in a desert place A has committed the offence defined by this section, though the death of the child does not ensue.

(c) A, intending to murder Z, buys a gun and loads it. A has not yet committed the offence. A fires the gun at Z. He has committed the offence defined in this section, and, if by such firing he wounds Z, he is liable to the punishment provided by the latter part of 3[the first paragraph of] this section.

(d) A, intending to murder Z by poison, purchases poison and mixes the same with food which remains in A's keeping; A has not yet committed the offence defined in this section. A places the food on Z's table or delivers it to Z's servants to place it on Z's table. A has committed the offence defined in this section."

23. Section 323 of the Indian Penal Code states as follows:

"Punishment for voluntarily causing hurt.- Whoever, except in the case provided for by section 334, voluntarily causes hurt, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both."

24. Section 324 of the Indian Penal Code states as follows:

"Voluntarily causing hurt by dangerous weapons or means.- Whoever, except in the case provided for by section 334, voluntarily causes hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both."

25. The incident of verbal abuse between the sister i.e. de-facto complainant/PW-1, her brother/PW-4 and her father/PW-9 took place around 3 p.m. on 15.03.1988 which agitated the appellant who presumably felt to have been stigmatized. As per the testimony of PW-1, PW-4 and PW-9,

the entire incident occasioned within the precinct of the landed property of the family. The appellant returned at about 8 p.m. after lapse of five hours with an iron rod and subsequently assaulted PW-1, PW-2 and PW-9. The intention to commit an offence is primarily prior to the accomplishment of the same. In the instant case, the appellant armed with an iron rod had appeared at the place of occurrence invariably with an ill-motive of revenge and thereby assaulted the aforesaid injured witnesses committing the offence convicted of.

26. There had been lapses on the part of the prosecution, since the offending knife was not recovered. The injury report of Anima Roy i.e. the wife of Khitish Chandra Roy, being PW-2 was not seized. The wearing apparels as well as the blood stained mud was not sent to the FSL for examination. The neighbours were not examined. The rough sketch map of the place of occurrence was not produced before the Court. The evidence of the related witnesses cannot be discarded if it appeared to be trustworthy and credible. The medical report marked as Exhibit-5 stated penetrating injury on the left side of the chest which denotes vital organ of a human body to establish an offence under Section 307 of the Indian Penal Code. The intention to commit an offence coupled with the injury report to have been inflicted on the vital parts of the body of the victim establishes the commission of the crime. The injury report mentioned the name of the appellant to have caused the injury to the injured Khitish Chandra Roy i.e. PW-9. PW-9 stated to have received injury on his left chest which has been corroborated by the medical report marked as Exhibit-5. PW-9 further stated that he had received a blow on his

left shoulder by a dagger and the same has been corroborated by the medical report marked as Exhibit-5 which mentioned sharp cut incise wound on the left deltoid region as aforesaid. Deltoid region is a crown of a shoulder covering the front side and back side of the joint. The intensity of penetrating wound elucidated in the form of fact coming out of a penetrating wound. The defence version that the victim had fallen on a 'fala' cannot be sustained and believed as the wound must have a continued wound and not in separate places of the body being on the chest and on the shoulder. The medical report and the testimony of the injured witnesses corroborate each other. In case of direct evidence by virtue of the deposition of the injured witnesses' corroboration of the same through independent eyewitnesses are not required. In the facts and circumstances of this particular case, the evidence of the injured witnesses is reliable, trustworthy and credible.

27. The lapses on the part of the Investigating Agency cannot be considered fatal to the prosecution case where the intention of the appellant as been aptly proved. The failure on the part of the Investigating Agency has stated above are, in the facts and circumstances of this particular case, can be ignored since the evidence of the injured witnesses as well as the medical report are corroborative and trustworthy. The attitude of the appellant to return after an initial brawl to effectuate his grievances is writ large through his action of appearing at the scene accompanying with an iron rod to render finality to his ill-motive.

28. There had been inconsistencies with regard to the time of the incident, however, due to passage of time between the date of incident and the date of

recording of evidence, the same can be the result of fallibility of human memory and such susceptibility can be ignored.

29. In view of the above discussions, the instant appeal being CRA 510 of 2001 is dismissed.

30. I record my appreciation for the able assistance rendered by Learned Advocate, Mr. Rajeswar Chakraborty, as *Amicus Curiae* in disposing of the appeal.

31. Lower court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.

32. 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.)