

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

Present:

The Hon'ble **Justice Prasenjit Biswas**

C.R.A. 216 of 1991

Harka Bahadur Karki

-Versus-

The State of West Bengal

For the Appellant : **Md. Sabir Ahmed,
Mr. Abdur Rakib,
Mr. Biswajit Sarkar,
Mr. Mojahid Mehedi.**

For the State : **Mr. Bidyut Kumar Ray,
Ms. Manashi Roy.**

Hearing concluded on : **29.08.2025**

Judgment On : **13.11.2025**

Prasenjit Biswas, J:-

1. This appeal is directed against the impugned judgment and order of conviction passed by the learned Sessions Judge, Darjeeling, in connection with Sessions Case No. 17/89.

2. By passing the impugned judgment this appellant found guilty for commission of offence punishable under Section 304A of the Indian Penal Code and was sentenced to suffer rigorous imprisonment for two years.
3. Being aggrieved by and dissatisfied with the said impugned judgment and order of conviction, the present appeal is preferred at the instance of the appellant.
4. The case of the prosecution in nutshell is that:

“A complaint was lodged by the defacto complainant stating, inter alia, that on 6th January, 1984 he along with his companions were returning to a Marebong Tea Estate after having their marking at Janbari and as soon as they reached near Changtong Tea Estate they were chased by the group of assailants. The said assailants were throwing stones aiming on them and being so chased a few of this group turned towards the nearby village and the rest started running towards falls area. It is said in the said complaint that the group of assailants consisting of this appellant and other accused persons. It is stated that because of being hit by the stones hurled by the assailants, four persons of the group of the defacto complainant sustained severe injuries and two of them died on the spot. The two injured persons i.e. Maniprasad Rai and Bhai Bahadur Rai the injured persons regained their

consciousness and started raising alarm. Hearing such alarm the nearby villagers including the fellowman of the group of companions of the complainant who took shelter in the village arranged for shifting the injured and the dead person to the hospital. Over this complainant a case being Pulbazar P.S. Case No. 2/48 dated 07.01.1984 was started.”

5. After completion of the investigation charge-sheet was submitted by the Investigating Agency. Charge was framed by the Trial Court under Section 304, Part-II of I.P.C.
6. In this case, thirteen (13) witnesses were examined on behalf of the prosecution and documents were marked as exhibits on its behalf. Neither any oral nor any documentary evidence was adduced on behalf of the defence.
7. Mr. Md. Sabir Ahmed, the learned Advocate appearing on behalf of the appellants, has strenuously argued that upon a proper consideration of the facts and circumstances of the case as well as the materials available on record, it becomes evident that the judgment and order of conviction passed by the learned Trial Court are unsustainable in law and, therefore, liable to be set aside.
8. The learned Advocate has submitted that the charges framed against the accused persons were not in accordance with law, and as a result, the appellant suffered serious prejudice in the course of the

proceedings before the Trial Court. It is contended that the framing of improper and legally defective charges vitiated the fairness of the trial and deprived the appellant of a proper opportunity to defend him effectively, thereby causing a miscarriage of justice.

- 9.** The learned Advocate has further drawn the attention of this Court to the evidence of P.W.6, Bhai Bahadur Rai, who is one of the injured witnesses in this case. In his cross-examination, P.W.6 clearly stated that because of the darkness that had set in at the time of the incident near the falls, he was unable to recognize the accused persons, including the present appellant. Despite such a categorical statement made by an injured witness, the learned Trial Judge has failed to consider or give due weight to this crucial piece of evidence while recording the conviction. According to the learned Advocate, this omission on the part of the Trial Court amounts to a serious error in the appreciation of evidence, especially since P.W.6 himself admitted that it was not possible for anyone to recognize the assailants due to darkness.
- 10.** In continuation, the learned Advocate also referred to the evidence of P.W.3, Khilman Rai, the complainant of the case, who similarly stated in his deposition that he could not recognize the accused persons at the time of the alleged incident. This part of his testimony, being vital to the issue of identification, was completely overlooked by the Trial

Court while passing the impugned judgment. Such non-consideration of material evidence, according to the learned Advocate, vitiates the finding of guilt recorded against the appellant.

- 11.** Furthermore, the learned Advocate has placed reliance on the testimony of P.W.4, Maniprasad Rai, another injured witness, who also stated in his evidence that during the chase, it was not possible for them to see or identify the faces of the accused persons because of darkness. This statement, corroborated by the versions of P.W.3 and P.W.6, clearly establishes that the surrounding conditions were not conducive for proper identification of the alleged assailants.
- 12.** Thus, the learned Advocate for the appellants contends that when all three material witnesses i.e. P.W.3, P.W.4, and P.W.6 have consistently admitted their inability to recognize the assailants, it was wholly unjustified on the part of the learned Trial Court to convict the appellant without any credible evidence of identification. The prosecution, it is argued, failed to prove beyond reasonable doubt the identity of the accused persons involved in the alleged assault.
- 13.** Mr. Md. Sabir Ahmed, the learned Advocate for the appellants, has further contended that the learned Trial Court completely failed to appreciate and properly consider the medical evidence on record. Drawing the attention of this Court to the deposition of P.W.1, Dr. S.C. Pradhan, the learned Advocate submitted that the said medical witness

clearly opined that the injuries sustained by the victims might have been caused due to a fall upon blunt substances. Similarly, P.W.2, Dr. Mitra, another medical expert, deposed that the injuries of the victims might have been caused by a fall upon a blunt or stony surface. According to Mr. Ahmed, the combined testimony of these two doctors unmistakably indicates that the injuries were consistent with accidental falls on rough or hard surfaces, and not with the throwing of stones as alleged by the prosecution.

- 14.** It is, therefore, the submission of the learned Advocate that the medical evidence completely contradicts the prosecution version of the incident. The learned Advocate has argued that when such direct contradictions between the medical and ocular evidence exist, the benefit of doubt must necessarily go to the accused. He further submitted that the prosecution witnesses have made several material contradictions and omissions in their statements, which cast serious doubt on the truthfulness of the prosecution story.
- 15.** The attention of this Court was also drawn to the evidence of P.W.3, the complainant, who, during cross-examination, stated that 10 to 12 persons were chasing them on the relevant date and time, but he failed to name or identify any of those persons. This, according to the learned Advocate, is a serious infirmity in the prosecution case since the identity of the assailants was never clearly established. The failure of

this key witness to name even a single assailant shows that the allegation against the present appellant is based on mere suspicion and not on credible identification.

- 16.** Further, referring to the testimony of P.W.4, Mani Prasad Rai, another injured witness, the learned Advocate submitted that in cross-examination, P.W.4 candidly admitted that when they reached near the falls and were allegedly assaulted, darkness had already set in, and although the assailants were using torchlights, it was not possible for them to see their faces. However, despite this crucial fact, no torchlight was ever seized or produced by the Investigating Agency, which raises serious doubt about the genuineness of the prosecution case. Moreover, the injury reports produced by the prosecution do not clarify the exact manner in which the victims sustained injuries, thereby further weakening the prosecution's case.
- 17.** The learned Advocate also pointed out that P.W.5, Padam Rai, and P.W.7, Bhim Bahadur Subba, who were stated to be companions of P.W.3, did not make any statement supporting the case of the prosecution. Similarly, P.W.8, Laiman Rai, stated during cross-examination that he did not know how the persons received their injuries, thereby completely demolishing the prosecution version. The same is true of P.W.9, Smt. Kishan Rai, who also failed to say anything in support of the prosecution's allegations. Mr. Ahmed argued that

such glaring inconsistencies and omissions among the prosecution witnesses clearly demonstrate that the investigation was carried out in a casual and perfunctory manner, without any effort to ascertain the real facts or collect credible evidence. He submitted that the learned Trial Court, while convicting the appellant, ignored these material aspects, which has resulted in a grave miscarriage of justice.

- 18.** The learned Advocate further contended that the present appellant has been falsely implicated in this case due to existing union rivalry, and that the entire prosecution case was fabricated with a view to harass the appellant. He argued that the evidence on record does not establish the guilt of the appellant beyond reasonable doubt and that the conviction is legally unsustainable and contrary to the settled principles of criminal jurisprudence.
- 19.** In light of these deficiencies and lapses in appreciation of evidence, the learned Advocate submits that the impugned judgment and order of conviction are legally flawed and factually unsustainable, and therefore, the same deserve to be set aside, allowing the appeal in favour of the appellant.
- 20.** Mr. Bidyut Kumar Ray, the learned Advocate appearing for the State, has submitted that there are no valid or sufficient grounds on record to warrant any interference with the impugned judgment and order of conviction passed by the learned Trial Court. According to the learned

Advocate, the findings recorded by the Trial Court are well-founded on the basis of cogent, credible, and consistent evidence led by the prosecution.

- 21.** It is contended that the prosecution witnesses have, in clear terms, supported the prosecution case, and nothing substantial has emerged during their cross-examination to discredit or shake their testimonies. The learned Advocate has further drawn the attention of this Court to the evidence of P.W.3, the complainant, who, in his deposition, has reiterated the material facts stated in the First Information Report (FIR), which has been exhibited in the case as Exhibit-1. The testimony of this witness, it is argued, lends full corroboration to the written complaint and is free from material inconsistencies or contradictions.
- 22.** The learned Advocate has also relied upon the evidences of P.W.6 and P.W.4, both of whom are injured witnesses, and have categorically stated in their depositions that the present appellant assaulted them, as a result of which they sustained injuries. Their status as injured witnesses, according to the learned Advocate, lends greater authenticity and reliability to their statements, since their presence at the scene of occurrence cannot be doubted.
- 23.** Furthermore, it has been urged that the injury report produced and exhibited by the prosecution side corroborates the oral evidence of these witnesses. The medical findings contained in the injury report are

consistent with the nature of assault and injuries described by P.W.4 and P.W.6, thereby reinforcing the prosecution's version of events.

24. The learned Advocate for the State has further drawn the attention of this Court to the depositions of P.W.1 and P.W.2, both of whom have made statements during the course of evidence that support the case of the prosecution in material particulars. According to the prosecution, P.W.1 is the autopsy surgeon who conducted the post-mortem examination on the bodies of the deceased victims. In his deposition, P.W.1 has stated that, in his expert opinion, the cause of death of the victims was shock and intracranial haemorrhage resulting from the injuries sustained, which were recorded in the post-mortem report. He has further clarified that the said injuries were ante-mortem and accidental in nature. The learned Advocate for the State contends that this medical evidence corroborates the prosecution's version of the occurrence and establishes the fact that the deaths were the direct consequence of the injuries received during the alleged incident.

25. The learned Advocate has also referred to the deposition of P.W.2, another medical witness, who was the doctor that examined and treated the injured witnesses, namely P.W.6, Bhai Bahadur Rai, and P.W.4, Maniprasad Rai. P.W.2 has deposed that he treated both the injured persons soon after the alleged incident and issued injury reports certifying that they had sustained injuries on their persons in

connection with the incident described by P.W.3, the complainant, in his complaint. The medical findings, as recorded in the injury reports, are consistent with the version of the prosecution and lend support to the testimony of the injured witnesses.

- 26.** Mr. Ray, the learned Advocate has said that nothing has been elicited during the cross-examination of these medical witnesses to discredit or disbelieve their statements. Their evidences remain unshaken and consistent, and there is no material contradiction or discrepancy that could diminish their credibility.
- 27.** In view of such cogent and corroborative medical evidence, the learned Advocate for the State has argued that the impugned judgment and order of conviction passed by the learned Trial Court are well-founded and based on proper appreciation of evidence. It is contended that the prosecution has succeeded in proving the case beyond reasonable doubt through reliable ocular and medical testimonies. Accordingly, the learned Advocate has urged that there is no justification for any interference with the findings of the learned Trial Court and that the appeal preferred by the appellant deserves to be dismissed outright.
- 28.** I have considered the rival submissions as made by the parties and have consulted with all the materials on record.
- 29.** In the present case, P.W.6, Bhai Bahadur Rai, one of the injured witnesses who sustained injuries during the alleged incident, has given

a statement in his cross-examination that assumes considerable importance. He categorically stated that at the time of the assault, it was already dark, and due to the prevailing darkness, he was unable to recognize the assailants who attacked them. This admission is crucial, as it directly concerns the question of identification, a fundamental aspect in establishing the guilt of the accused in any criminal trial.

30. According to P.W.6, during the course of the incident, the assailants chased them and pelted stones, one of which struck him on the head, causing him to fall unconscious. He further deposed that when he later regained consciousness, he found Surya Bahadur Thapa and Kumar Thapa lying nearby, both dead and bearing visible injuries. He also observed P.W.4, Maniprasad Rai, another injured person, lying at the same place with bleeding injuries. This narration provides a description of the aftermath of the alleged assault but notably lacks any identification or description of the assailants involved in the attack.

31. The fact that P.W.6 could not recognize or name any of the persons responsible for the assault makes his testimony particularly significant. As an injured witness, his evidence would ordinarily be considered of high evidentiary value since he personally experienced the incident. However, his explicit admission of inability to identify the assailants due to darkness substantially weakens the prosecution's case on the issue of identification.

- 32.** This failure to identify the accused not only diminishes the probative value of his testimony but also casts serious doubt on the accuracy and reliability of the prosecution version concerning the identity of the alleged culprits. When a key injured witness himself admits that he could not recognize the persons who attacked them, it becomes unsafe to base a conviction solely on general or speculative evidence regarding the involvement of the accused.
- 33.** Therefore, the statement of P.W.6 clearly indicates that the conditions of visibility at the time of occurrence were poor, making it impossible for him to see or identify the assailants. His inability to name or recognize any of the accused creates a serious infirmity in the prosecution's case and renders the version put forth regarding the participation of the appellants highly doubtful. This aspect goes to the root of the matter and materially affects the credibility of the prosecution's claim regarding the identity and involvement of the accused persons in the alleged offence.
- 34.** In the present case, P.W.4, Maniprasad Rai, who is one of the injured witnesses, has made statements that substantially support the testimony of P.W.6. In his cross-examination, P.W.4 categorically stated that by the time they reached near the place of occurrence, darkness had already set in. He further deposed that at that time, the assailants were using torch lights, and due to the prevailing darkness, it was not

possible for them to clearly see the faces of the assailants. This admission from an injured witness is significant, as it directly affects the reliability of the alleged identification of the accused persons.

- 35.** The statement of P.W.4 clearly conveys that the witnesses, including himself, were in no position to properly recognize or identify the individuals who attacked them. This part of his evidence finds substantial corroboration in the testimony of P.W.6, who also stated that visibility at the time of the incident was poor owing to darkness. The consistency between the statements of P.W.4 and P.W.6 lends credence to the inference that the incident occurred under conditions of extremely limited visibility, which were not conducive to the positive identification of the assailants.
- 36.** In criminal jurisprudence, identification of the accused is a vital element, particularly in cases involving assaults or group attacks taking place during the night. The concurrent evidence of P.W.4 and P.W.6, both of whom admitted that darkness prevailed at the scene and that they could not properly see their assailants, strikes at the very root of the prosecution's case on the point of identification. Their candid admission that it was difficult to see or recognize the faces of those involved renders their evidence unreliable for the purpose of fixing the identity of the accused beyond reasonable doubt.

- 37.** Furthermore, the fact that the assailants were allegedly using torch lights, as mentioned by P.W.4, adds another dimension of uncertainty, as the flickering or directional light from torches would not necessarily enable a clear and consistent identification of multiple persons, especially in a situation of panic or confusion.
- 38.** Therefore, the concurrent and consistent version of P.W.4 and P.W.6 that the incident took place under conditions of darkness, making identification difficult or impossible, creates a reasonable doubt as to whether the witnesses were in a position to identify the actual culprits. This aspect significantly weakens the evidentiary value of the prosecution witnesses on the crucial issue of identification and thereby undermines the prosecution's case in establishing the involvement of the appellants beyond reasonable doubt.
- 39.** In the present case, P.W.4, who is one of the injured witnesses, has categorically deposed that at the time of the alleged incident, the assailants were using torch lights. This statement is significant because it suggests that visibility at the scene of occurrence depended upon those torch lights and that identification of the assailants would have been possible only through their use. However, despite this clear and specific assertion made by P.W.4, it is evident that the Investigating Agency did not seize or recover any torchlight allegedly used by the appellants during the incident.

- 40.** Such an omission constitutes a serious lapse in the investigation and materially affects the credibility of the prosecution case. The failure to recover or produce the torch lights, an important piece of corroborative physical evidence, creates a substantial doubt about whether such torch lights were actually used by the alleged assailants at all. If the prosecution story were true in its entirety, the investigating officer would have been expected to make efforts to trace, seize, and produce those articles during the course of investigation and trial. The absence of such recovery, therefore, casts a reasonable suspicion on the authenticity and completeness of the prosecution narrative.
- 41.** Moreover, the injury report, which has been marked as an exhibit in this case, does not clarify the manner in which the injuries were sustained by the injured persons. The medical evidence is vague and non-specific—it neither mentions whether the injuries were inflicted by sharp or blunt weapons, nor does it provide any description that could help ascertain the nature or circumstances of the assault consistent with the prosecution version. The omission of such essential details in the medical records weakens the evidentiary value of the injury report and raises further doubts about the accuracy of the prosecution's account of events.
- 42.** Taken together, the failure to seize the alleged torch lights and the incomplete and inconclusive medical evidence represent significant

deficiencies in both investigation and proof. In the present case, the entire prosecution story is primarily founded upon the oral testimonies of the injured witnesses, whose statements form the core of the prosecution evidence. In criminal cases of this nature, where physical injuries are alleged, medical evidence plays a crucial corroborative role. It is expected that the injury reports and medical examination findings will substantiate and lend support to the oral depositions of the injured witnesses by clearly describing the nature, cause, and manner in which the injuries were sustained.

- 43.** However, in this case, the injury report, though exhibited as evidence, fails to provide any such clarity or corroboration. It is notably silent on the vital aspect of how the injuries were sustained, and does not indicate whether the wounds were caused by sharp, blunt, or any specific weapon. Nor does it describe the probable force, direction, or circumstances of the assault that could have led to such injuries. This absence of detail in the medical documentation deprives the Court of the necessary corroborative support that would otherwise strengthen the oral testimonies of the witnesses.
- 44.** Such ambiguity and lack of descriptive particulars in the injury report cast a serious shadow of doubt upon the veracity and completeness of the prosecution story. When the medical evidence fails to align with or affirm the ocular version, the reliability of the prosecution's case

becomes questionable. In cases involving bodily harm, oral testimony should be corroborated by medical evidence to ensure the truthfulness of the alleged occurrence. Therefore, in the present matter, where the medical report is vague and non-explanatory, it would not be prudent to rest the conviction solely on the basis of oral evidence, especially when such evidence lacks independent medical corroboration. This deficiency in the medical record materially affects the credibility and probative value of the prosecution's version, thereby creating a reasonable doubt regarding the authenticity of the incident as alleged.

- 45.** In his cross-examination, P.W.3, Khilman Rai, who is also the complainant in the present case, has stated that the number of persons who were allegedly chasing them was around 10 to 12. He further deposed that all those persons continued to chase his companions who had run towards the falls. However, while making this statement, the witness himself admitted that he was not certain about the exact number of individuals involved, stating that *"it might be 10 to 12 persons."* This admission clearly reflects his uncertainty and lack of precise observation at the time of the incident.
- 46.** Significantly, P.W.3 also failed to identify or specify who those persons were that allegedly chased them. He did not attribute any specific role, act, or identity to any of the individuals said to have been among the group of chasers. Such vagueness in his testimony creates serious

doubt about the credibility of his account, particularly because he is the principal complainant and would naturally be expected to have observed and recognized at least some of the assailants if the incident had occurred in the manner alleged.

- 47.** The failure of P.W.3 to name or even describe the persons involved in the alleged chase, coupled with his own admission of uncertainty regarding their number, considerably weakens the prosecution version. It suggests either that he did not have a clear view of the alleged assailants or that the incident may not have taken place in the precise manner narrated by the prosecution.
- 48.** Such ambiguity in the evidence of the complainant, who is supposed to be the most material witness in this case, creates a serious infirmity in the prosecution story. His inability to identify the alleged pursuers or to provide a consistent account of their number or involvement renders his testimony unreliable and insufficient to establish the guilt of the appellant or any other accused person beyond reasonable doubt.
- 49.** In the present case, P.W.5, Padam Rai, and P.W.7, Bhim Bahadur Subba, who, according to the prosecution, were companions of the complainant and were present at or near the place of occurrence at the relevant time, have not deposed anything in their respective evidences regarding the alleged assault said to have been committed by the present appellant or any of the other alleged assailants. Their complete

silence on such a crucial aspect of the case, namely, the actual commission of the assault, raises grave doubts about the authenticity, reliability, and overall veracity of the prosecution story. Both P.W.5 and P.W.7 were expected to be key witnesses, as they were claimed to have accompanied the complainant during the incident. Naturally, their testimonies would have been of immense importance in corroborating the version of events narrated by the complainant and other injured witnesses. However, their failure to make any mention of the alleged assault or to identify the appellant and other accused persons as perpetrators of the offence significantly undermines the prosecution's version of events.

- 50.** Such omissions from witnesses who were allegedly present at the spot give rise to two strong possibilities, either P.W.5 or P.W.7 were not actual eye-witnesses to the incident, or the occurrence did not take place in the manner projected by the prosecution. In either case, their evidences do not advance the prosecution case in any manner; rather, they introduce a serious inconsistency that strikes at the root of the prosecution narrative. Therefore, the absence of any incriminating statement from these two material witnesses regarding the alleged participation of the appellant in the assault constitutes a serious infirmity in the prosecution evidence. Their silence not only weakens

the evidentiary foundation of the case but also casts substantial doubt on the credibility of the prosecution version as a whole.

- 51.** PW8, Laiman Rai, is another witness examined by the prosecution in support of its case. In his examination-in-chief, PW8 stated that upon hearing some cries, he proceeded towards the place near the falls and, on reaching there, found four persons lying on the ground with injuries. Out of these four, two were already dead while the remaining two were alive but injured. At first glance, this statement appears to lend some support to the prosecution version regarding the occurrence of an incident resulting in injuries and death. However, a careful scrutiny of his cross-examination reveals that PW8 categorically admitted that he did not know how those persons sustained their injuries or who had caused them.
- 52.** This admission by PW8 assumes great importance because it directly undermines the probative value of his testimony. While he may have arrived at the scene after the incident and observed the aftermath, his own statement makes it clear that he was not an eyewitness to the assault itself. Consequently, his evidence does not establish any link between the appellant and the alleged offence. His testimony, therefore, only proves that he found certain injured and deceased persons lying at the place of occurrence, but it fails to throw any light on how or by whom the injuries were inflicted.

- 53.** When a witness like PW8 does not have personal knowledge of the incident and specifically admits ignorance about the cause or perpetrators of the injuries, his evidence cannot be relied upon to fix culpability on the accused. On the contrary, his cross-examination virtually discards the prosecution's story to the extent it seeks to show the appellant's participation in the offence. It becomes evident that PW8 was, at best, a post-occurrence witness who merely came upon the scene after the incident had already taken place.
- 54.** The prosecution was expected to produce credible eyewitnesses who could affirmatively identify the assailants and describe the manner of assault. However, the evidence of PW8 does not fulfill this requirement. Instead, his deposition creates a clear gap in the chain of circumstances sought to be established by the prosecution. His lack of knowledge about how the victims received their injuries introduces a substantial element of doubt regarding the alleged involvement of the appellant and other accused persons.
- 55.** Thus, the testimony of PW8, when read in its entirety, not only fails to support the prosecution version but rather weakens it. His admission in cross-examination that he was unaware of how the injuries were caused or who was responsible for them completely neutralizes his earlier statement in examination-in-chief. Therefore, his evidence cannot be treated as corroborative of the prosecution case, and it

substantially detracts from the claim that the appellant was connected in any manner with the alleged assault or offence.

56. Similarly, P.W.9, Smt. Kishanfull Rai, in her deposition, has not stated anything that directly or indirectly implicates the appellant with the alleged offence. Her evidence, much like that of P.W.8, does not contain any material assertion pointing towards the appellant's participation or involvement in the commission of the alleged crime. She neither witnessed the occurrence nor provided any corroborative statement linking the appellant to the incident in question. Therefore, when the evidence of P.W.9 is read in conjunction with that of P.W.8, it becomes apparent that both witnesses have failed to furnish any substantive or reliable testimony that could establish the guilt or involvement of the appellant. This significant omission further weakens the prosecution's case and creates a reasonable doubt regarding the alleged complicity of the appellant in the offence.

57. It appears from the record that P.W.11, Dhan Lal Rai, who is considered to be one of the best occurrence witnesses to the alleged incident, did not make any statement in his deposition directly involving the present appellant with the commission of the offence. The learned Advocate for the appellant has rightly drawn attention to the fact that the testimony of this witness, who reached the scene of occurrence soon after the alleged event, is of crucial importance for

determining the veracity of the prosecution story. In his deposition, P.W.11 stated that on the fateful evening, one Sancha Kumar informed him that some people were crying and raising hue and cry near the “Jhora” (stream). Acting upon this information, he, along with one Narey Thapa, proceeded towards the Jhora, and upon reaching there, found four persons present at the spot. He further stated that out of those four, three persons were lying on the Jhora, apparently in an injured or motionless condition, while one person was found sitting on a stone nearby. After observing this situation, he left the place without mentioning anything about the identity of the assailants or connecting any particular individual, including the present appellant, to the incident in question.

- 58.** The absence of any incriminating statement against the present appellant by such an important witness, who admittedly reached the scene of occurrence almost immediately after the alleged incident, assumes significant importance. It clearly shows that P.W.11 neither saw the assault taking place nor could identify any person who might have been responsible for the injuries sustained by the victims. His testimony is, therefore, neutral in nature and does not lend any support to the prosecution’s version implicating the appellant. Moreover, the prosecution did not declare P.W.11 hostile, which implies that his evidence must be accepted as part of the prosecution record. In

such circumstances, when the best occurrence witness has not stated anything connecting the accused with the crime, it seriously undermines the prosecution's case and raises grave doubts regarding the reliability and completeness of the investigation.

- 59.** The learned Advocate for the appellant has also rightly pointed out that had the appellant been actually involved in the alleged offence, P.W.11, being an independent witness and among the first to arrive at the scene would have naturally mentioned his name or at least given some indication about the participation of the accused persons. The complete absence of such mention in his deposition suggests that the prosecution has failed to establish the direct involvement of the appellant beyond reasonable doubt.
- 60.** It appears from the testimony of PW1, the autopsy surgeon, that upon conducting the post-mortem examination, he opined that the nature, location, and characteristics of the injuries sustained by the victim were consistent with those which could result from a fall on a hard and blunt surface, such as stones or rocky ground. According to his medical opinion, such injuries could very well occur due to accidental impact upon a rough and uneven surface, rather than being the result of any intentional assault. This opinion of the autopsy surgeon assumes considerable significance, as it casts doubt on the prosecution's version that the injuries were caused by the deliberate act

of assault. The medical evidence, therefore, supports the possibility that the victim might have sustained the said injuries due to a fall on a stony or hard surface, and not necessarily due to any overt act on the part of the accused.

- 61.** PW2, the other medical practitioner who had examined the injured persons, namely Bhai Bahadur Rai (PW6) and Mani Prasad Rai (PW4), has clearly deposed in his cross-examination that such injuries could also be caused in the event of a fall on a hard or stony surface, or by impact with a blunt object, as might occur accidentally. Hence, when the testimonies of PW1 and PW2 are read together, it becomes evident that the injuries sustained by the victims could very well be the result of a fall on a rough and hard surface, rather than being inflicted by the act of pelting stones as alleged by the prosecution.
- 62.** Thus, upon a careful evaluation of the entire evidences adduced by the prosecution, there appears to be nothing on record to indicate that the present appellant had any involvement in the commission of the alleged offence. The testimonies of the prosecution witnesses fail to lend support to the prosecution version and do not, in any manner, establish the participation of the appellant in the alleged occurrence.
- 63.** So, in view of the above facts and circumstances at discussion made above I am of the opinion that there is illegality and material

irregularity in the impugned judgment and order of conviction passed by the learned Trial Court and as such, it is liable to be set aside.

64. Accordingly, the instant appeal be and the same is hereby **allowed**.
65. The impugned judgment and order of conviction passed by the learned Trial Court dated 27.04.1991 in connection with Sessions Case No. 17/89 is hereby set aside.
66. The appellant is on bail. He is to be discharged from his respective bail bonds and be set at liberty if, he is not wanted in any other cases.
67. In accordance with the mandate of Section 437A of the Code of Criminal Procedure (Section 481 of the Bharatiya Nagarik Suraksha Sanhita, 2023), it is incumbent upon the appellant to furnish bail bonds, accompanied by suitable sureties. Such bonds, once executed, shall remain in full force and effect for a period of six months, ensuring the presence of the appellant as required by law and securing the due administration of justice.
68. Let a copy of this judgment along with the Trial Court record be sent down to the Trial Court immediately.
69. Urgent Photostat certified copy of this order, if applied for, be given to the parties on payment of requisite fees.

(Prasenjit Biswas, J.)