

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:-

HON'BLE JUSTICE PARTHA SARATHI SEN

C.R.A. No. 354 of 1988

Sri Musafir Rai.

-Versus-

The State of West Bengal and Ors.

With

CRA 132 of 1988

Ram Kailash @ Ram Kailash Singh and Anr.

-Versus-

The State of West Bengal and Ors.

For the appellant in CRA 354 of 1988: Ms. Jonaki Saha Adv.

For the appellant in CRA 132 of 1988: Mr. T.K Mukherjee, Adv.

For the respondent/State:

**Ms. Faria Hossain, Ld. APP.,
Mr. Avishek Sinha, Adv.,
Ms. Kanchan Roy, Adv.**

Last Heard on : 11.03.2025

Judgment on : 20.03.2025

PARTHA SARATHI SEN, J. : –

1. In this appeal the judgement of conviction and order of sentence both dated 01.03.1988 as passed in Sessions Trial no.2(4) of 1985 by the learned Additional Sessions Judge, 6th Court, Alipore, 24-Parganas-South has been assailed. By the said judgement the said trial court convicted the accused Ram Kailash Singh under Section 324 IPC. By the self same judgement the said court also convicted accused Ram Kailash Singh, Musafir Rai and Sewraj Prasad Singh under Section 148 IPC and under Section 307 IPC read with Section 149 IPC. The said court thus sentenced the convict Ram Kailash Singh to suffer RI for two years for the offence

committed by him under Section 324 IPC. The said court also sentenced convict Ram Kailash Singh, Musafir Rai and Sewraj Prasad Singh to suffer RI for two years each for the offence committed by them under Section 148 IPC and also sentenced to suffer RI for 7 years each and to pay fine of Rs. 1000/- each in default to suffer RI for six months each for the offence committed by them under Section 307 IPC read with Section 149 IPC with a further direction that all the sentences would run concurrently after setting of the period of detention against the period of substantive sentences.

2. The convicts namely; Ram Kailash Singh @ Ram Kailash and Sewraj @ Siraj Prasad Singh felt aggrieved and thus preferred CRA 132 of 1988.

3. The other convict Musafir Rai also felt aggrieved and preferred CRA no.354 of 1988.

4. Since in both these two appeals common judgement of conviction and order of sentence have been assailed and since in these two appeals common questions of facts and law are involved, the instant appeals have been tagged together and thus this Court proposes to dispose of the instant two appeals by a common judgement. It is pertinent to mention herein that during the pendency of the instant appeal the appellant no.2 Sewraj @ Siraj Prasad Singh in CRA 132 of 1988 had died and accordingly CRA 132 of 1988 stood abated as against him which was recorded vide order dated 07.02.2025.

5. For effective adjudication of the instant two appeals the facts leading to initiation of the aforementioned session trial is required to be dealt with in a nutshell.

6. One Bindya Rai wife of Bishan Deo Rai of 72/2 Topsia Raod, South Kolkata had given an ejahar with one SI of Beniapukur P.S to the effect that her mother-in-law is the land lady of the two plots of land bearing no.72/2 and 72/1 Topsia Raod. It was further stated that the plot no.72/1 Topsia Road, South Kolkata was under possession of one Jagat Prasad where his brother Ram Kailash Singh was also residing. She further stated in her ejahar that in front of the said plot i.e. plot no.72/1 there was a small structure where a primary school was run by local people which was allotted by her father-in-law solely for running the said school and the said portion of the structure was not part and parcel of the plot of Jagat Prasad Singh. She stated further before the said SI that in the morning of the said day i.e. on 20.02.1983 at about 08:00 hours when she was cleaning the said shed at that time she was assaulted by Ram Kailash Singh, Jagat Prasad Singh and Lakkhan Lal Singh by fists and blows.

7. She stated further that soon thereafter one Bishu Mondal and one Musafir along with 10/12 persons reached there and attacked the local people with brick bats and as a result whereof the informant, one Ram Singh, one Laxmi Devi, one Basanti Devi, one Maya Devi, one Ashok Rai and one Dukhi Ram were injured and the said injured persons were taken to Chittaranjan Hospital.

8. The said ejahar was reduced into writing by the said S.I of Beniapur P.S and the same was treated as a written complaint on the basis of which R Case no.75 dated 20.02.1983 under Section 148/149/307 IPC and under Sections 3 and 5 of the Explosive Substances Act was initiated. Investigation was taken up. In course of investigation one of the victims namely; Dukhram succumbed to his injuries and thus the provision of Section 302 IPC was added in the said FIR and on completion of the same charge sheet was submitted under Sections 148/302 IPC and under Section 9(b) of the Indian Explosive Act, read with Section 149 IPC.

9. After commitment and transfer the learned trial court considered the charges against the accused persons and on 10.04.1985 framed charges under Sections 148/302/149 IPC against accused Ram Kailash Singh, Jagat Prasad Singh, Siraj Prasad Singh and Musafir Rai. On 01.03.1988 learned trial court also framed a separate charge under Section 324 IPC against Ram Kailash Singh. Since the accused persons pleaded their innocence and claimed to be tried at the time of framing of charge, the said trial proceeded. By the impugned judgement learned trial court acquitted Jagat Prasad Singh from the charges as framed against him however, the said trial court convicted the aforementioned three accused persons in the manner as discussed in the foregoing paragraph.

10. Trial court record reveals that in order to bring home the charges as against the accused persons the prosecution has examined 21 witnesses in all and several documents and one material were exhibited on their

behalf. Before the learned trial court no evidence was adduced on behalf of the accused persons however from the trend of cross-examination of the prosecution witnesses and the answers as given by the accused persons in their respective examinations under Section 313 CrPC it appears to this Court that the defence case is based on clear denial and false implication.

11. In course of her argument Ms. Saha, learned advocate for appellant in CRA 354 of 1988 at the very outset draws attention of this Court to the written complaint being the ejahar of the informant (PW1) as well as to her evidence. It is submitted by her that the said PW1 being the informant though claimed herself as an eye witness to the alleged incident, she had not mentioned the name of Musafir Rai either in the FIR or in her deposition. It is further submitted by Ms. Saha that the evidence of PW3 and PW5 cannot be termed as trustworthy inasmuch as the said PW3 and PW5 testified that the alleged incident occurred on 22.02.1983 though FIR was lodged on 20.02.1983 which is absurd. Drawing attention to the evidence of PW4 it is further submitted that though the said witness in her examination-in-chief stated about the alleged role of appellant Musafir Rai in the alleged crime but peculiarly enough she failed to identify the said appellant Musafir in the witness dock which raises a serious doubt with regard to her presence at the P.O of the alleged incident. It is further submitted by Ms. Saha that from the cross-examination of PW12 it would reveal that he testified to the effect that what have been seen by him on the day of the alleged occurrence was told by him for the first time in

court. She further submits that in the cross-examination of PW12 it further comes out that he had not taken the name of the present appellant, Musafir before the I.O which tantamounts to material omission. It is further argued by Ms. Saha that in course of her deposition PW13 testified nothing against the present appellant Musafir which shows that on the relevant day and hour the present appellant Musafir was not present at the P.O.

12. Drawing attention to the cross-examination of PW14 it is submitted by Ms. Saha that since PW14 had categorically stated that he did not tell anybody before the day of his deposition that Musafir had charged bomb on the relevant day, such omission may be considered favourably. Drawing attention to the evidence of PW15 and PW17 it is submitted by Ms. Saha that since in their cross-examination PW15 and PW17 categorically stated that they were not examined by the I.O. their examination-in-chiefs are of little relevance. It is further submitted by Ms. Saha that PW20 who is the medical officer of Chittaranjan Hospital testified that he examined the victim Dhukiram on 22.02.1983 at about 9 AM and at that time the patient was conscious. It is further submitted that it does not transpire from the evidence of PW20 that at the earliest opportunity the name of the appellant, Musafir was taken by the victim which raises a serious doubt with regard to the alleged presence of the appellant Musafir at the P.O on the relevant day and hour.

13. It is further submitted by Ms. Saha that in the trial court record there is no material that the appellant Musafir has committed any crime under Section 307/149 IPC.

14. Mr. Mukherjee, learned advocate for the appellant Ram Kailash Singh in CRA 132 of 1988 while adopting the argument of Ms. Saha also draws attention of this Court to the ejahar of PW1 which was treated as a written complaint. It is submitted by Mr. Mukherjee that in such ejahar there was no assertion against Ram Kailash Singh that he had assaulted Ram Singh by a crowbar and on the contrary it has been stated by PW1 in such ejahar that the victim was assaulted by Ram Kailash by fist and blows. It is further argued by Mr. Mukherjee that from the evidence of the prosecution witnesses it would reveal that on account of family rivalry case and counter case have been filed and therefore chance of exaggeration and false implication cannot be ruled out.

15. It is further submitted by Mr. Mukherjee that since no charge under Sections 307/149 IPC were framed, trial court was not justified to convict the appellant in CRA 132 of 1988 under those sections. It is further contended by him that from the evidence of the prosecution witnesses no material is forthcoming to come to a conclusion that the appellant Ram Kailash is guilty for the offence under Sections 307/149 IPC.

In course of his argument Mr. Mukherjee places reliance upon a reported decision of **Sangaraboina Sreenu vs. State of Andhra Pradesh** reported in **1997 CCrLR (SC) 224**.

16. In course of her argument Ms. Faria Hossain, learned APP for the State submits before this Court that the evidence of two doctors namely; PW20 and PW18 (autopsy surgeon) gets due corroboration from the evidence of the other prosecution witnesses and therefore there cannot be any justification to disbelieve the testimony of the prosecution witnesses with regard to the role of the appellant Ram Kailash in the alleged crime under Section 324 IPC. Ms. Hossain in course of her argument also draws attention of this Court to the evidence of PW13 (injured). It is submitted by her that the said injured categorically testified that he was assaulted by the appellant Ram Kailash Singh as well as by his brother Master with a rod for which he sustained injuries on his head and on his left side of face and such evidence also gets due support from the evidence of PW18 (doctor of Chittaranjan Hospital) as well as of other independent witnesses.

17. It is further argued by Ms. Hossain that since death of Dukhiram occurred on account of hurling of bomb, learned trial court was justified to frame charges under Section 302/149 IPC against the accused persons who formed unlawful assembly with common object.

18. Placing reliance upon the reported decision of **Nankannoo vs. State of Uttar Pradesh** reported in **2016 (3) SCC 317** it is however submitted on behalf of the State that correctness of the conviction under Sections 307/149 IPC of the present appellants may be looked into since the offences under Sections 302 and 307 IPC are not cognate offences.

19. Upon consideration of the entire materials as placed before this Court and after giving due adherence to the submissions of the learned advocates for the contending parties this Court at the very outset proposes to consider as to whether the conviction as passed against Ram Kailash under Section 324 IPC is at all sustainable in the eye of law. As discussed in the forgoing paragraphs the charge under Section 324 IPC was framed on 01.03.1988 i.e immediately prior to pronouncement of the said judgement of conviction. At this juncture I propose to look to the provision of Section 216 CrPC. The provision of Section 216 CrPC is quoted hereinbelow in verbatim:-

“216. Court may alter charge.

(1)Any Court may alter or add to any charge at any time before judgment is pronounced.

(2)Every such alteration or addition shall be read and explained to the accused.

(3)If the alteration or addition to a charge is such that proceeding immediately with the trial is not likely, in the opinion of the Court, to prejudice the accused in his defence or the prosecutor in the conduct of the case, the Court may, in its discretion, after such alteration or addition has been made, proceed with the trial as if the altered or added charge has been the original charge.

(4)If the alteration or addition is such that proceeding immediately with the trial is likely, in the opinion of the Court, to prejudice the accused or the prosecutor as aforesaid, the Court may, either direct a new trial or adjourn the trial for such period as may be necessary.

(5)If the offence stated in the altered or added charge is one for the prosecution of which previous sanction is necessary, the case shall not be proceeded with until such sanction is obtained, unless

sanction has been already obtained for a prosecution on the same facts as those on which the altered or added charge is founded.”

20. On perusal of Section 216 CrPC it reveals to this Court that under the said provision the Court may either alter or add any charge any time before judgment is pronounced. In view of such, this Court finds no irregularity and/or illegality on the part of the learned trial court in framing the charge under Section 324 IPC as against the appellant Ram Kailash 01.03.1988. Now this Court again proposes to look to the provision of Section 216 (3) of CrPC which says that if addition of a charge in the trial, in the opinion of the Court, is not likely to prejudice the defence of the accused the court may in its discretion add such charge and thereafter proceed with the trial, as if the said added charge had been the original charge.

21. On careful scrutiny of the impugned judgement it appears to this Court that while framing charge under Section 324 IPC as per the provision of Section 216 CrPC learned trial court in the impugned judgement held thus:-

“Today I have framed a separate charge against accused Ram kailash for offence punishable under Section 324 IPC. Since no further evidence is necessary on this point and the defence has already cross-examination witnesses in regard to the hurt caused by accused.”

22. This Court has meticulously gone through the evidence of the prosecution witnesses, both oral and documentary. It also appears to this Court that sufficient evidence has been adduced by the prosecution

witnesses with regard to the alleged offence committed by the appellant Ram Kailash under Section 324 IPC. It also reveals to this Court that on behalf of the defence the said witnesses have been extensively cross-examined. In view of such, this Court holds that framing of charge under Section 324 IPC by the trial court is very much justified since no prejudice have been caused to the said accused on account of such framing of charge immediately prior to pronouncement of judgement. It is pertinent to mention herein that Mr. Mukherjee, learned advocate appearing for Ram Kailash before this Court has also not argued that on account of delayed framing of charge under Section 324 IPC his client's interest was seriously prejudiced in the said trial.

23. Trial court record reveals that in order to bring home the charges as against the accused persons the prosecution has examined 21 witnesses in all and some documents and one material was exhibited on their behalf. For the sake of convenience the prosecution witnesses may be categorized in the manner indicated herein:-

Sl. No.	Private individuals	Government officials	Police officials
1.	PW1- Informant.	PW7-Medical Officer of Chittaranjan Hospital.	PW2- A constable of police and a plan maker.
2.	PW3- A resident of premises no.72/1, Topsia Road, (South), Kolkata.	PW8- A Judicial Magistrate.	PW19- SI of police and seizing officer.
3.	PW4- A resident of premises no.72/1, Topsia Road, (South),	PW18- Autopsy Surgeon.	PW21- R.O and I.O.

	Kolkata.		
4.	PW5- A resident of premises no.72/1, Topsia Road, (South), Kolkata.	PW20- Medical Officer of Chittaranjan Hospital.	
5.	PW6- A resident of premises no.72/1, Topsia Road, (South), Kolkata.		
6.	PW9-A resident of premises no.46, Topsia Road.		
7.	PW10- A resident of premises no.72/1, Topsia Road, (South), Kolkata.		
8	PW11- A resident of premises no.72/1, Topsia Road, (South), Kolkata.		
9.	PW12- A resident of premises no.72/1, Topsia Road, (South), Kolkata.		
10.	PW13- (Ram Singh)- A resident of premises no.72/1, Topsia Road, (South), Kolkata.		
11.	PW14-A resident of 72/2 Topsia Road.		
12.	PW15- Sister-in-law of PW1.		
13.	PW16- A resident of premises no.72/1, Topsia Road, (South), Kolkata.		
14.	PW 17- A resident of premises no.72/1, Topsia Road, (South),		

	Kolkata.		
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24. Since in the impugned judgement learned trial court have thoroughly discussed the evidence adduced by the prosecution witnesses this Court considers that detailed discussion of evidence of the said prosecution witnesses all over again is unnecessary except to the extent the same is required for effective adjudication of the instant two appeals.

25. At this juncture this Court shall make an endeavour to come to a conclusion as to whether the learned trial court's findings with regard to the involvement of the appellant Ram Kailash in the offence under Sections 324 IPC is justified. This Court thus at the very outset proposes to look to the evidence of PW20 who is a medical officer and who at that material time was posted at Chittaranjan Hospital.

26. Before the learned trial court PW20 testified that on the relevant day i.e. on 20.02.1983 he examined one Ram Singh and found the following injuries:-

"1. A sharp injury on the vertex 2 & ½" X 1/4" deep.

2. One sharp cut injury on the right cheek. 1½" in length and 1/4th inch deep."

He further testified that 7 stitches were given for treatment of the injuries, the said patient was conscious, his pupil were of normal size and normally reacting to light, pulse 88 per minute, his B.P was 120 mm of Hg, his chest was clear. The said doctor further testified that he found no abnormality either in the abdomen or in the cardiovascular system of the

said patient. He further testified that the central nervous system of the said patient was also found to be normal.

27. At this juncture I propose to look to the evidence of PW13 (Ram Singh) who is one of the alleged victims of the said alleged incident. The said PW13 testified before the learned trial court that on the relevant day at about 8/9 AM a quarrel took place with Ram Kailash (the appellant herein) over land issue over which he found that the appellant Ram Kailash was assaulting Parvati Devi. He further testified that he raised protest and soon thereafter the appellant Ram Kailash and his brother Master assaulted him with rod and danda. He further testified that he sustained injuries on his head and at the left side of his face. He also testified that after suffering such injuries he was taken to hospital. On careful perusal of the cross-examination of PW 13 it appears to this Court that PW13 remained absolutely consistent in course of his cross-examination and nothing came out from his mouth which may support the case of the defence.

28. According to the prosecution the alleged incident of assault by the appellant Ram Kailash upon the head of the PW13 (Ram Singh) was witnessed by PW1, PW9, PW10, PW11 and PW14. As discussed hereinabove PW1 is the informant who in her examination-in-chief practically echoed her version which was reduced into writing and treated as a written complaint. In her examination-in-chief she categorically testified that on the relevant day and hour when she was cleaning the land in front of her house and close to the school, a quarrel took place

between her and appellant Ram Kailash and his son since they did not allow her to clean the said land. She testified further that Ram Kailash and his son assaulted her with danda to which she raised alarm and when Ram Singh (PW13) reached at the spot to rescue her at that time the appellant Ram Kailash hit Ram Singh on his head with an iron rod which looked like a crowbar.

29. PW9 who used to reside in the same vicinity also testified that when he reached to the spot he too was assaulted by Ram Kailash and when Ram Singh (PW13) reached at the spot and asked the appellant as to why they are committing such crime then all the three accused persons assaulted Ram Singh who sustained injuries at his head and nose.

30. PW10 is the sister-in-law of PW1. She also testified that on the relevant day and hour when PW1 was sweeping the vacant space which was at all material time used as a school, Ram Kailash and his son Laxman Lal assaulted PW1 with rod and when Ram Singh came to the P.O and asked the assailants as to why they were beating her the accused Ram Kailash beat him with a crowbar.

31. PW11 also testified that the appellant Ram Kailash assaulted her husband Ram Singh on his head causing severe hurt to his head.

32. This Court has meticulously gone through the cross-examination of the said prosecution witnesses namely; PW1, PW9, PW10 and PW11. It appears to this Court that those prosecution witnesses remained absolutely consistent in their respective cross-examinations and nothing

could reveal from their depositions which suggest that the versions of the PWs are either contrary to the truth or exaggerated.

33. It thus appears to this Court that the evidence of PW13 (Ram Singh) not only gets due support from the evidence of PW20 but also from the deposition of ocular witnesses namely; PW1, PW9, PW10 and PW11.

34. It is settled principle of law that the testimony of an injured witness have a great evidentiary value in view of the fact that it is hard to believe that an injured witness would led false evidence to screen the real offender and implicate the other. The Hon'ble Apex Court had on many occasions dealt with the evidentiary value of an injured witnesses.

In the reported decision of ***State of U.P vs. Naresh and Ors.*** reported in **(2011) 4 SCC 324** the Hon'ble Apex Court while considering the relevancy of an injured witnesses expressed the following view:-

"27.Thus, the evidence of the injured witness should be relied upon unless there are grounds for the rejection of his evidence on the basis of major contradictions and discrepancies therein."

The same view was taken by the Hon'ble Apex Court in the reported decision of ***Mohar and Anr. vs. State of U.P*** reported in **(2002) 7 SCC 606** wherein the Hon'ble Apex Court held thus:-

"The testimony of an injured witness has its own efficacy and relevancy. The fact that the witness sustained injuries on his body would show that he was present at the place of occurrence and had seen the occurrence by himself. Convincing evidence would require to discredit an injured witness."

35. In view of the discussion made hereinabove this Court thus finds no infirmity in the findings of the learned trial court in convicting the appellant Ram Kailash under Section 324 IPC.

36. Accordingly the finding of the learned trial court in this regard is upheld.

37. From the trial court record it reveals further that the present two appellants namely; Ram Kailash and Musafir Rai faced trial on the basis of charges as framed against them under Section 148 IPC as well as under Section 302 IPC read with Section 149 IPC. As discussed hereinabove learned trial court convicted the present two appellants under Section 148 IPC as well as under Section 307 read with Section 149 IPC though no such charge under Section 307/149 IPC was framed against them.

38. At this juncture I propose to look to the provision of Section 222 of CrPC which is reproduced hereinbelow in verbatim:

“222. When offence proved included in offence charged.

(1)When a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete minor offence, and such combination is proved, but the remaining particulars are not proved, he may be convicted of the minor offence, though he was not charged with it.

(2)When a person is charged with an offence and facts are proved which reduce it to minor offence, he may be convicted of the minor offence, although he is not charged with it.

(3)When a person is charged with an offence, he may be convicted of an attempt to commit such offence although the attempt is not separately charged.

(4)Nothing in this section shall be deemed to authorise a conviction of any minor offence where the conditions requisite for the initiation of proceedings in respect of that minor offence have not been satisfied.”

39. On perusal of Section 222(2) of CrPC it thus reveals to this Court that if a person is charged with an offence, there cannot be any predicament to convict him for the offence which is an attempt to commit such offence although the attempt is not separately charged.

40. In course of their respective arguments Mr. Mukherjee and Ms. Saha were very vocal on account of conviction of their clients under Sections 307/ 149 IPC though no such charges were framed against the present two appellants as discussed hereinabove. Placing reliance upon the reported decision of **Sangaraboina Sreenu** (supra) it is argued by Mr. Mukherjee since the ingredients of offences under Sections 302 and 307 are different and since the nature of offences are also different learned trial court is not at all justified in convicting the present two appellants under Section 307 IPC. It was further argued by Mr. Mukherjee that as per the provision of Section 222 CrPC conviction for multiple offences of similar nature is permissible but the said Section does not permit a court to convict of an attempt to commit such crime since no charge has been framed against the appellant. Ms. Saha in course of her argument also adopted the versions of Mr. Mukherjee.

41. While placing reliance upon the reported decisions of **Nankaunoo (supra)** Ms. Faria Hossain, learned APP submits before this Court that since the offences under Sections 302 and 307 IPC are not cognate offences the correctness of conviction of the present two appellants under Sections 302/149 IPC may be looked into.

42. After careful consideration of the arguments as advanced by Mr. Mukherjee, Ms. Saha and Ms. Hossain it appears to this Court that their argument in this regard cannot be accepted since on perusal of the provision of Section 222 (3) CrPC the intention of legislature is absolutely clear and thus there cannot be any impediment in convicting an accused for attempt to commit an offence though attempt was not separately charged and on the contrary at the initiation of the trial the said accused was charged for commission of the said offence.

43. The same view was taken by the Hon'ble Apex Court in the reported decision of **Pandharinath vs. State of Maharashtra** reported in **(2009) 14 SCC 537** wherein the Hon'ble Apex Court held thus:-

"It is true that there was no charge under Section 376 read with Section 511 IPC. However, under Section 222 of the CrPC when a person is charged for an offence he may be convicted of an attempt to commit such offence although the attempt is not separately charged."

44. This Court thus finds that the trial court is very much justified to convict a person for attempt to commit an offence although the attempt is not separately charged and at the initiation of the said trial the said person was charged for commission of the said offence provided there are

sufficient materials in the evidence of the prosecution witnesses to convict him for attempt to commit such offence.

45. At this juncture I once again propose to look to the relevant portion of the examination-in-chief of PW 20. In course of his examination-in-chief PW 20 further testified that on the relevant day i.e. on 20.02.1983 at about 9 AM he examined Dukhram who suffered injury on account of incident at 72/1, Topsia Road. He testified that he was brought by one Gangasagar Routh and on examination of the patient he found the following injuries on his person namely;

“1) One lacerated cut injury on the back of head-2” in length and ¼”in depth. 2)One cut injury on the right maxilliar region -1 and ¾” length and ¼” in depth. 3) One cut injury on the middle of lower lip-2½X2” in depth.”

46. The said PW20 further testified with regard to the condition of the victim Dukhram in the following manner:-

“Patient was conscious, pulse 70 per minute, blood pressure 112 by 76 mm of mercury.

Pupils were normal. Chest and abdomen nothing normal could be detected. Cardio vascular system-no abnormality was detected. Central vascular system-no abnormality detected. I stitched the injuries, for each of the injury no. 1, 2 and 3 four stitches were given. Prgonosis was unpredictable. Injury no.1 might be caused by any hard and blunt substance or by explosion of bomb. In regard to the injuries of the two patients viz,. Ram Singh and Dukhram as observed by me these could not be self-inflicted injuries.”

47. Since according to the prosecution PW3, PW4, PW5, PW12 and PW14 are the ocular witnesses to the incident of assault upon victim

Dukhiram by the present two appellants and by the members of their team/group this Court considers that the evidence adduced by the said prosecution witnesses are required to be looked into.

48. PW3 in course of his examination-in-chief categorically testified that on 22.02.1983 at about 8/8:30 AM the accused Ram Kailash and his brother initially assaulted PW1 and thereafter Ram Singh and when the said two victims were taken to hospital he was standing there at the P.O and he noticed thereafter that accused Siraj, accused Bishu Mondal and accused Musafir Ali and 3 /4 other accused persons reached at the P.O and at that material time Siraj was carrying bomb while accused Ram Kailash was sitting in front of his house on a slab. PW 3 testified further that on arrival of such accused persons, accused Ram Kailash uttered 'mera party giya' and he pointed out at Dukhiram and again uttered 'maro usko' and soon thereafter accused Siraj charged Dukhiram with bomb. PW3 further testified that on account of hurling of bomb Dukhiram fell down on the ground and he was bleeding from his ear, nose, mouth and he further testified that Dukhiram was taken to hospital by para people and then the assailants fled away.

49. On careful scrutiny of the evidence of PW4 it reveals that at about 9 AM when he went to a shop near to the P.O he found accused Ram Kailash was sitting in front of his house and soon thereafter 10/12 persons arrived there including accused Siraj, accused Musafir and accused Bisu. He further testified that seeing those accused persons

accused Ram Kailash shouted “mera party aiya gaya” (my party has come) and the said Ram Kailash further directed that Dukhiram be attacked.

50. PW4 testified further that then accused Siraj, accused Musafir and accused Bishu hurled bomb at Dukhiram on his head and left side of his face and he fell down on the ground and then Dukhiram was shifted to hospital by para people.

51. The evidence of PW5 was in the same line since he testified that on the relevant day at about 8 AM accused Ram Kailash was sitting near the P.O and at that time accused Shiraj, accused Musafir, accused Bishu and others came to spot from the direction of bus stand. He further testified that upon their arrival Ram Kailash shouted ‘Hamara party aia gia’ (my party has come). He further testified that Ram Kailash pointed out to Dukhiram and accused Siraj hurled bomb at him and on such attack Dukhiram fell down on the side of the road and he suffered injury on his head.

52. This Court thus finds that the evidence of PW3, PW4 and PW5 are in the same line and this Court finds no contradiction in their evidence. This Court had also gone through the cross-examinations of PW3, PW4 and PW5. It appears to this Court that in their respective cross-examinations the said witnesses remained absolutely consistent. This Court thus finds no reason to disbelieve the unchallenged testimonies of PW3, PW4 and PW5 who in their respective depositions categorically stated that the present appellants Ram Kailash, Musafir and their associates formed an unlawful assembly and in prosecution of that object

they hurled bomb upon Dukhiram to which he sustained severe injuries which gets due corroboration from the evidence of PW20 vis-à-vis from the injury report as prepared by the said doctor.

53. On perusal of the evidence of PW21 who is the Recording Officer and the Investigating Officer it reveals from his evidence that after taking charge of investigation soon after the occurrence of the incident and registration of FIR he went to the P.O and seized remnants of exploded bomb and on his direction S.I S.N Saha (PW19) seized those remnants namely; jute string, one unexploded bomb and some pieces of brick bats and some pieces of broken tiles under cover of a seizure list. PW19 being the SI of police of Beniapukur P.S testified in the same line.

54. From the evidence of PW21 it reveals further that after seizure he submitted those seized articles namely; remnants of the exploded bomb as seized from the P.O to the Deputy Controller of Explosives, Eastern Circle, Calcutta for examination and comment. Before the learned trial court the memo dated 30.06.1983 as written by Controller of Explosives, Eastern Circle, Calcutta and another memo dated 20.06.1983 as written by the Assistant Chemical Examiner, Explosives Department were exhibited as Exhibit 7 (collectively). The genuineness of the said Exhibit 7 was neither under challenge before the learned trial court or before this appellate court. On perusal of the said two memos (Exhibit 7 collectively) it appears to this Court that the said two experts categorically opined that the materials which have been sent for chemical examination were found to be involved in explosion of an explosive mixture of chlorate of

potassium and sulphide of arsenic manufacture and possession whereof is prohibited under Section 6 of the Indian Explosives Act, 1884 and a round object kept in the tin container was an explosive mixture of Chlorate of potassium and sulphide of arsenic. He further opined that such a bomb could endanger life on explosion.

Memo dated 20.06.1983 also reveals that the substances which were sent to him for chemical examination contained one jute string, sulphide of arsenic and radicals of potassium chlorate, arsenic and sulphate.

55. It thus appears from the evidence of PW19 and PW21 as well as from the contents of the Exhibit 7 (collectively) that the prosecution is successful to prove both by oral and documentary evidence that on the relevant day and hour hand bomb(s) containing prohibited articles under the Indian Explosive Act, 1884 was exploded at the P.O at the instance of the present two appellants on the victim Dukhiram which caused severe injuries in his person. It thus appears to this Court that the prosecution has adduced sufficient evidence as against the present two appellants that by hurling bomb towards Dukhiram the present two appellants had intended to cause death of Dukhiram.

56. From the evidence of the prosecution witnesses, more specifically from the evidence of PW20 (medical officer of Chittaranjan Hospital) it reveals that the said medical officer though found the above noted injury on the person of Dukhiram but found no abnormality in respect of other

parameters of his health. The said Dukhiram was thus not admitted in hospital.

57. From the evidence of PW21 (IO) it reveals that after taking charge of investigation and after seizure of the remnants of the exploded bomb by PW19 as per his direction, he thereafter proceeded to Chittaranjan Hospital and made an attempt to record the statement of the victim Dukhiram but he failed to do so since at that material time the victim Dukhiram was found to be restless. PW7 another medical officer of Chittaranjan Hospital deposed that on 22.02.1983 the said patient Dukhiram was brought dead when he was discharging his duty at emergency unit at the said hospital.

58. PW18 is the autopsy surgeon who performed autopsy over the dead body of the victim Dukhiram. He found the following injuries on the person of Dukhiram as reveals from his deposition namely;

“1). Superficial burn over the lateral aspect of right neck and also right fore arm and right back of the neck.

2). Lacerated wound $\frac{1}{2}$ " X $\frac{1}{2}$ " into bone with six stitches over right parietal region of the scalp with singeing of scalp hairs with yellowish stain around the injury. 1 & 1/2" external occipital protuberance 1" lateral to right parietal eminence with haematoma right parietal region of the scalp 4" x 3".

3). separation of posterior part of sagittal suture 2" in the length and in continuation one fissure fracture right occipital bone 2" length.

4. Extra dural haemorrhages 100 grams in weight over the right parietal occipital region of the brain with subdural haemorrhages both cerebral hemisphere of brain.

5). E.V.C. blood in and all around the injuries.

6). *Injuries are fresh.*

7). *Lungs both side focci and small haemorrhages.*

8). *Lacerated wound 1/2" into muscle right axillary region with four stiches.*

9). *Lacerated wound middle of lower lip 1" x 1/2" muscle with four stiches."*

59. The said doctor opined that the death of Dukhram was due to effect of head injury and the same was ante mortem and homicidal in nature.

60. Learned trial court while writing the impugned judgment noted the chronology of events as discussed hereinabove and thus came to a finding that since the victim Dukhram was not admitted at hospital immediately after suffering injury on his person he was not sure in the event if Dukhram was admitted in hospital after suffering his injury there may be a chance of survival. In view of such, the learned trial court held that he could not convincingly come to a conclusion that Dukhram died as a consequence of bomb injury.

61. This Court holds that the finding of learned trial court is perfectly justified in this regard since it reveals to this Court from the evidence of the prosecution witnesses that the victim Dukhram suffered bomb blast injury on 20.02.1983 and he died on 22.02.1983 at his home and he was thereafter brought to Chittaranjan Hospital in dead condition. Though autopsy surgeon opined that the death of the victim was homicidal in nature but it cannot be definitely said on account of the sequence of

events as discussed supra that the present two appellants and their associates with a common object caused death of the deceased Dukhiram.

62. On the contrary there are sufficient materials that the present two appellants took active part in directing Siraj to throw bomb upon the person of Dukhiram only with an intention to cause his death and therefore learned trial court is very much justified in convicting the present two appellants for attempting to cause murder of Dukhiram under Section 307/149 IPC.

63. In view of the discussion made hereinabove the instant two appeals are thus dismissed.

64. With the disposal of the instant two appeals all pending interlocutory applications, if there be any, stands disposed of.

65. The impugned judgment of conviction and order of sentence both dated 01.03.1988 as passed in Sessions Trial no.2(4) of 1985 by the learned Additional Sessions Judge, 6th Court, Alipore, 24-Parganas-South is hereby upheld.

66. In view of dismissal of the instant appeal, bail bonds of the appellants namely; Ram Kailash Singh @ Ram Kailash and Musafir Rai are hereby cancelled.

67. The appellants Ram Kailash Singh @ Ram Kailash and Musafir Rai are directed to surrender before the learned trial court within a fortnight from the date of passing of this judgement failing which the learned trial court is hereby directed to issue non-bailable warrant of arrest for their apprehension and detention.

68. Department is hereby directed to send down the trial court record along with a copy of this judgement to the trial court forthwith.

69. Department is further directed to forward a copy of this judgement of the Member Secretary, Calcutta High Court Legal Services Authority who on receipt of the same shall disburse the admissible amount of honorarium to Ms. Jonaki Saha, learned advocate for the appellant in CRA 354 of 1988 as appointed by this Court, preferably within a month from the date of receipt of the copy of this judgement.

70. Urgent Photostat certified copy of this judgement, if applied for, be given to the parties on completion of usual formalities.

(Partha Sarathi Sen, J.)