

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

PRESENT:

THE HON'BLE JUSTICE TIRTHANKAR GHOSH

C.R.A. 583 of 2019

***Md. Golab Sk. @ Ukil Sk. Ors.
versus
The State of West Bengal.***

For the Appellants : Mr. Ashraf Ali,

For the State : Mr. Joydeep Roy,
Ms. Sujata Das.

Reserved On : 17.09.2024.

Judgement On : **27.09.2024.**

Tirthankar Ghosh, J. :

The present appeal has been preferred against the judgment and order of conviction and sentence dated 27.08.2019 passed by the learned Additional District & Sessions Judge, Fast Track Court, Rampurhat in Sessions Trial No. 01/ September/2011 arising out of Sessions Case No. 102 of 2011, wherein the learned Trial Court was pleased to convict the appellants namely, Md. Golab Sk. @ Ukil Sk., Bodu @ Mohiuddin Sk. and Hebjan @ Hebjan Sk. @ Hebjan Ali for commission of offences under Section 324 of the Indian Penal Code and sentencing them to suffer Simple Imprisonment for 3 (three) years and fine of Rs.5,000/- each in default to suffer Simple Imprisonment for 2 (two) months each.

Murarai police Station case no. 239/10 dated 15.11.2010 was registered for investigation under Section 341/324/326/302/34 of Indian Penal Code on the basis of the written information/complaint filed by one Niamat Sk. (complainant) against Md. Golab Sk. @ Ukil Sk., Bodu @ Mohiuddin Sk, Tasdir @ Ashahad Sk., Sahajahan @ Hodu Sk., Saddam Sk and Hebja Sk @ Hebjan Ali. The allegations made in the letter of complaint addressed to the Officer-in-charge, Murarai Police Station were to the effect that:

- (i) The complainant's son Sipul Sekh was married to Toklima Begum one and half years ago. After marriage he started residing at his in-law's house.
- (ii) During his stay at the in-law's house the complainant's son was often assaulted by Bodu Sk (father of Toklima) and his relatives.
- (iii) On 14.11.2010 his son Sipul Sekh was assaulted by the accused persons during evening hours and being afraid, he came to the complainant's house and narrated the entire incident.
- (iv) After hearing the incident from his son both of them went to Bablu Sekh a member of Panchayat of the village. However, Bablu Sekh was not available and when the complainant was returning to Nimtala More and reached near the door of Bodu Sekh's house, the accused persons out of grudge started assaulting the complainant blocking the road in a pre-planned manner.

- (v) The complainant on being attacked started screaming when his nephew rushed to the spot. The accused surrounded all three of them and inflicted blows with sword, dagger and other sharp-edged weapons.
- (vi) As a result, Dalim Sekh fell down on the ground. The accused persons thought his son and nephew has died and left the place.
- (vii) The local people helped the injured to be shifted at Murarai Hospital by car and Dalim Sekh died on the way to the hospital, where doctor declared him dead. After primary treatment complainant's son was shifted to Rampurhat Hospital where the doctors advised him to be shifted to Burdwan Hospital. Sipul Sekh was fighting for his life at the hospital and as such being engaged with his treatment there was delay in reporting the incident by the complainant to the police authorities. The complainant therefore requested the police authorities to take immediate steps and punish the offenders.

On receipt of the aforesaid complaint Murarai Police Station case no. 239/10 dated 15.11.2010 was registered and the case was endorsed by the officer-in-charge to Sub-inspector M. Mondal (PW14) for investigation. The investigating officer on conclusion of investigation submitted charge-sheet under Sections 341/324/326/302/34 of the Indian Penal Code before the learned A.C.J.M. Rampurhat. The case being Sessions triable case, the learned

Magistrate after compliance with the relevant provisions of law was pleased to commit the case to the Court of Sessions before the Learned Additional Sessions Judge, Rampurhat. The records of the case were finally transmitted to the learned Additional District and Sessions Judge, Fast Track Court, Rampurhat for trial and disposal.

The learned trial Court on consideration of the materials collected by the investigating agency and after affording opportunity of hearing to both the parties was pleased to frame charges under Sections 341/324/326/302/34 of the Indian Penal Code against the six accused persons. The contents of the charges were read over to the accused persons to which they pleaded not guilty and claimed to be tried.

Prosecution in order to prove its case relied upon 14 witnesses which included PW1, Niamat Sk., complainant; PW2, Kaim Sk, relative of daughter-in-law of the complainant; PW3, Rabiul Sk., local resident and eye-witness; PW4, Hasibul Sk., local resident; PW5, Sipul Sk., injured and son of the complainant; PW6, Laddu Sk., eye-witness; PW7, Md. Safiuddin Ahmed, scribe of the FIR; PW8, Dr. Subhas Poddar, post-mortem doctor; PW9, Niranjana Das, constable of police who brought the dead body of Dalim Sk. from Murarai Rural Hospital to Rampurhat Sub-Divisional Hospital; PW10, SI Biswajit Chowdhury, Officer-in-Charge of Murarai Police Station; PW.11, Dr. Himadri Halder, medical officer of Rampurhat Sub-divisional Hospital who treated the injured Sipul Sk.; PW12, SI Brojendra Maity, second investigating officer of the

case; PW13, Dr. Hirak Bandhopadhyay, doctor of Murarai Rural Hospital; PW14, SI M. Mondal, first Investigating officer of the case.

PW1, Niamat Sk, complainant in his deposition before the Court stated that Sipul Sk was his son who was married to Toklima Bibi daughter of Bodu Sk. After marriage his son used to reside at his in-law's house and there was an instance of matrimonial quarrel in between his son and daughter-in-law along with her relatives when on 27th Kartik about a year ago his son came to his house and disclosed to him that his in-laws used to assault him time and again. Thereafter, he along with his son went to the member's house of he said village and in the midway he asked his son to stand at Nimtala and he alone went to member's house. Bablu Sk was not present at his home and when he was returning back in the way he met with Bodu Sk in front of his house. While speaking with Bodu Sk at that time his elder son assaulted him on his shoulder with a stick and at that time Ukil Sk, Bodu Sk, Tasdir Sk, Saddam Hossain, Sahajahan Sk, Hebjar Sk were present on the spot. He identified all the accused persons in Court and proceeded to state that all these accused persons were armed with iron rod, knife and lathi. On being assaulted he cried for help then his son Sipul Sk and his nephew Dalim Sk, Rabiul Sk and others rushed to the spot. After his son reached at the spot Hebjar Sk stabbed his son with a knife and Tasdir Sk stabbed with a big knife at the back of Dalim Sk. Being inflicted with such injuries both Sipul Sk and Dalim Sk fell down and the accused persons fled away from the spot presuming that both the persons have died. Thereafter he took his son and nephew towards the police station by

a Tata Sumo vehicle. As he reached near Santoshpur village on the way his nephew died and he reiterated such incident to the police station who advised them to take the injured to hospital and the police authorities also followed them. On examination doctor at the hospital declared his nephew Dalim Sk as dead. The doctor at Murarai Hospital also told them to take the patient Sipul Sk to Rampurhat Sub-divisional Hospital for better treatment. Sipul Sk after an hour was referred from Rampurhat Sub-divisional Hospital to Burdwan Medical College and Hospital and at about 4.00 am Sipul Sk was shifted to Burdwan Medical College and Hospital. Inquest on the dead body of Dalim Sk was held at Murarai hospital in his presence because he did not accompany his son at Rampurhat hospital or Burdwan Medical College and Hospital and identified the body of Dalim Sk and signed on the inquest report. He identified his signature which was admitted in evidence and on the next day he lodged a complaint with the police station. He identified the written complaint which was prepared by one Safiuddin as per his instruction. He identified his signature which was admitted in evidence. In cross-examination he replied that initially his son and daughter-in-law resided at his house and since one of the family members of his daughter-in-law created dispute, as such he informed the matter to the police station where a decision was taken and thereafter his son and daughter-in-law used to stay at the house of Bodu Sk. He denied of any knowledge regarding the livelihood of his son during his stay at his in-law's house as to whether his son used to reside separately or not. He also replied in cross-examination that he informed the police as to which

accused was carrying what arms. He reiterated the incident in cross-examination as was earlier narrated in his examination-in-chief.

PW2, Kaim Sk is a relative of daughter-in-law of the complainant but denied of being examined by the police and was declared hostile.

PW3 is Rabiul Sk. a local resident who deposed that he knew Dalim Sk who died on 14.11.2010 and he also knew Sipul Sk. On the relevant date at about 7.00 pm when he was passing by the road at that time he saw all the accused were talking when he asked them about the assembly, at that time the accused persons replied that there was a dispute with Sipul Sk. He identified all the accused persons in Court. When he was at a distance of half km from the place of occurrence he saw that the accused persons were running and on hearing the clamour and outcry he came back and saw Dalim Sk was lying on the road with two stab injuries at his back side. He also saw that a person was holding Sipul Sk who was severely injured and there was one stab injury on the lower portion of his abdomen. The witness thereafter proceeded to state that he along with other local people took Sipul and Dalim Sk to Murarai police station. Dalim Sk stated to them in the vehicle when he was brought to the police station that Tasdir Sk stabbed him. On the way to Murarai police station Dalim Sk died and as such when they reached the police station, police personnel requested them to take the injured at hospital first. In the hospital Dalim Sk was declared dead. He signed on the inquest report, his signature was admitted in evidence. In cross-examination he replied

that he heard noise from half km distance from the spot but he did not inform the police authorities that Dalim Sk told him that Tasdir Sk stabbed him.

PW4, Hasibul Sk is a local resident who deposed that he knew Sipul Sk and he had no knowledge regarding the incident and was also not examined by the police. He was declared hostile by the prosecution.

PW5, Sipul Sk who was injured and an eye-witness to the incident as also son of the complainant. The witness deposed that he married Toklima and after marriage he resided at his in-law's house. He alleged that his in-laws used to assault him regularly and on 27th Kartik about 14 months ago at about 7.00/7.30 pm he reported to his father that he was assaulted by his father-in-law and brother-in-law, when his father asked him to go to the Member. He was accompanied by his father who asked him to wait at Nimtala and proceeded to the Bablu Sk's house who is the Member. As Bablu was not at his residence his father had to return and at that time Tajdu, Ukil, Bodu, Hebja, Sahjahan and Saddam restrained his father. The accused persons were armed with tangi, hasua, talwar/knife and lathi and restrained his father in front of the house of Bodu. He identified all the accused persons in Court and proceeded to state that the accused persons were assaulting his father and on seeing such incident he rushed towards him for saving his father when Hebja stabbed him with a knife on right side of lower portion of his abdomen and on the side of the rib, Ukil assaulted him on his leg by hasua and his father-in-law Bodu assaulted him with a stick on his head. At the same time other

accused persons also assaulted him with sticks and stone on other parts of his body and when Dalim rushed to the spot at that time Tasdir stabbed on his back twice, as a result both of them fell down on the spot. Rabiul, Lader, Hasibul and other persons came to the spot and took both of them by a Tata Sumo vehicle to Murarai Police Station and from there they were taken to hospital. Dalim died on the way and the doctor at the hospital declared him dead. He was referred to Rampurhat hospital after primary treatment and from Rampurhat he was referred to Burdwan Medical College and Hospital where he was treated. In cross-examination he deposed that he did not tell to police that he went to his house at 8.00 pm to inform about the incident of assault by his father-in-law and other members of the in-laws house. He also in cross-examination accepted the fact that he did not tell the police authorities that Ukil assaulted on his leg with hansua and his father-in-law assaulted on his head with a stick and it is for the first time he is narrating the same in Court. Further he replied that he had stated to the police as to what arms/weapons were carried by which accused. He denied the suggestion on behalf of the defence that no incident occurred on the relevant date between him along with his family members of his in-laws house.

PW6, Laddu Sk is an eye-witness. He deposed that he knew both Sipul and Dalim and according to him Dalim died on 27th Kartik, 1417 B.S. at about 7.00 to 8.00 pm in front of the house of Bodu Sk. He proceeded to narrate that at the relevant time he was passing in front of the house of Bodu Sk and saw that Hebjan was assaulting Sipul by knife and Dalim Sk was assaulted by

Tasdir by knife on his backside on the above portion of his hip on both sides of spinal cord and other accused also were assaulting them with sticks. Both Sipul and Dalim fell down on the ground, as a result of such assault he along with others took them to Murarai Hospital by vehicle where doctor declared Dalim as dead, Sipul was referred to Rampurhat Hospital. Police conducted inquest over the dead body of Dalim and he signed on the inquest report as witness. He identified his signature on the inquest report which was admitted in evidence. He further stated that Sipul was married with the daughter of Bodu and family members of Bodu used to misbehave with Sipul. Similarly, in cross-examination he replied that Dalim and Sipul's house was situated at Danga Para and Nimtala Para in different areas. He further replied that he signed the inquest report after he made statement before the police. He also replied that he had stated the names of the accused persons who assaulted by tangi and sword and injured Dalim and Sipul.

PW7 is Md. Sofiuddin Ahamed, scribe of the FIR who deposed in Court that at per instructions of Niamat Sk (PW1) he drafted the FIR which was read over and explained to him and then Niamat Sk signed on it. He also signed in the FIR as a scribe and identified his signature and the contents of the FIR in Court. The FIR as such was admitted in evidence.

PW8 is Dr. Subhas Podder, post-mortem doctor who deposed that he conducted the post-mortem examination of dead body of Dalim Sk in connection with Murarai P.S. U/D case no. 37/10 dated 14.11.2010 and the

body of the deceased was identified by Constable Niranjan Das. On examination he found:

“(1) one in sized (read incised), penetrated injury measuring 2" x 1" wide at the centre into chest cavity deep. Elliptical in shape with everted Margins, placed (Sic) obliquely, over left lateral side of the chest wall over posterior Auxiliary line and 4" below auxiliary pit. On dissection and pressing the tract it is seen to have pierced skin, soft tissue, Muscles, vessels and nerves at that corresponding level to pass through and through at left 5th intercostals space with a direction to inwards, forwards and medially to pierce pleura to enter into chest cavity and finally it terminated by causing a penetrated injury measuring 1" x ¼" x ½" over lower lobe of left lungs.

(2) One elliptical shaped in signed (read incised) wound measuring 2" x ½" 3" deep plagued slightly oblique over vertebral column at the level of 7 thoracic vertebra. On dissection and tracing the track it has seen to pierce the skin soft tissue, muscles, nerve vessels at that corresponding level and finally terminated by piercing fractured of 7 thoracic vertebra and spinal cord (read cord).

(3) Chest cavity full of blood and blood clots. No other injury could have detected.”

He also opined that death was due to effect of the noted injury which are ante-mortem and homicidal in nature. He identified the post-mortem report

which was filled up and signed by him with his seal. The same was admitted in evidence. In cross-examination he replied that he did not give any opinion about nature of weapons and opined if he received the FSL report he could have gave further opinion.

PW9 is Niranjana Das, constable of police who brought the dead body of Dalim Sk from Murarai Rural Hospital to Rampurhat Sub-divisional Hospital. He identified his signature in the carbon copy of the dead body challan which was admitted in evidence.

PW10, Biswajit Chowdhury, Officer-in-charge of Murarai Police Station who deposed that on 15.11.10 he received a written complaint from Niamat Sk and after receipt of such complaint he started Murarai Police Station case no. 239/10 dated 15.11.2010 under Sections 341/324/326/302/34 of the Indian Penal Code. He also filled up the formal FIR, identified the same along with his signature, as such the formal FIR was admitted in evidence. He thereafter stated that the investigation was assigned to Sub-inspector M. Mondal, he also identified his signature and hand writing in respect of endorsement which was also admitted in evidence. In cross-examination he replied that he do not have any personal knowledge regarding the case.

PW11, Dr. Himadri Halder is medical officer of Rampurhat Sub-divisional Hospital who treated Sipul Sk. He deposed that on that day he treated Sipul Sk who was admitted with history of physical assault with the following injuries:

“(1) One penetrating wound lower part of chest wall of right side in the wide (sic) circular (sic) line measuring 6 C.M. x 3 C.M. x 5 C.M.

(2) One laterated (sic) wound in the mid line on the scalp over the right parital area measuring 7 C.M. x 3 C.M. x 2 C.M.

(3) One infiged (sic) (read incised) wound are right leg measuring 5 C.M. x 2 C.M. x 2 C.M.”

He further narrated that the patient was admitted at Rampurhat Sub-divisional hospital from 14.11.2010 to 15.11.2010 and thereafter he was referred to Burdwan Medical College. He produced the medical reports of the patient/Sipul Sk which was admitted in evidence. In cross-examination he replied that the patient was first treated by Murarai Rural Hospital and on a specific query answered that two linear edged will be from starting to end in case of assault by sharp cutting weapon and proceeded to state that since he has recorded in his report that the wound is 5 C.M. x 2 C.M. x 2 C.M. from this fact it would be evident that the wound was incised wound.

PW12 is Brojendra Maity, Sub-inspector of Police and second investigating officer of the case who deposed that on 20.01.2011 he was posted at Murarai Police Station and he received a Case Diary for further investigation from the then Officer-in-charge. He collected injury report, arrested the accused persons and thereafter submitted charge-sheet under Sections 341/324/326/302/34 of the Indian Penal Code and later supplementary charge-sheet was submitted under Section 307 of the Indian Penal Code.

PW13 is Dr. Hirak Bandhaypadhay attached to Murarai Rural Hospital. He deposed that on 14.11.2010 he examined Sipul Sk and recorded the history from a person who accompanied him and reported that Sipul Sk was hit with some sharp instrument and sustained injury on his back and right side of his abdomen. So the right side of the abdomen was tied with one cloth and blood was coming out from the said portion. The patient was in a critical condition and as such he was sent to Rampurhat S.D. Hospital for better treatment without writing injury report. He further deposed that he sent the patient to Rampurhat Sub-divisional Hospital after administering first aid to him for which the injury report and treatment-sheet was written by him and the same contained his signature. He identified the same and as such it was admitted in evidence. In cross-examination he admitted that name of the appellant is not reflected in the report neither the manner of incident and place of incident in the report.

PW14 is M. Mondal, the investigating officer of the case who deposed that on 15.11.2010 he was posted at Murarai Police Station and was endorsed by the then Officer-in-charge to investigate Murarai PS case no. 239/10 dated 15.11.2010. He deposed that during investigation he visited the place of occurrence, prepared sketch map with index, examined witnesses and recorded their statements under Section 161 of the Code of Criminal Procedure, held inquest over the dead body of Dalim Sk, prepared the dead body challan. He also prepared seizure list on 15.11.2010 in presence of two witnesses, arrested two of the accused persons, collected bed head ticket from

Burdwan Medical College and Hospital and collected the post-mortem report from Rampurhat Sub-divisional Hospital. In cross-examination he replied in respect of some of the witnesses as follows:

“Niyamat told me during investigation that Tasadir stabbed his nephew by dagger (Chora) and Hevja stabbed his son by chaku (Knife). Sipur Sk. did not tell me that he went to rescue his father at Nimtala because his father was confined/restrained at Nimtala and also did not tell me that accused Okil injured him on his legs by big Hasua and his father in law assault him on his head by a Lathi. He mentioned date 14.11.2010 before me during investigation. He also did not tell me that he saw the incident in moon lit night.”

Mr. Ashraf Ali, learned advocate appearing on behalf of the appellants submitted that the prosecution version in the present case is full of embellishment and the witnesses have improved their cases to such an extent that it would be difficult to believe the version of each of the witnesses. Learned advocate in order to substantiate his argument submitted that in the letter of complaint it was only referred that Bodu Sk and his relatives attacked and at the bottom of the written complaint 6 persons were named in the FIR. It was further pointed out that the medical report did not contain any name which was disclosed before the medical officer in respect of any of the accused persons having physically assaulted or inflicting injuries with knife both in respect of the deceased Dalim Sk and injured Sipul Sk. It was further stated that the investigating officer in his cross-examination categorically replied that Sipul Sk did not state the names of Ukil Sk and Bodu Sk to him and Niamat

Sk told the IO that Hebjar stabbed his son Sipul with knife. By drawing the attention of the Court to the evidence of PW5, it was pointed out that the injured witness Sipul Sk himself admitted that he did not state regarding Ukil Sk assaulting him with hansua on his leg and his father-in-law Bodu Sk assaulting him on his head with a stick or that others inflicted injuries on him with stick and stone and it was for the first time before the Court he stated regarding the role of Ukil and Bodu. Learned Advocate emphasised that the prosecution witnesses after a long lapse of time resorted to improve their cases with the mala fide object of putting them behind the bars in respect of each and every person whose name appeared in the FIR and the same was irrespective of the fact as to whether those persons were present at the time of incident. It was lastly submitted having regard to the manner in which the prosecution evidence has surfaced it would not be fit and proper to convict the appellants as the evidence is full of contradictions, improvements and inconsistent. The learned advocate for the appellants, thus, prayed for setting aside the order of judgment and order of conviction and sentence so passed by the learned trial Court.

Mr. Joydeep Roy, learned advocate appearing for the State refuted the contentions as advanced by the learned advocate on behalf of the appellant and submitted that in a ghastly incident where number of persons are present and one person has died within a close proximity of time and others seriously injured to such an extent that one of them was referred from one hospital to another, then it may not be possible for the person who was present at the

spot to specifically point out each of the persons and their complicity in commission of the offence. Learned advocate, thereafter proceeded to draw the attention of the Court to the injuries which were inflicted upon the injured PW5 and submitted that from the medical report it would reveal that there were four serious injuries on the person of the injured PW5, which included injury on the head, abdomen as well as the leg. The written complaint which was signed in close proximity of time and was treated to be the FIR may not be an encyclopaedia of facts containing all the details relating to the incident but the documentary evidence goes to show that PW5, Sipul Sk was injured at three parts of the body and this evidence has been corroborated by way of the medical records. So far as the complainant, PW1 is concerned he only restricted himself to the severe injuries which were inflicted with the aid of knife/sword at the right side abdomen of PW5. However, it was stated that the accused persons assaulted Sipul Sk on every part of the body. According to the State this has been clarified by PW5, the injured eye-witness and regarding the role of each of the accused persons, an injured witness being the best witness to clarify the injuries inflicted by each persons do not dilute the prosecution case at all, as in this case the version of injuries at least are corroborated by medical evidence. Learned advocate for the State therefore submits that there is no scope for interference with the judgment and order of conviction and sentence so passed by the learned trial Court and as such all the appellants should be convicted and the learned trial Court's verdict be affirmed.

Before dealing with the evidence which has appeared in course of the trial, another issue which requires consideration as three witnesses were tendered by the defence after examination of the accused persons under Section 313 of the Code of Criminal Procedure. By tendering such defence witness the accused persons intended to establish the juvenility in respect of some of the accused persons. Records reflect that the learned trial Court by its order dated 11.07.2019 after appreciating the documentary evidence placed by the defence was pleased to hold that the accused Ashahad Sk @ Tasdir Sk was a student of Gopalpur Sishu Sikhshya Kendra and his date of birth according to the Admission Register of the school is on 11.11.1995, as such on the date of the incident he was 15 years 10 months old and was a minor. Consequently, so far as Tasdir Sk is concerned his case was referred to the Juvenile Justice Board. Needless to state that the consistent version of the witnesses were to the extent that it was Tasdir Sk who inflicted the vital blows on Dalim Sk with a sharp edged weapon resulting in the death of Dalim Sk.

I have considered the submissions advanced on behalf of the prosecution as well as that of the appellants and I find that there was a relation existing between the accused persons as well as the de facto complainant which was the genesis leading to the incident of 14.11.2010. The appellants before this Court are Md. Gulab Sk @ Ukil Sk, Hebjar @ Hebjan Sk @ Hebjan Ali and Bodu @ Mohiuddin Sk. The witness so cited by the prosecution which are relevant for the purposes of dealing with the complicity of the three appellants are PW1, Niamat Sk; PW5, Sipul Sk and PW6, Laddu

Sk.. PW1, Niamat Sk was an eye-witness and in the FIR he did not assign any specific role to any of the accused persons but it was stated that when he reached near Bodu Sk's house he was attacked and on hearing hue and cry his son Sipul Sk and nephew Dalim Sk rushed to save him, when Bodu Sk and his relatives surrounded them with deadly weapons and Sipul Sk and Dalim Sk fell down on the spot as they were injured by Bodu Sk and his relatives at different parts of their bodies. None of the accused persons were named before the doctors and the same story was narrated when the inquest was conducted by the Sub-inspector of police and inquest report was signed by PW1/complainant/Niamat Sk. In his deposition before the Court PW1, Niamat Sk repeated the incident as narrated in the FIR however, he stated his son Sipul Sk was stabbed by Hebjar Sk and Tasdir Sk stabbed Dalim Sk. PW5 in his evidence deposed before the Court that Hebjar Sk stabbed him with knife on right side lower portion of his abdomen and on the side of the rib, Ukil Sk assaulted him in his leg with hansua and his father-in-law assaulted him with a stick on his head. However, he deposed that he did not name Ukil Sk and Bodu Sk before the investigating officer who recorded his statement that Ukil Sk assaulted him on his leg with hansua and his father-in-law Bodu Sk assaulted on his head with a stick and it was for the first time he narrated the incident in Court. PW6, Laddu Sk who was an eye-witness he deposed that Hebjar Sk assaulted Sipul Sk with a knife and Tasdir Sk assaulted Dalim Sk with a knife at the backside, when Sipul and Dalim fell down on the ground. The investigating officer PW14 in cross-examination admitted that Niamat Sk

during his examination stated that Hebjar stabbed his son by knife and Tasdir stabbed his nephew with a dagger. In cross-examination PW14 also stated that PW5, Sipul Sk did not tell him that Ukil Sk injured on his leg by a hansua and his father-in-law Bodu Sk assaulted him on his head with a stick.

Having considered that the specific role of Ukil Sk and Bodu Sk in respect of assaulting or inflicting injuries upon Sipul Sk for the first time appeared in evidence before the Court and were not stated earlier and the name of Hebjar Sk and his participation in the commission of offence having been consistently stated before the investigating officer as well as in Court and is corroborated by three witnesses including the injured witness, I am of the view that the finding of guilt and conviction in respect of Ukil Sk and Bodu Sk do not inspire any confidence as such the judgment and order of conviction and sentence dated 27.08.2019 under Section 324 of IPC passed by the learned Additional District & Sessions Judge, Fast Track Court, in Sessions Case No. 01/September/2011 is hereby set aside.

So far as the judgment and order of conviction and sentence so imposed upon the appellant Hebjar Sk is concerned as held by the learned Additional District and Sessions Judge, Fast Track Court, in Sessions Case no. 01/September/2011 corresponding to Murarai Police Station case no. 239/10 dated 15.11.2010 do not call for any interference, the same is hereby affirmed and he is directed to serve out rest of the sentence, so imposed by the learned trial Court.

Accordingly, it is directed that as the appellants Ukil Sk and Bodu Sk are on bail they may be discharged from their bail bonds.

So far as Hebjar Sk is concerned as he has been convicted and is on bail his bail bond stands cancelled and he is directed to surrender before the learned trial Court for serving out rest of the sentence.

Thus, Criminal Appeal no. 583 of 2019 is partly allowed.

Pending connected applications, if any, are also disposed of.

Department is directed to send back the Trial Court Records immediately. A copy of the judgment be forwarded to the learned Trial court immediately for compliance regarding the directions given above.

All parties shall act on the server copy of this judgment duly downloaded from the official website of this Court.

Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Tirthankar Ghosh, J.)