

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

Present:

The Hon'ble **Justice Prasenjit Biswas**

C.R.A. 266 of 1991

Ismail Khan & Anr.

-Versus-

The State of West Bengal

For the Appellant : **Ms. Shruti Mukhopadhyay**
(Amicus Curiae)

For the State : **Mr. Avishek Sinha,**
Mr. Subhajit Chowdhury.

Hearing concluded on : **28.10.2025**

Judgment On : **16.12.2025**

Prasenjit Biswas, J:-

- 1.** The judgment and order dated 31.07.1991 passed by the learned Additional Sessions Judge, 3rd Court, Midnapore is assailed in this appeal.
- 2.** By passing the impugned judgment and order this appellant was found guilty for commission of offence punishable under Section 304 Part-II/447/323 along with Section 34 of the Indian Penal Code.

3. Being aggrieved by and dissatisfied with the said impugned judgment and order of conviction passed by the learned Trial Court, the present appeal is preferred at the behest of the appellants.
4. The case of the prosecution, in essence, is that-

“The complainant, Mohabbat Khan, lodged a written complaint before the Goaltore Police Station on 01.02.1990. The complaint narrated the circumstances leading to the alleged offence. According to the complainant, his father, Soleman Khan, had two brothers, namely Moslem Khan and Ismail Khan. It was stated that approximately 13–15 years prior to the incident, the complainant’s grandmother had transferred 15 decimals of land in favor of Soleman Khan through a registered deed. Simultaneously, she also transferred certain ‘bastu’ land in favor of the uncles. The dispute arose because the land transferred to Soleman Khan was situated by the roadside, which became a source of tension between him and his brothers. On 25.12.1989, the complainant and his family began cutting earth on the land to construct a house. This activity was resisted by the uncles and their sons, leading to a temporary cessation of work. An amicable settlement was later achieved through the intervention of co-villagers, and the uncles and their sons left

the site. The complainant stated that on 31.01.1990, the wife of his cousin allegedly took away some 'babui' cord kept by the complainant's family for drying purposes, which led to a verbal altercation with the female members of the complainant's household. During this exchange, Moslem Khan attempted to take away a cycle belonging to the complainant's family, alleging defect in its repair by one of the complainant's brothers. When Soleman Khan resisted this act, Ismail Khan, on the direction of Moslem Khan, assaulted Soleman Khan with a lathi, striking him on the head and back, causing bleeding injuries and resulting in him falling to the ground. Upon witnessing the assault on his father, Ayub Khan, the brother of the complainant, rushed to intervene. At that stage, the appellant Nazrul along with Ismail Khan, armed with lathis, assaulted Ayub Khan on his head, causing bleeding injuries and leading him to fall to the ground. The assault on both Soleman Khan and Ayub Khan occurred in the courtyard of the complainant's house, immediately drawing the attention of the complainant and his younger brother, who rushed to the spot and took the injured Ayub to safety, making arrangements for medical treatment. The deceased Ayub Khan was initially shifted to Garhbeta Hospital. However, due to the severity of his

condition, he was later transferred to Bankura Medical College and Hospital, where he ultimately succumbed to his injuries. On the basis of the complainant's statement, Goaltore Police Station registered Case No. 3/90 dated 01.02.1990. After completing investigation, the prosecuting agency filed a charge-sheet against the appellant Nazrul and the other accused persons under Sections 147, 148, 447, 325, and 304 of the Indian Penal Code."

5. Charge was framed by the Trial Court against five accused persons under Section 148/304 (part-I) read with Section 149,323 read with Section 149 and under Section 447 read with Section 149 of the Indian Penal Code.
6. In the present case, the prosecution examined a total of sixteen (16) witnesses, whose testimonies were supported by documentary evidence produced and duly marked as exhibits. Additionally, the prosecution produced four lathis, which were collectively marked as Material Exhibit-I.
7. On the other hand, the defence did not adduce any oral or documentary evidence in support of his case.
8. The learned Trial Court, upon appreciation of the evidence, convicted two persons, namely Ismail Khan and the appellant Nazrul. It is further noted that during the pendency of the

present appeal, Ismail Khan, one of the convicts, has expired, and consequently, the appeal against him has stood abated.

9. Ms. Shruti Mukhopadhyay, learned Amicus Curiae appearing for the appellant, submitted that the learned Trial Court failed to appreciate the discrepancies, contradictions, and omissions in the statements of prosecution witnesses. It was contended that the Trial Court ought to have taken note of certain procedural and evidentiary shortcomings which significantly affect the credibility of the prosecution case. It was submitted that there was an unexplained delay in lodging the FIR. The incident occurred on 31.01.1990 at approximately 14:30 hrs, whereas the complaint was lodged only on 01.02.1990 at 17:45 hrs, representing a delay of more than 24 hours. According to the learned Advocate, the prosecution has failed to provide a plausible explanation for such delay, which raises questions regarding the reliability of the narrative presented in the FIR.
10. Regarding the seizure of lathis, it is said by the learned Advocate that PW12 stated that four lathis were seized in his presence. However, he did not mention whether the lathis had any identifying marks or distinctive features. More importantly, no forensic examination was conducted on the lathis to determine whether they contained traces of blood, tissue, or other material linking them to the victims. Learned Amicus Curiae submitted

that the absence of forensic analysis weakens the evidentiary value of the seized weapons and introduces doubt about their direct involvement in causing the injuries.

- 11.** It was further submitted that PW14, the Medical Officer, categorically stated that the injuries sustained by the deceased could also have resulted from a fall onto a hard surface, and similarly, the injuries on PW2 were consistent with trauma caused by a fall or rubbing against a hard, blunt object. According to the learned Advocate, this medical testimony provides a strong alternative explanation for the injuries, which is unrelated to any assault with lathis. The submissions emphasized that these medical opinions contradict the prosecution's claim and support the possibility of false implication of the appellant.
- 12.** Attention was also drawn to the evidence of PW16, the Investigating Officer, who admitted that although PW1 produced four lathis before him, he did not send them for forensic examination to ascertain whether the bloodstains were human or matched the victims. Furthermore, PW16 did not seize bloodstained earth or other material from the place of occurrence, which, in cases of assault with blunt objects, is a basic investigative requirement. These lapses, it was submitted, undermine the evidentiary value of the seized weapons.

- 13.** The learned Advocate also highlighted discrepancies in the testimony of PW11, a medical practitioner who attended the victims at the scene. PW11 stated that six to seven individuals were lying in an injured state, including PW2 and the deceased. This account was inconsistent with the statements of other witnesses, who consistently asserted that only PW2 and the deceased Ayub sustained injuries in the assault perpetrated by the appellant and others. This inconsistency, it was argued, casts doubt on the reliability of the prosecution narrative.
- 14.** Ms. Mukhopadhyay further submitted that the autopsy surgeon who conducted the post-mortem examination of the deceased was not examined, representing a serious lacuna in the investigation. Additionally, there was no seizure of bloodstained clothing worn by either PW2 or the deceased, which are critical pieces of evidence in assault cases. The failure to secure and exhibit such evidence, it was contended, severely impairs the probative value of the prosecution case.
- 15.** Relying on these discrepancies, contradictions, and investigative failures, it was argued that the appellant has been falsely implicated in the offence and that the case against him is concocted with mala fide intentions. Learned Amicus Curiae submitted that the Trial Court ought to have critically examined

these inconsistencies instead of accepting the prosecution narrative at face value.

- 16.** In support of her contentions, reliance was placed on the decision of the Hon'ble Apex Court in **Abdul Razak & Ors. v. State of Karnataka**¹, wherein the Court observed that the conduct of prosecution witnesses can significantly impact the reliability of their testimony. In that case, although witnesses were present, they did not intervene to prevent the death of the victim, and their subsequent inaction cast doubt on the prosecution case. Learned Amicus Curiae submitted that, by analogy, the prosecution evidence in the present case suffers from similar credibility issues, compounded by investigative lapses and medical inconsistencies, thereby warranting a finding in favour of the appellant.
- 17.** On the basis of the above submissions, it was urged that the instant appeal filed by the appellant may be allowed, and the impugned judgment and order of conviction passed by the learned Trial Court may be set aside in the interest of justice.
- 18.** Mr. Avishek Sinha, learned Advocate appearing for the State, submitted before this Court that there is nothing on record warranting interference with the impugned judgment and order of conviction passed by the learned Trial Court. It was submitted

¹ (2015) 6 SCC 282

that the evidence on record is more than sufficient to establish the involvement of the appellant Nazrul in the commission of the offence. It was further contended by the learned Advocate that the evidence clearly demonstrates that the appellant, along with the co-accused, inflicted bodily injuries on the deceased Ayub Khan, fully aware that such injuries were likely to cause his death. There is nothing in the record to suggest that the prosecution has failed to prove its case against the appellant. The submission emphasized that both the eyewitness's testimony and medical evidence consistently support the prosecution's version.

- 19.** Specifically, the learned Advocate highlighted that multiple witnesses, including PW1, PW2, PW3, PW4, and post-occurrence witnesses (PW5–PW10), unequivocally stated that the deceased Ayub, while attempting to lift his injured father (PW2), was assaulted by Ismail and the appellant Nazrul with a lathi. The injuries inflicted by the appellant on the head of the deceased were grievous and fatal, and the evidence regarding the sequence and nature of the assault remained unshaken during cross-examination, leaving no room for discrediting their testimonies.
- 20.** In support of this contention, reliance was placed upon the decision of the Hon'ble Apex Court in **Mano v. State of Tamil Nadu**², wherein it was held that the evidence of witnesses who

² (2007) 13 SCC 795

have a relationship with the deceased or the injured cannot be discredited merely on the ground of such relationship. Their credibility remains intact unless there is material to suggest bias or fabrication, which is absent in the present case.

- 21.** Applying this principle, it was submitted that the witnesses in the present case, although related to the deceased and the injured, have provided consistent, credible, and corroborated accounts of the incident. Their evidences establish the direct participation of the appellant Nazrul in striking the deceased with a lathi, causing grievous injuries, and ultimately resulting in his death. The submission further emphasized that there is no discrepancy or infirmity in the testimonies that would justify interference with the conviction.
- 22.** In conclusion, the learned Advocate for the State submitted that (1) the ocular and post-occurrence evidence unequivocally establishes the appellant's guilt, (2) the medical evidence and post-mortem findings corroborate the witness accounts, (3) the appellant's argument regarding familial relationship of witnesses or procedural lapses in respect of the post-mortem and seized lathis does not affect the credibility of the prosecution evidence and the principles laid down in *Mano v. State of Tamil Nadu* reinforce that the witnesses' relationship with the deceased does not diminish the weight of their testimonies.

- 23.** Accordingly, it was urged that the conviction and sentence imposed upon the appellant by the Trial Court requires no interference, and the findings of the Trial Court should be upheld in their entirety.
- 24.** I have anxiously considered the rival submissions advanced by both the parties and have gone through all the materials in the record.
- 25.** PW1, Mohabat Khan, the defacto complainant in the present case, and son of PW2 as well as brother of the deceased Ayub Khan, has made statement before the Trial Court reiterating the contents of the written complaint lodged by him. According to his testimony, on the relevant date, they had commenced cutting earth on their land for the purpose of constructing a house when the accused persons protested against such activity. At that stage, the villagers assembled at the site and requested both parties to halt the work, in an effort to settle the matter amicably. Following this intervention, the accused persons temporarily left the village. PW1 has further deposed that the accused persons returned on 17th Magh, 1396 B.S., and upon their return, they again opened quarrel with PW2 concerning the construction of the house. He stated that they kept 'babui cord' on their land for drying purposes. During the renewed altercation, the accused

persons forcibly lifted away the cord, which further escalated the dispute into a physical confrontation.

- 26.** According to PW1, during the course of this altercation, the accused Ismail struck his father, PW2, with a lathi, causing him to fall to the ground. On witnessing this, the deceased Ayub rushed to lift and rescue his father, but Ismail dealt a lathi blow to Ayub's shoulder, causing him to fall. Immediately thereafter, the present appellant Nazrul assaulted Ayub on his head with a lathi. As a result of this assault, the deceased fell down, sustaining grievous injuries. PW1 has further stated that the deceased was initially lifted to the veranda of their house, where first aid measures were attempted. Subsequently, the deceased was shifted to Garhbeta Hospital and thereafter referred to Bankura Medical College and Hospital, where he ultimately succumbed to the injuries sustained in the assault. PW1 also clarified that his injured father, PW2, was taken to hospital only on the following day, and he explained that the delay in hospitalisation was due to the non-availability of suitable conveyance, which required considerable effort to arrange.
- 27.** Importantly, PW1 was cross-examined by the defence, but nothing material was elicited from his cross-examination that could discredit or render his testimony false. His evidence therefore stands credible and reliable, corroborating the sequence

of events as narrated in the written complaint and aligning with the testimony of other eyewitnesses and post-occurrence witnesses. The testimony of PW1 is particularly significant as it provides: (1) context and background for the dispute leading to the assault; (2) first-hand narration of the involvement of the accused, including the appellant Nazrul, in striking the deceased; (3) details regarding the immediate aftermath, including nursing of the deceased, and (4) the reasons for delayed hospitalisation; and corroboration of the crucial link between the assault and the death of the deceased Ayub. In conclusion, the evidence of PW1 strongly supports the prosecution case, establishes the appellant Nazrul's active participation in the assault, and provides a clear and coherent account of the events leading to the fatality of the deceased.

- 28.** PW2, Soleman Khan, the father of the deceased Ayub, is an injured witness to the incident and has provided a detailed account of the circumstances leading up to and during the assault. According to his deposition, the incident was preceded by a dispute between him and the accused Moslem over certain landed properties that had been transferred to him by his mother, situated alongside the road. PW2 has stated that the accused Moslem threatened him with forcible appropriation of the land in his favour, thereby creating the context for the

altercation. PW2 has explained that on the date of the incident, some 'babui' cord was lying in the courtyard of the house. The accused Nazrul, the present appellant, forcibly took away the cord, and the accused Ismail attempted to take away PW2's bicycle by force. When PW2 resisted these acts, the accused Moslem allegedly ordered Ismail to assault him. Following such direction, Ismail struck PW2 on the shoulder with a lathi, and immediately thereafter, Nazrul dealt him a lathi blow on the left side of his head, causing bleeding injury and resulting in his fall to the ground. PW2 has stated that the accused persons fled the scene upon the arrival of nearby villagers, leaving behind the weapons used in the assault.

- 29.** PW2 has further deposed regarding the immediate aftermath of the incident. He stated that his injured son, the deceased Ayub, was first lifted to their house, where water was poured over his injuries in an attempt to provide relief. At this stage, the deceased was initially senseless but regained consciousness when Dr. Sadhan Prasad Mandal (PW11) arrived to administer medical aid, and subsequently again became senseless due to the severity of his injuries. PW2 has explained that immediate hospitalization could not be arranged on the same day because reaching Garhbeta Hospital required a journey of about two miles, either on foot or by arranging suitable transport such as a bus or

private vehicle. Consequently, the deceased was shifted to Garhbeta Hospital on the following day and later referred to Bankura Medical College and Hospital, where he ultimately succumbed to his injuries. PW2 has clearly stated that the assault and the circumstances surrounding the incident were directly linked to the quarrel over landed property and the forcible taking of articles from their house. He further confirmed that his oral testimony regarding the incident is in full consonance with the written complaint lodged by the defacto complainant. Importantly, PW2's testimony remained unshaken during cross-examination by the defence, lending further credibility to his version.

- 30.** The evidence of PW2 is of high probative value for several reasons. It provides a first-hand account of the sequence of events, identifies the role of the accused persons including the appellant Nazrul in inflicting injury, explains the causation of the head injury to PW2 and the deceased, and provides context to the delay in shifting the deceased to hospital without weakening the crucial link between the assault and the ultimate fatality. PW2's account, read in conjunction with other eyewitnesses, post-occurrence witnesses, and medical evidence, significantly strengthens the prosecution case regarding the involvement of

the appellant Nazrul in the commission of the offence and the resultant death of the deceased Ayub.

- 31.** PW4, Rahamat Khan, brother of the deceased Ayub, is an eye-witness to the occurrence and has provided a detailed account of the events leading to the fatal assault on his elder brother. According to his deposition, on the relevant date, the accused Ismail assaulted PW2 (his father) with a lathi, causing him to fall to the ground. PW4 has stated that upon seeing his father being assaulted, his elder brother, the deceased Ayub, rushed to rescue him. At that juncture, Ismail struck Ayub with a lathi on his shoulder, and immediately thereafter, the present appellant Nazrul assaulted Ayub on his head with a lathi.
- 32.** PW4 further deposed that upon witnessing these assaults, he and the other family members began crying and called for the help of nearby villagers. In response, the accused persons attempted to assault them as well, but timely arrival of the villagers prevented further injury. Thereafter, the deceased Ayub and PW2 were lifted to their house and laid down on the verandah. This witness has also stated that the immediate treatment of the deceased was arranged by PW11, Dr. Sadhan Prasad Mandal, who attended to the injuries sustained by Ayub. Importantly, PW4 deposed that the deceased Ayub, while conscious, named his assailants before Dr. Sadhan and others present at the house. This statement by

the deceased constitutes a contemporaneous identification of the persons responsible for the assault, lending significant corroborative weight to the prosecution case.

- 33.** PW4 further deposed that the following day, his injured brother was first taken to Garhbeta Hospital and thereafter referred to Bankura Medical College Hospital, where he ultimately succumbed to the injuries inflicted by the assault. The testimony of PW4 is crucial for several reasons. First, he provides direct evidence of the sequence of assault on both PW2 and the deceased, clearly establishing the active role of the appellant Nazrul in striking the deceased on the head. Second, PW4 corroborates the medical treatment provided by PW11 and affirms that the deceased was conscious enough to identify his assailants immediately after the incident. Third, his evidence is consistent with the accounts of other eye-witnesses and post-occurrence witnesses, creating a cohesive and credible narrative regarding the assault and its fatal consequences.
- 34.** In conclusion, the evidence of PW4 establishes the appellant Nazrul's active participation in the assault on the deceased, the immediate consequences of such assault, and the subsequent identification of the appellant as one of the assailants, thereby strongly supporting the prosecution case.

- 35.** PW8, Sarif Khan, son of PW2, has provided an eyewitness account of the incident, which corroborates the versions given by other witnesses regarding the assault on both his father and his elder brother, the deceased Ayub. According to his testimony, the altercation between his father, PW2, and the accused persons began when the accused Ismail suddenly struck PW2 on the head with a lathi, causing him to fall to the ground. PW8 further deposed that, in line with the testimonies of PW1, PW2, and PW4, the deceased Ayub immediately rushed forward to lift and rescue his father. At that moment, the accused Ismail dealt a lathi blow to Ayub, and immediately thereafter, the present appellant Nazrul struck Ayub on his head with another lathi. As a direct result of these blows, the deceased fell to the ground, sustaining grievous injuries to his head.
- 36.** PW8 has also stated that after the assault, the family members began attending to the injured father and brother. They lifted both PW2 and the deceased to their house. The deceased subsequently regained consciousness, and his treatment was immediately arranged by Dr. Sadhan Prasad Mandal (PW11). PW8 further stated that on the following morning, the deceased was taken to Garhbeta Hospital, and subsequently referred to Bankura Medical College and Hospital, where he ultimately succumbed to the injuries inflicted by the assault. The testimony

of PW8 is particularly significant as it provides direct corroboration of the sequence of assault on the deceased and PW2, affirming the active participation of the appellant Nazrul in striking the deceased on the head. His account aligns consistently with the testimony of other eyewitnesses and post-occurrence witnesses, thereby strengthening the prosecution case regarding the identity of the assailants, the manner of assault, and the crucial link between the lathi blows inflicted by the accused and the eventual death of the deceased.

- 37.** In conclusion, the evidence of PW8 reinforces the chain of events as narrated by other witnesses and substantiates the fact that the deceased Ayub sustained fatal injuries due to the concerted assault by Ismail and the appellant Nazrul, further validating the prosecution case in its entirety.
- 39.** PW10, Fuli Begam, the wife of the deceased Ayub Khan, has provided a vivid and first-hand account of the incident. According to her testimony, on the relevant date and at the material time, her husband and her father-in-law were taking their meal when the accused persons commenced their unlawful acts. She stated that one of the accused directed others to collect articles from inside their house, and at the same time, another accused advised the others to take away the articles already collected. At

that juncture, her father-in-law resisted the unlawful actions of the accused, following which he was assaulted.

- 40.** PW10 has further deposed that the accused Moslem instructed the others to continue collecting articles from their house. When her father-in-law was assaulted with a lathi on his shoulder, her husband, the deceased Ayub, rushed to rescue him. At that time, the accused Ismail struck Ayub on his shoulder with a lathi, and immediately thereafter, the present appellant Nazrul also assaulted Ayub with a lathi. As a result of this concerted assault by Nazrul and the other accused persons, the deceased fell down. PW10 has stated that she took water and began pouring it on the head of her husband in an attempt to provide immediate relief.
- 41.** PW10's evidence further establishes the sequence of medical intervention following the assault. She stated that her husband was initially taken to Garhbeta Hospital and, owing to the seriousness of his condition, was subsequently shifted to Bankura Medical College and Hospital, where he ultimately succumbed to the injuries sustained. The testimony of PW10 is of considerable evidentiary value for several reasons. First, she is an eye-witness to the chain of events leading up to the assault, particularly the specific role played by the appellant Nazrul in striking the deceased with a lathi. Second, her evidence corroborates the versions given by other witnesses regarding the

nature of the assault and the immediacy of the injuries sustained by the deceased. Third, her narration regarding the medical treatment and the progression of the deceased's condition post-assault provides a clear and continuous link between the assault and the fatal outcome.

42. In sum, the evidence of PW10 demonstrates that the appellant Nazrul, along with the other accused, actively participated in the assault on the deceased Ayub, which resulted in grievous injury to his head and ultimately led to his death. Her testimony provides both direct and corroborative support to the prosecution case concerning the identity of the assailants, the manner of assault, and the link between the assault and the death of the victim.

43. PW5 Murali Pramanik, PW6 Haraj Mallick, PW7 Islam Chowdhury and PW9 Tafajjal Chowdhury are neighbours of the parties and have been cited by the prosecution as witnesses to the occurrence or its immediate aftermath. A conjoint reading of their testimonies reveal a consistent narrative which lends corroboration to the prosecution case with regard to the assault on the deceased Ayub and the involvement of the present appellant Nazrul. PW5, Murali Pramanik, is a post-occurrence witness. He has stated in his evidence that upon reaching the place after the incident, he saw the deceased Ayub with a

bleeding injury on his head. PW5 has further deposed that the deceased himself disclosed to him the names of the assailants, namely Ismail, Nazrul (the present appellant), Ishak and Rabi. The statement made by the deceased to PW5, naming his assailants, assumes significance as it was made immediately after the occurrence when the deceased was still alive and suffering from the injuries, thereby lending credibility to the version narrated by this witness.

44. PW6, Haraj Mallick, is also a post-occurrence witness. He has stated that he heard about a quarrel between the accused persons on one side and PW2 on the other. On hearing such incident, he went to the house of PW2 and, upon reaching there, noticed that treatment of Ayub Mandal was being administered by Dr. Sadhan Mondal (PW11). This witness has also stated that he saw bleeding injury on the head of the deceased and noticed that PW2 was lying on the ground in an injured condition. The testimony of PW6 thus corroborates the fact that Ayub had sustained a serious head injury and that immediate medical assistance was sought after the incident.

45. PW7, Islam Chowdhury, has deposed on similar lines as PW5. He has stated that when the deceased Ayub regained his senses, he disclosed that he was first assaulted by Ismail with a lathi and thereafter by Nazrul, the present appellant, also with a lathi on

his head, as a result of which he fell down. PW7 further stated that even after falling down, the deceased received additional lathi blows. This testimony is material as it attributes a clear and specific role to the appellant Nazrul in assaulting the deceased on the vital part of the body, namely the head.

46. PW9, Tafajjal Chowdhury, another neighbouring witness, has deposed as an eyewitness to the incident. He has stated that upon hearing 'hallah', he went near the house of PW2 and noticed PW2 lying on the ground. He further stated that when the deceased Ayub attempted to lift his injured father, he was assaulted by Ismail and the present appellant Nazrul with lathi. This witness has also narrated the subsequent events, stating that the deceased was lifted and nursed, a doctor was called, and after some time the deceased regained consciousness. PW9 has stated that the doctor treated Ayub and advised that he be shifted to a hospital. Accordingly, the deceased was first taken to Garhbeta Hospital on the following morning and thereafter referred to Bankura Medical College Hospital, where he ultimately succumbed to his injuries.

47. The evidence of PW5, PW6, PW7 and PW9, when read together, presents a coherent and consistent account of the incident and its immediate aftermath. Their testimonies corroborate the fact that the deceased sustained grievous head injuries, that the

assault was inflicted with lathis, and that the present appellant Nazrul actively participated in the assault. The consistent disclosure made by the deceased to PW5 and PW7 regarding the identity of his assailants further strengthens the prosecution case. There is no material contradiction in their evidences which would render their testimonies unreliable.

- 48.** Thus, the evidence of these neighbouring witnesses lends substantial corroboration to the prosecution version regarding the manner of assault, the nature of injuries sustained by the deceased, and the involvement of the appellant Nazrul in the commission of the offence.
- 49.** PW3, Mahamad Mamtajuddin Chowdhury, another neighbour of the parties, has deposed to the sequence of events in a natural and convincing manner. According to his testimony, on the relevant date and time, he was present inside his house when he heard "*hallah*" (shouting). On hearing such commotion, he immediately came out of his house and proceeded towards the house of the deceased. Upon reaching near the place of occurrence, this witness noticed the accused Nazrul (the present appellant) and Rahamat, the brother of PW1, grappling and dashing against each other. He further stated that he ascertained that the quarrel had originated over the issue of taking away of babui cord. PW3 has further stated that while he was present at

the place of occurrence, the accused Ismail arrived there, armed himself with a lathi, and struck PW2 with the same, as a result of which PW2 fell down. It is the categorical version of this witness that upon seeing his father fall, the deceased Ayub rushed to the spot to lift PW2. At that point of time, the accused Ismail assaulted Ayub with a lathi on his head. Immediately thereafter, the present appellant Nazrul also assaulted Ayub with a lathi on his head, causing Ayub to fall down on the ground. The role attributed by PW3 to both Ismail and the appellant Nazrul is thus specific, clear, and unequivocal, particularly with regard to the assault on the vital part of the body of the deceased.

- 50.** PW3 has further deposed that after the arrival of the police at the spot, he went there and noticed the police as well as some bloodstained lathis, and that his signature was obtained on the seizure list. This part of his evidence lends corroboration to the seizure of the weapons of offence from the place of occurrence. In his cross-examination, PW3 has stated that the complainant and his two brothers had snatched away the lathis from the accused persons and resisted further assault upon the injured Ayub (the deceased) and PW2, Soleman. Far from weakening the prosecution case, this statement explains the cessation of the assault and demonstrates the immediate reaction of the family members in attempting to save the injured persons.

- 51.** The testimony of PW3 further stands corroborated by the evidence relating to the immediate aftermath of the incident. As per the consistent version of the witnesses, immediately after the occurrence, the deceased Ayub was taken to his house, where he was given primary treatment by PW11, Sadhan Prasad Mandal. PW11 has stated in his evidence that upon reaching the house of PW2, he found the condition of the deceased to be serious. He noticed injuries on the head of the deceased, administered first aid, and advised that the injured be shifted to a hospital for further treatment.
- 52.** Although PW11 was declared hostile by the prosecution, his testimony regarding the serious condition of the deceased and the presence of head injuries was not denied or shaken. Even as a hostile witness, PW11 has virtually supported the prosecution case to the extent that the deceased had sustained serious injuries on his head immediately after the incident and that his condition was precarious.
- 53.** Thus, the evidence of PW3, read in conjunction with the testimony of PW11, clearly establishes not only the manner of assault and the specific role of the appellant Nazrul in inflicting a lathi blow on the head of the deceased, but also the immediate consequences of such assault. The sequence of events narrated by PW3 appears natural, inspires confidence, and is further

corroborated by the medical assistance rendered to the deceased immediately after the occurrence.

- 54.** PW12, Serojuddin, is a witness to the seizure of the incriminating articles. Though he was declared hostile by the prosecution, a careful scrutiny of his evidence reveals that his testimony cannot be brushed aside in its entirety. It is well settled that the evidence of a hostile witness is not to be rejected wholesale and that the portion of such testimony which supports the prosecution case and is otherwise credible can be safely relied upon. In his cross-examination conducted by the prosecution after being declared hostile, PW12 has categorically stated that the police seized four numbers of lathis by preparing a seizure list and he put his left thumb impression (L.T.I.) on the relevant paper. He has further stated that although his name was written on the seizure list by someone else, the fact remains that he had affixed his L.T.I. thereon. This part of his evidence clearly supports the prosecution version regarding the seizure of the weapons used in the commission of the offence.
- 55.** More importantly, in his cross-examination by the defence, PW12 has stated that he put his L.T.I. on the seizure list at the house of PW2. This statement assumes significance as it lends corroboration to the prosecution case with regard to the place of occurrence. The consistent case of the prosecution is that the

incident took place in the courtyard of the victim, which is situated at or adjacent to the house of PW2. The admission of PW12 that the seizure list was prepared and his L.T.I. was taken at the house of PW2 virtually corroborates the situs of the incident as projected by the prosecution.

- 56.** Thus, even though PW12 was declared hostile, his testimony, particularly the portions extracted during cross-examination by both the prosecution and the defence, clearly establishes two material aspects: first, the seizure of four *lathis* by the police under a seizure list duly acknowledged by him through his L.T.I.; and second, the fact that such seizure was effected at the house of PW2, which, in turn, fortifies the prosecution version that the occurrence took place in the courtyard of the victim.
- 57.** Accordingly, the evidence of PW12, to the extent it supports the prosecution case, cannot be discarded and, on the contrary, provides corroborative support to the prosecution story regarding both the recovery of the weapons of offence and the place of occurrence.
- 58.** PW14, Dr. T. Khan has stated in his evidence that he examined the deceased Ayub Ali Khan and also examined the injured Soleman Ali Khan (PW2) and he found injuries on their persons. It is said by this witness that the party who brought the patient named Ishak Khan, Md. Islami Chowdhury stated before him that

the injury of the patient was caused by Ismail and this appellant Nazrul of Modnapur with lathi on 31.01.1990 at about 3.30 P.M. After examining the deceased this witness found that one of the injuries was grievous and the same was on head injury and the deceased was advised for shifting to Bankura Medical College and Hospital as his condition was not satisfactory. This witness has said that he also examined the injured Soleman Khan (PW2) and the said patient (PW2) disclosed before him that he sustained the injuries because of assault to him by lathi on 31.01.1990 at about 3.30 P.M. by Ismail, Ishak and Nazrul Khan. In cross-examination, this witness has stated the patient himself disclosed the name of the assailants.

- 59.** PW16, Investigating Officer of this case has stated that the place of occurrence was within the compound the house of the complainant. It is said by this witness that in course of investigation he examined PW11, Sadhan Prasad Mandal who stated before him that the said witness heard from the deceased that when Ayub went for saving PW2, this appellant along with others attacked him with lathi.
- 60.** The ocular and post-occurrence evidence in this case, when examined in its entirety, provides a clear, cohesive, and corroborated account of the events leading to the fatal assault on

the deceased Ayub Khan and the injury to PW2, Soleman Khan, and establishes the active participation of the appellant Nazrul.

- 61.** PW1, Mohabat Khan, the defacto complainant, son of PW2 and brother of the deceased, stated that the incident arose from a dispute over construction of a house on their land. On the relevant date, as they started cutting earth for construction, the accused protested, and villagers temporarily mediated. The accused returned on 17th Magh, 1396 B.S., and renewed quarrel with PW2. During the altercation, the accused forcibly lifted away babui cord, prompting a physical confrontation. PW1 deposed that Ismail assaulted his father PW2 with a lathi, and when the deceased Ayub went to rescue his father, Ismail struck him on the shoulder, followed immediately by Nazrul assaulting him on the head with a lathi. As a result, the deceased fell down, sustaining grievous head injuries. PW1 further stated that the deceased was initially taken to the veranda of the house, then shifted to Garhbeta Hospital, and later to Bankura Medical College and Hospital, where he ultimately succumbed to his injuries. He also explained that his father, PW2, was taken to hospital only the following day due to the lack of conveyance. PW1's testimony remained unshaken during cross-examination. PW2, Soleman Khan, the injured father of the deceased, corroborated the sequence of assault. He explained that the

altercation began when accused Moslem threatened him over landed property. During the confrontation, Ismail struck him on the shoulder, and the appellant Nazrul gave a lathi blow on the left side of his head, causing bleeding injury. He confirmed that the accused fled upon the arrival of villagers, leaving behind the lathis. PW2 further explained that the deceased Ayub was initially taken home for first aid, treated by Dr. Sadhan Prasad Mandal (PW11), and subsequently shifted to hospital the following day, where he later died.

- 62.** PW3, Mahamad Mamtajuddin Chowdhury, a neighbouring witness, stated that he heard shouting (*hallah*) and saw Nazrul and Rahamat (brother of PW1) dashing each other over a quarrel regarding babui cord. He observed that Ismail assaulted PW2 with a lathi, and then the deceased Ayub tried to lift his father but was struck on the head by Ismail and immediately thereafter by Nazrul, causing him to fall. PW3 confirmed that bloodstained lathis were seized by the police with his signature obtained on the seizure list. PW4, Rahamat Khan, brother of the deceased, provided an account consistent with PW3. He saw Ismail assaulted PW2, after which the deceased went to rescue him. He witnessed Ismail struck the deceased on the shoulder, followed immediately by Nazrul striking him on the head, resulting in his fall. PW4 stated that villagers arrived to prevent further assault,

and the deceased and PW2 were taken to their house, where treatment was arranged by PW11. He further confirmed that the deceased identified his assailants to the doctor before being shifted to hospital. PW5, Murali Pramanik, a post-occurrence witness, stated that he saw bleeding injuries on the deceased Ayub and heard the deceased named his assailants namely Ismail, Nazrul (appellant), Ishak, and Rabi. PW6, Haraj Mallick, another post-occurrence witness, confirmed that upon hearing about the quarrel, he went to the house of PW2 and observed the deceased being treated by PW11, and also saw bleeding injuries on Ayub's head. PW7, Islam Chowdhury, corroborated that the deceased, after regaining consciousness, stated that he was assaulted first by Ismail and then by Nazrul on his head, even continuing to receive blows after falling. PW8, Sarif Khan, son of PW2, stated that he saw Ismail struck PW2, followed by Ismail and Nazrul assaulting the deceased, resulting in his fall. He confirmed that both father and brother were attended to at home, treated by PW11, and later shifted to hospital where the deceased ultimately died. PW9, Tafajjal Chowdhury, a neighbouring witness, confirmed hearing hallah, saw PW2 lying injured, and witnessed the deceased being assaulted by Ismail and Nazrul while attempting to lift his father. He observed that the deceased was nursed, a doctor was called, and was subsequently shifted to

Garhbeta Hospital and then Bankura Medical College Hospital, where he died. PW10, Fuli Begam, wife of the deceased, deposed that during the incident, Ismail assaulted her husband's father on the shoulder, and the deceased Ayub went to rescue him, at which point Ismail struck Ayub, followed immediately by Nazrul striking him on the head. She provided details of her efforts to pour water on the deceased's head and confirmed that he was first taken to Garhbeta Hospital and then to Bankura Medical College Hospital, where he died. PW11, Dr. Sadhan Prasad Mandal, the doctor who administered first aid, confirmed the presence of serious injuries on the head of the deceased. Although declared hostile, he did not deny that the deceased sustained injuries requiring medical attention immediately after the assault.

- 63.** After Analysing of evidences it appears that the testimonies of PW1–PW11, taken together, present a highly consistent and corroborated narrative i.e. (1) the altercation originated over landed property and the seizure of babui cord. (2) the accused Ismail and appellant Nazrul actively participated in assaulting both PW2 and the deceased Ayub, with Nazrul specifically striking the deceased on the head with a lathi. (3) the deceased sustained grievous head injuries, required immediate first aid, and was later referred to hospitals, ultimately succumbing to his

injuries. (4) multiple eyewitnesses and post-occurrence witnesses corroborate each other, including the sequence of assault, identification of assailants, and medical treatment and (5) even hostile witnesses such as PW11 confirmed the injuries and condition of the deceased, lending further credibility to the prosecution case. In conclusion, the combined ocular and post-occurrence evidence clearly establishes that the appellant Nazrul actively participated in the assault on the deceased Ayub, which directly resulted in grievous injury and subsequent death. The consistent and corroborated testimonies leave no room for doubt regarding his involvement in the commission of the offence.

- 64.** From a careful and holistic appreciation of the evidence brought on record, it clearly emerges that the appellant, Nazrul, had taken an active and direct part in the occurrence. The ocular evidence adduced by the prosecution witnesses consistently establishes that the appellant was armed with a lathi and that he participated in the assault upon the deceased, Ayub. The testimonies of the material witnesses are cogent, consistent, and free from material contradictions so far as the role attributed to this appellant is concerned, and it unequivocally demonstrates his involvement in inflicting blows upon the victim. Significantly, the aforesaid ocular version finds substantial corroboration from the medical evidence led by the prosecution. The post-mortem

findings reveal that the deceased sustained grievous injuries, particularly on the vital part of the body, namely the head. The nature, location, and severity of the injuries are fully compatible with an assault by a hard and blunt object such as a lathi, as deposed to by the prosecution witnesses. The medical opinion further confirms that the injuries so sustained were sufficient in the ordinary course of nature to cause death, thereby firmly establishing the nexus between the assault and the fatal outcome.

- 65.** The evidence on record further discloses that the assault was not an isolated act but a concerted one, in which the appellant Nazrul, along with the co-accused Ismail (since deceased), participated. As a result of the cumulative effect of the blows inflicted by the appellant and the other accused persons, the deceased suffered grievous head injury, ultimately leading to his death. The medical evidence leaves no room for doubt that the death of Ayub was the direct consequence of the injuries sustained in the said assault. Upon an overall evaluation of the oral and medical evidence, this Court is of the considered opinion that the prosecution has successfully proved, beyond reasonable doubt, the factum of assault upon the deceased Ayub by the appellant Nazrul with a lathi, along with the co-accused Ismail. The prosecution evidence inspires confidence and remains

unshaken in cross-examination on the material aspects relating to the participation of the appellant and the causation of death.

66. In the present case, the post-mortem report of the deceased, as marked in the case records, serves as an important piece of evidence regarding the cause of death. It is noted that the autopsy surgeon was not called by the prosecution to testify in court for proving the post-mortem report. However, the report was marked before the Trial Court without any objection from the accused. The mere absence of the autopsy surgeon in proving the post-mortem report does not, *ipso facto*, render the report inadmissible or irrelevant. The argument advanced on behalf of the appellant, suggesting that the absence of the medical officer who conducted the autopsy constitutes a glaring shortcoming, cannot be accepted in isolation. Judicial precedents have consistently held that if a document is admitted without objection, its evidentiary value is not automatically negated merely because the person who prepared it was not called to testify. The report, thus, can be relied upon as relevant evidence for determining the cause of death, especially when corroborated by the eyewitness.

67. Regarding the lathis used in the assault, it is noted that the weapons were duly seized by the police and recorded in the seizure list. While the seized lathis were not sent for forensic

examination at the FSL, this omission does not automatically discredit the prosecution's case. The key issue in the present case is the active role of the appellant Nazrul in the assault on the deceased, which has been consistently corroborated by the eyewitness and post-occurrence witnesses (PW1–PW10). These witnesses have specifically testified that the appellant assaulted the deceased with a lathi, causing him to fall and eventually succumb to his injuries. The medical evidence, as adduced by PW11, and the post-mortem report, establish the cause of death as injury to the head inflicted by a hard and blunt instrument, fully consistent with eyewitness accounts of lathi blows. Although the autopsy surgeon was not called to testify, the report was admitted without objection, and the absence of oral proof does not diminish its evidentiary value. The injuries described are compatible with the assault as narrated by the witnesses, and the sequence of medical intervention, initial first aid at home, transfer to Garhbeta Hospital, and subsequently to Bankura Medical College Hospital aligns with the timeline given by the eyewitnesses. The seizure of lathis, duly recorded in the seizure list, further corroborates the testimonies, demonstrating the instrumentality of the assault. While these lathis were not sent for forensic examination, the absence of such testing does not

affect the credibility of the eyewitness evidence, which clearly identifies the appellant as one of the assailants.

- 68.** Therefore, the alleged discrepancies namely, the non-examination of the autopsy surgeon and the absence of forensic testing of the seized lathis cannot be treated as grounds sufficient to interfere with the findings of the Trial Court. The Trial Court, after a careful appreciation of the entire evidence, both ocular and medical, concluded that the appellant was actively involved in the commission of the offence.
- 69.** It is further observed that the eyewitness's testimony and independent witnesses regarding the assault on the deceased provide direct and compelling evidence of the appellant's role. The post-mortem report, even without oral proof by the autopsy surgeon, corroborates the cause of death as resulting from the assault described by these witnesses. Similarly, the seizure of the lathis establishes the instrumentality of the assault, while the absence of forensic examination does not diminish the credibility of the eyewitness accounts or the overall prosecution case. The evidence on record, both ocular and medical, has been carefully examined in the context of this appeal. A holistic appreciation of the testimonies of eyewitnesses (PW1–PW4), post-occurrence witnesses (PW5–PW10), and the medical evidence (PW11 and PW14), along with the post-mortem report and seizure of lathis,

provides a clear and unambiguous picture of the events leading to the death of the deceased Ayub Khan and the injury sustained by PW2, Soleman Khan.

- 70.** After a careful and holistic appraisal of all the evidence on record it is clear that the appellant Nazrul actively participated in the assault on the deceased Ayub Khan, the assault inflicted by Nazrul, in conjunction with Ismail, directly caused grievous injury to the head, which ultimately led to the death of the deceased, the testimony of multiple independent witnesses, combined with the medical and post-mortem evidence, leaves no room for doubt regarding the appellant's involvement and the Trial Court, in the impugned judgment, rightly appreciated the evidence and concluded that the appellant was guilty of the offence.
- 71.** In support of the appellant's argument, reference has been made to the decision of the Hon'ble Supreme Court in ***Abdul Razak (Supra)*** wherein the Court observed that although witnesses were present at the scene, they did not intervene to rescue the deceased, and such non-intervention was a factor in assessing the culpability of the accused and the dynamics of the incident. However, the factual matrix of the present case is materially different from the situation in the aforementioned judgments. In the instant case, the evidence on record clearly demonstrates that

the deceased Ayub Khan, along with other family members and eyewitnesses, immediately rushed to the place of occurrence upon hearing the commotion. The deceased went forward to rescue his father, PW2, Soleman Khan, who was being assaulted by the accused Ismail, and in the process, he himself was struck on the shoulder by Ismail and on the head by the appellant Nazrul with a lathi, causing grievous injury. The prompt intervention by the deceased and other eyewitnesses establishes a crucial distinction from the cited judgments. Unlike in case of **Abdul Razak**, where the passive presence of witnesses was noted, in the present case, the active attempt to save the injured directly led to the deceased being assaulted. The immediate and voluntary intervention by the deceased and other family members demonstrates both the spontaneity of the act and the direct involvement of the appellant in inflicting the fatal blow.

- 72.** Thus, the observations made in case of **Abdul Razak** regarding the inaction of witnesses cannot be pressed into service to draw any analogy with the facts of the present case. On the contrary, the present facts underscore the appellant's active and direct participation in the commission of the offence, as the assault on the deceased occurred precisely while he was attempting to rescue his injured father. This distinction is crucial and

reinforces the culpability of the appellant Nazrul, as established by the ocular and medical evidence on record.

73. It is instructive to refer to the observations of the Hon'ble Apex Court in **Mano (Supra)** where the Supreme Court, inter alia, held the following:

1. Relationship of witnesses to the victim does not, by itself, affect their credibility. The Court observed that the mere fact that witnesses are related to the deceased or the injured cannot be a ground to discard their testimony or assume interestedness in favor of the prosecution.

2. The Court further stated that:

“It is more often than not that a relation would not conceal the actual culprit and make allegations against an innocent person. A foundation has to be laid if a plea of false implication is made. In such cases, the court has to adopt a careful approach and analyse evidence to find out whether it is cogent and credible.”

Applying the principle laid down in the above decision, the argument advanced on behalf of the appellant, that the testimony of witnesses who are relatives of the deceased or injured cannot be relied upon is untenable. The credibility of such witnesses must be assessed on the basis of the consistency, cogency, and reliability of

their evidence, rather than the mere fact of relationship. In the present case, the evidence of the witnesses relating to the incident is consistent and corroborated by medical and post-occurrence evidence, and there is no material to suggest any false implication. Accordingly, the reliance on these witnesses by the Trial Court is fully justified.

- 74.** In conclusion, the Trial Court rightly appreciated the evidences on record, including the post-mortem report and seizure of weapons, and came to the correct finding that the appellant Nazrul actively participated in the assault, which directly led to the death of the deceased. The objections raised by the appellant regarding procedural or technical gaps cannot outweigh the overwhelming ocular and corroborative evidence, and thus cannot form a basis to interfere with the Trial Court's conclusion.
- 75.** In view of the above facts and discussion I find that there is nothing materials on record for which the impugned judgment and order of conviction passed by the Trial Court may be interfered with.
- 76.** Accordingly, the instant appeal be and the same is hereby **dismissed.**
- 77.** The impugned judgement and order of conviction dated 31.07.1991 passed by the learned Additional Sessions Judge, 3rd Court, Midnapore in connection with Sessions Trial Case No.III of

October, 1990 (arising out of G.R. Case No.201 of 1990) 91 is hereby affirmed.

- 78.** The bail bond furnished by the appellant during the pendency of the appeal is hereby cancelled.
- 79.** The appellant **Nazrul Khan** is accordingly directed to surrender immediately before the Jail Authority /Trial Court to serve the remaining sentence awarded within a period of four weeks from today, failing which appropriate coercive action may be taken in accordance with law.
- 80.** Let a copy of this judgment along with the Trial Court record be sent down to the Trial Court immediately for compliance.
- 81.** Urgent Photostat certified copy of this order, if applied for, be given to the parties on payment of requisite fees.

(Prasenjit Biswas, J.)