

Form No: J(1)

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:-

The Hon'ble Justice Rajasekhar Mantha
And
The Hon'ble Justice Ajay Kumar Gupta

CRA 203 of 2015

Sudarshan Mondal & Ors.
Versus
The State of West Bengal

With

CRA 220 of 2015

Bijoy Mondal & Ors.
Versus
The State of West Bengal

For the Appellants
in CRA 203 of 2015

: Mr. S. Banerjee, Sr. Adv.
Mr. A. Jena, Adv.
Mr. D. Das, Adv.

For the Appellants
in CRA 220 of 2015

: Mr. Swapan Kumar Mallick, Adv.
Mr. K.M Rahaman, Adv.
Ms. Sudeshna Das, Adv.

For Amicus Curie
in CRA 220 of 2015

: Mr. Jayanta Narayan Chatterjee, Sr. Adv.

Hearing concluded on

: 18th November, 2025

Judgment on

: 25th November, 2025.

Rajasekhar Mantha, J.

1. The instant appeal is directed against the judgment and order of conviction dated 31st March, 2015 passed by the Additional Sessions Judge, 2nd Court, Malda in Sessions Trial No. 49 of 2003 arising out of Sessions Case No. 217 of 2001.
2. The appellants including all the other accused persons were found guilty of offences under Section 147 and 148 of the IPC, and were sentenced to a rigorous imprisonment of one year each and further pay a fine of Rs 2,000 each. In default of the payment, they were to further undergo a rigorous imprisonment of three months each.
3. Accused Umakanto, Sudarshan, the appellant, and Sudhir were further found guilty of offences under Section 447 read with Section 149 of the IPC and were sentenced to 3 months imprisonment and was directed to pay a fine of Rs 500 each. In default thereof, they were to further undergo a rigorous imprisonment of 15 days.
4. Accused Umakanto, Sudarshan and Sudhir were also found guilty of the offences punishable under section 302 of the IPC read with section 149 of the IPC and were sentenced to life imprisonment and were directed to pay a fine of Rs 5,000 each. In default thereof, they were to further undergo a rigorous imprisonment of 2 years each.
5. The sentences as stated were directed to run concurrently.

THE PROSECUTION CASE

6. On 29th January, 1998 at about 8:30 AM, 14 accused persons including the appellants, brutally attacked and killed the victim Akalu Mondal. The appellants also brutally attacked Mohilal Mondal, and Bijoy Mondal. Akalu was the son of Mohilal Mondal. Akalu was the brother of Bijoy Mondal.
7. About 5-6 months prior to the incident, the accused Gudar Mondal in a drunken condition snatched rupees 800/- and a bicycle from Bijoy Mondal at Khejuria Ghat, Bodtola more. Akalu Mondal lodged a complaint with the local P.S. in that regard.
8. On the fateful day, i.e. 29th January, 1998, the complainant Baidyanath Mondal, PW 1, another son of Mohilal Mondal, went to seek justice for his brother Bijoy Mondal, from one Sachitra Mondal, a local gram panchayat member, against the snatching of Rs 800 and theft of a bicycle.
9. **Sachitra Mondal, PW 2**, who was working in a field, is stated to have said that he alone cannot bring out any settlement and directed the complainant to go to the house of one Chand Miya and participate in a “Salish” (a meeting for dispute resolution, in presence of distinguished villagers and elders).
10. A Salish was called on at the house of Chand Miya, where one of the accused Umakanta Mondal was present. He is stated to have told Chand Miya and one Sachitra that he would go to his village and bring a village elder, locally referred to as a ‘Morol’.
11. Later, all the 14 accused persons under the leadership of accused Umakanta Mondal arrived at the Salish armed with sharp cutting weapons

used in agriculture, locally called Ballam, Sulpi, Hasua, and also carried bows and arrows.

12. Seeing the belligerence of the accused persons, Sachitra and Chand Miya told Mohilal Mondal and his sons Baidyanath, Akalu and Swapan Mondal to leave the Salish and save their lives. Together they ran into the house of one Ramakanta Rabidas and bolted the door from inside. The complainant Baidyanath Mondal ran far away from the place and hid in a place from where he could see the PO.
13. The accused persons later encircled the house of Ramakanta Rabidas. Accused Jiten, Sudarshan, and Sudhir climbed the roof of the house, broke open the tiles therefrom and entered the house. The other accused persons broke the door of the house and entered the house.
14. The accused no. 1 Gudar Mondal, since deceased, assaulted Akalu Mondal with a Ballam in different parts of the body. Umakanta Mondal and Jiten chopped Akalu Mondal with a Hasua. The father of the appellant Mohilal Mondal was also severely assaulted.
15. The elder brothers of the complainant, Bijoy Mondal and Swapan Mondal hid themselves under a cot in the room and/or stood thereat. They were dragged out by the appellants and severely assaulted.
16. Akalu Mondal died on the spot. The other injured persons namely Mohilal, Bijoy, Swapan were first taken to Bedrabad PHC and thereafter to Malda Sadar Hospital. The accused later on fled away on the motorcycle of the victims and stole a tape recorder and some money from the house of Rabidas.

17. Inquest was conducted on the same day at about 12:30 PM by the Kaliachak PS. Several injuries were found on the body of the deceased Akalu Mondal, inflicted by sharp cutting weapons like Hasua, Ballam, Sulpi. The inquest report was signed by the complainant and Chandrakanta Mondal and Sachitra Mondal.
18. Kaliachak PS registered the FIR being Kaliachak P.S. case No. 19 dated 29th January, 1998 under Section 147/ 148/ 149/ 447/ 323/ 326/ 379, and 302 of the IPC. Post mortem was conducted on the dead body of Akalu. The opinion of PM Doctor was that death occurred due to the injuries inflicted anti-mortem and homicidal in nature.
19. Charges were framed against 12 accused persons, namely, Umakanta, Bijoy, Madhusudan, Sudarshan, Adhir, Sudhir, Bhabesh, Jiten, Anil, Sadhu and Bablu Sil under Section 147/ 148/ 149/ 447/ 323/ 326/ 379/ 302 of the IPC. The trial commenced.

THE EVIDENCE ON RECORD

20. **PW 1, was Baidyanath Mondal.** He was the complainant. He is an eye-witness to the events that took place outside the house of Rabidas. He has deposed exactly what was stated in the complaint. His evidence could not be shaken in cross-examination.
21. PW 1 has deposed that the complaint was written by Baba Charan Lal. He also deposed that two of the accused persons namely Gudar and Adhir had died before the trial commenced. There were two persons called Sudhir

Mondal. One was the son of Khoka and the other was the son of Akalu. He, inter alia, named Sudarshan and Sudhir as two of many assailants.

22. **PW 2, was Sachitra Mondal**, another eye witness to the events outside the house of Rabidas. He narrated the entire incident as stated in the complaint. He deposed that on 29th January, 1998 he was in his paddy field at Chakbahadurpur Mouza. The accused Gudar and Umakanta and the victims Bijoy, Baidyanath and Akalu went to meet him in his field demanding the return of rupees 800/- and the bicycle of Bijoy Mondal, snatched by Gudar and Umakanta.
23. He has deposed that a Salish was scheduled to be held in respect of the said incident at the house of Chand Miya but was to no avail. The Salish was attended by some other villagers. The father of Akalu and Swapan Mondal namely Mohilal came to the place of Salish.
24. PW 2 deposed that the accused persons led by Umakanta, later came to the Salish with sharp cutting weapons like bow and arrow, lathi, Sulpi, dhal, ballam and Hasua. He told Akalu, Swapan, Mohilal and Baidyanath that there was no chance of a Salish and it is better that they should leave the place.
25. He further deposed that the victims took shelter in the house of Ramakanta Rabidas. He named the accused Umakanta, Sudarshan, Sudhir, Jiten another Sudhir, Bejoy, Anil, and Madhusudan having encircled the house of Ramakanta with the aforesaid sharp cutting weapons. Jiten Mondal climbed

the roof of the house and broke open tiles and entered the room armed with Ballam.

26. PW 2 has stated that the remaining accused persons entered the house by breaking open the door. There were screaming coming out of the house. The accused persons came out of the house 20-25 minutes later. They took away a motorcycle from outside of the house of Bijoy Mondal.

27. When PW 2 entered the PO along with one Chandrakanta, and Fagu Mondal, he found that the victim Akalu was lying dead on the floor and his father Mohilal was lying unconsciously with injuries. Swapan and Bijoy Mondal also suffered injuries.

28. He confirmed having signed on the inquest report and identified his signature. He confirmed that the police seized blood-stained earth, arrows and Kantha under a seizure list which he has signed. He confirmed that at the time of trial Gudar Mondal, Adhir and Umakanta Mondal had died. He confirmed that police examined him between 12:00 Noon and 01:00 PM on the date of occurrence. His evidence could not be shaken in cross-examination.

29. **PW 3 was Archana Rabidas**, grand-daughter of Ramakanta Rabidas. She stated that she was working in the courtyard of the house with her mother Sidhubala Rabidas and noticed Bijoy, Akalu, Mohilal and Swapan entering their house and bolting the house from inside.

30. She noticed many persons namely, Gudar, Sudarshan, Madhu and Sadhu and others surrounding the house with sharp cutting weapons and entered

the house by removing the tiles from the roof. She saw the victim Akalu lying on the ground with bleeding injuries and blood-stained marks on the body of Bijoy, Swapan and Mahilal. She was taken away by her mother. She identified the accused in the dock. Her evidence could not be shaken seriously in cross-examination. She confirmed having given a statement to the police against accused Madhusudan, Sudarshan, Gudar and Sudhir.

31. **PW 4 was Kalpana Mondal.** She saw the incident from a distance. She confirmed Umakanta, Sudhir, Gudar and Madhusudan flee away on the motorcycle of Akalu from the PO.

32. **PW 5 was Chand Miya.** He confirmed that on the 29th January, 1998 a Salish, in respect of the snatching of the money from Bijoy by Gudar Mondal was due to be held in his house. He confirmed the presence of Sachitra, Akalu, Bijoy, Baidyanath, Gudar and Umakanta in the house of Chand Miya. He was declared hostile. He denied the prosecution case in its entirety after being declared hostile.

33. **PW 6 was Laxmi Rabidas.** She confirmed that a Salish was going on in the house of Chand Miya on the date of the incident at about 08:00 to 08:30 PM. She deposed that in course of Salish a quarrel took place between Gudar and Akalu. She was declared hostile.

34. She confirmed that she was examined by the police. In cross-examination, she confirmed the case of the prosecution. She has confirmed that when the Salish was held in the house of Chand Miya regarding snatching away of a bicycle and money belonging to victim Bijoy by Gudar Mondal, Umakanta,

went outside to call on Madhu, Sudarshan, Sadhu, Jiten, Akalu, Bablu, Bijoy and other persons who arrived at the house of Chand Miya with sharp cutting weapons generally used in agriculture called Ballam, Hasua, and bows and arrows. She identified the accused persons in Court.

35. **PW 7 was Sindhubala Rabidas**, wife of Ramakanta Rabidas. She has deposed that she saw Gudar and Akalu Mondal entering the room of Ramakanta and closed the room and there was a quarrel going on. She ran away thereafter. She was declared hostile by the prosecution.

36. She confirmed having told the police that Gudar Mondal, Umakanta, Madhu, Sudarshan, Sadhu, Jiten, Akalu, Bablu, Bhavesh broke open the door and entered into the house of Ramakanta Rabidas. She has confirmed that Akalu received severe injuries and was bleeding. Bijoy and Swapan hid under a cot. She denied the rest of the prosecution case.

37. **PW 8 Bijoy Mondal** was an eye witness who was injured in the incident. He has deposed exactly on the lines of PW 1 and 2 and as stated in the complaint. He identified each of the accused persons and gave details of the nature of the attack by the accused persons on the victims. He named appellants Sudhir and Sudarshan amongst other assailants. He confirmed that his bicycle was snatched away by Gudar and his associates 6-7 months before the date of occurrence along with a sum of Rs.800/- in cash. He confirmed that his brother Akalu has earlier lodged a complaint in that regard. His evidence could not be shaken in his cross-examination.

38. **PW 9 was Binoy Rabidas.** He confirmed that the wooden chowki blood stained katha, blood-stained pillow was seized by the police in his seizure list where he has signed and was given to be kept in his custody. He was declared a hostile.
39. **PW 10 was Sanatan Karmakar.** He was a witness to the wearing apparels of the victim. He identified the signature thereon. The seized apparels were, however, not produced in Court.
40. **PW 11 was Hanif Sk.** He was a witness to the seizure of the motorcycle and many other items under the seizure list. He identified the signature thereon.
41. **PW 12 was Dr. Ajoy Kumar Das** who conducted the post mortem. He found the following injuries on the victim.

- i. *Eyes- Half opened, mouth-half opened, R.M.-present. Built-average and Injuries-*
- ii. *Lacerated wound 1" x ½" x muscle deep at left side of frontal region of scalp,*
- iii. *Lacerated wound ¾ x ¾" x ¼" x skin deep on right side of face below the ear.*
- iv. *Septum deep lacerated would 1/2 " x ¼" at tip of nose.*
- v. *Incised would 2" x ¼" x bone deep at posterior part of right upper uter aspect of neck cutting skin, tissue, muscle, vessel and part of survival vertribra.*
- vi. *Abrasion ½" x 1/8" at lower anterior chest wall.*
- vii. *Incised wound 2" x ½" x muscle deep at left upper back.*
- viii. *Abrasion 1" x ½" at dorsal aspect of base of right thumb.*
- ix. *Abrasion on ½" x ¼" at outer aspect aspect of middle of left leg. Nature of weapon used-hard blunt weapon.Weapon with sharp edge".*

42. **PW 13 was Swapan Mondal** who was an eye witness and sustained injuries in course of the assault. He confirmed that his father Mohilal Mondal was missing for 14 years. There is no evidence to indicate as to the whereabouts of the Mohilal Mondal who had sustained injuries in the attack by the accused persons. He deposed about the entire incident similar to PW 1, 2 and 8 and as stated in the complaint. He deposed about the prosecution case in detail. He was an eye-witness to the incident. He corroborated their evidence in the trial. He named the appellants Sudarshan and Sudhir as the assailants. He specifically deposed that the appellant Sudhir assaulted him along with others.
43. **PW 14 was Biren Rabidas.** He confirmed that he saw the accused persons had gone to the house of Chand Miya and there was a quarrel in front of the house of Ramakanta Rabidas between Bijoy and Gudar. He confirmed a scuffling between Gudar and Bijoy. He further confirmed that Sudarshan Mondal the appellant no. 1 in CRA 203 of 2015 hit him with a lathi. He confirmed that Sudhir, Umakanta, Sadhu, and Gudar entered the house of Ramakanta he was not aware of what happened thereafter. He was a witness to the inquest. He identified the accused present in the Trial Court. He was also a seizure witness to the blood-stained earth and broken tiles of the house of Ramakanta Rabidas.
44. **PW 15 was Bawas Purti** a police constable who took the dead body of Akalu to Malda Sadar Hospital for post mortem.
45. **PW 16 was the Officer-in-Charge** Kaliachak PS and also the first Investigating Officer. He identified the signature and handwriting of Kalyan

Chakraborty, Sub Inspector who was the former IO. He deposed that Kalyan Chakraborty died before the investigation was completed. The investigation was continued by Bibhutibhusan Das who also died in the meantime. He identified the signature of Bibhutibhusan and the entire documents in the investigation under the signature of Kalyan and Bibhutibhusan Das.

46. The accused were examined under Section 313 of the Cr.P.C. They denied the suggestions put forward to them and claimed to be innocent.

47. **DW 1 was Md. Aftabuddin Khan.** He was a teacher-in-charge of Chakbahadurpur RR Primary School. He produced the admission registrar dated 30th April, 1985 for the year 1982-83 about the age of accused Jiten.

48. **CW 2 was doctor Monojit Chakraborty** posted at Malda Medical College as medical officer. He was part of a board of three doctors comprising in, himself Dr. Sujata Gupta and Dr. Fanibhusan Roy who examined Bablu Sil and Jiten Mondal who sustained injuries and deposed about their age.

49. **CW 3 was doctor Fanibhusan Roy** who confirmed the evidence of CW 2 as regards Bablu and Jiten Mondal.

50. **CW 4 was doctor Alok Mazumdar** who examined Jiten and Bablu and found them to be aged about 35-40 years and 40-45 years each respectively. Jiten was found to be minor as on the date of incident.

51. Based on the evidence on record, the appellants and other accused persons have been convicted and sentenced as aforestated.

ANALYSIS OF THIS COURT

52. Mr. Sabyasachi Banerjee, Sr. Advocate, leading A. Jena, Advocate, has firstly argued that PW 8 deposed that Jiten had pierced Akalu with a ballam. He, however, did not state who had pulled out the ballam from Akalu. PW 13, has also deposed that Jiten was assaulted with a ballam. However, PW 13 added that Sundarshan had pulled it out. The said omission by PW 8 and addition by PW 13 is argued to have rendered the evidence of PW 8 and 13 unreliable.
53. Every omission is not a contradiction. The omission, in order to amount a contradiction must have belied the prosecution's case. PW-13 has only added an additional fact which may have been omitted by PW-8. If there was a specific question to PW-8, as to who pulled out the ballam from Jiten then based on such answer, a case of contradiction could have been developed by the appellants.
54. Mr. Banerjee next pointed out that PW 1 deposed that the appellants assaulted the deceased victim, Akalu, and his father and brothers inside the house of Ramakanta Rabidas. PW 1 was not present inside the said house. PW 1, therefore, could not have seen Akalu's attackers. Thus, PW-1 could not have attributed specific roles to the appellants. Thus, the evidence of PW 1 on the role of the appellants and other accused persons is argued to be imaginative and thus unreliable.
55. The aforesaid argument assumes that PW 1 could not see the inner space of the said house while standing outside the house. He has deposed that he was at a vantage position from where he could see the PO. He was hiding thereat.

The appellants and the accused persons broke open the door of the house. The inside of the house was therefore exposed to public view. A person standing outside the house can thus see the events taking place in the inner space of the said house. The appellants have also removed the roof tiles of the house, apart from breaking open the door. The house, therefore, was dismantled. Thus, a person outside the said dismantled house can see what is happening inside. The evidence of PW 1 is thus believable.

56. Mr. Banerjee next argued that the body of the victim was stated to have been found by both eye-witnesses and the other witnesses within the house of Ramakanta Rabidas. The inquest report, however, indicates that the body was found on a cot made of steel about 100 meters away from the house of Shri Ramakanta Rabidas. Thus, he argues that the prosecution's case is riddled with contradictions from the inception.

57. The scope of an inquest report under Section 174, CRPC is limited as held in **Amit Kumar & Ors. v. Union Of India & Ors** reported in **2025 INSC 384 (See. Para nos. 22-28)**. It is not by itself be the investigation of a crime, under Section 154, CRPC. An inquest report records the immediate circumstances surrounding the death of the victim. Therefore, an inquest report cannot negate the substantive oral/documentary evidence, which has remained uncontroverted/ unshaken during cross-examination of the PWs.

58. The victim was murdered inside the house of Ramakanta Rabidas, and three other persons, namely, Mahilal, Bijoy, and Swapan were also grievously assaulted thereat. After the appellants had left the PO, an attempt was made by the villagers to take the deceased along with other injured victims to the

local PHC at Bedtala. The body of the victim Akalu thus was removed from the place of occurrence for medical treatment.

59. The inquest therefore could not have been conducted at the PO. Thus, adequate explanation is available from the evidence on record indicating as to why the inquest report stated that the body was found 100 meters away from the house of Ramakanta.

60. Mr. Banerjee next pointed out that PW 1,3,4,5 and 6 have deposed that Jiten along with Sudhir and Sudharsan climbed up on the roof of the house of Ramakanta Rabidas to remove the tiles thereof and caused an entry route into the house of Ramakanta. Whereas PW 8 and 13, who were inside the house of Ramakanta, have stated that only Jiten climbed up on the roof. He, therefore, argues that the aforesaid contradiction would render the evidence of PW 1 unreliable.

61. PW 8 and 13 were inside the house. Thus, they did not have the view which a person standing outside the house would have to the roof of the house. As a result, PW 8 and 13 could not state as to how many persons climbed up the said roof.

62. Whereas, PW 1, 4, 5 and 6, were present outside the house of Ramakanta Rabidas. Thus, the said witnesses had a proper view of who climbed up on the roof. This Court therefore cannot reject the version of PW 1, 4, 5, 6. They are indeed the most reliable witnesses on the entry made via the roof. Thus, the appellants Sudhir and Sudarshan having also climbed up the roof of the house to remove the tiles to cause an entry thereto cannot be disbelieved.

63. Admittedly PW 1 and 2 were standing near the house of Chand Miya. PW 5,6 and 7 stated that they saw more than 1 person removing tiles from the roof of

the house of Ramakanta. Thus, there is substantial corroboration between the PWs on the fact that more than one person climbed up the roof.

64. The evidence above has established the following:-

- A. The victims ran to the house of Ramakanta Rabidas. They were chased by the appellants. The appellants encircled the said house;
- B. The appellants and the victims both entered into the said house;
- C. The appellants broke open the door of said house. Thereafter, the appellants left the house of Rabidas. The PW(s) and the other villagers took out the deceased Akalu and the other injured persons;
- D. The victim and appellants, therefore, have been proved to be under the same roof at the material point in time, when the incident took place and thereafter the body of the victim was recovered therefrom.

65. In view of the above evidence on record, section 106 of the Indian Evidence Act is attracted calling upon the appellants to render an explanation as to why did they enter into the said house, and what did they do to the victims thereat. The entry of the appellants and thereafter the exit of injured bodies of the victim from the said house were required to be answered away by the former. In the absence of the said explanation, an adverse inference is called for against the appellants.

66. Further, the manner in which the appellants entered into the said house is more material than their exact entry point from the said house. The appellants visiting the house of a co-villager are not expected to break open the door and

remove roof-tiles and assemble with the aforesaid sharp cutting weapons, unless their intention was to attack and kill the inmates of the house.

67. In the absence of the aforesaid explanation, the evidence of eye witnesses that the appellants and other accused persons attacked the victims with sharp cutting weapons inside the house of Ramakanta Rabidas becomes eminently established. Further, it is the appellants who have killed the victim, under the said roof also becomes the only conclusion.

68. Mr. Banerjee next argued that the examination of the appellants under Section 313 of the Cr.P.C, is inadequate and improper. The appellants were not confronted with the alleged unlawful assembly and the murder of Akalu as part of a common object. He, therefore, argues that the appellants can at best be convicted under Section 326 of the IPC for having assaulted Bijoy, Manilal and Swapan Mondal.

69. A combined reading of questions 7 to 17 put to the accused Sudarshan and questions 7 to 17 to Sudhir Mondal, the other accused under Section 313 indicates that the evidence of unlawful assembly and movement of such assembly with the object of causing the death of the victims or severely injuring the same, was duly put forth to the appellants.

70. The evidence on record clearly indicates that upon the victims reaching the house of Chand Miya along with Sucharit Mondal, PW 2, Umakanta who was present there, excused himself to go to his village and fetch an elder otherwise called Morol. After sometime, Umakanta led 14 accused persons to the place of occurrence. The said accused persons were armed with Sulpi, Ballam, Hasua, Bow and Arrow and Sticks. The accused persons coming to the PO for a Salish were not required to carry weapons, unless their intention was otherwise.

71. The accused persons including the appellants therefore had a common object of causing such harm to the victims, which in the ordinary course was capable of causing death of the victims. The accused were admittedly exhorted by Umakanta to attack the victims.
72. The evidence on record indicates that upon seeing the accused persons heavily armed with sharp cutting weapons, Chand Miya and PW 2 namely Sachitra Mondal advised the appellants to flee for their lives. The victims thereupon ran into the house of Ramakanta Rabidas and locked the door from inside, the bedroom of Ramakanta.
73. If the accused had merely wanted to intimidate the victims, the matter should have ended thereat. However, the accused persons including the appellants thereafter broke into the house of Ramakanta both from the roof top and from the main door and committed murderous assault on Akalu Mondal and severely assaulted Manilal, Bijoy and Swapan Mondal. Each of the accused persons is therefore liable under Section 149 of the IPC for the murder of Akalu Mondal under Section 302 of the IPC and causing grievous injuries to Manilal, Bijoy and Swapan Mondal.
74. The evidence of unlawful assembly has been tendered and recorded in the presence of the appellants. They had the opportunity to cross-examine the PW(s) on such evidence. The evidence of the PW(s) have, however, remained uncontroverted. Therefore, no prejudice has been caused to the appellants even if the argument of Mr. Banerjee, of alleged non-compliance of Section 313 is accepted.

75. Section 313 is a one-to-one dialogue between the Court and the accused. The accused persons seldom explain the circumstances appearing against them. The defense counsel navigates the defense for the accused by cross-examining the PWs. More often than not the accused is advised to answer in a 'yes' or 'no' to the circumstances put to him or her, under Sec 313, CrPC.

76. Thus, while the right under Section 313, CrPC, continues to be acknowledged as a vital safeguard for the accused, overemphasis on the questions and answers asked and tendered under Sec 313 may be counterproductive to the criminal justice system of this Country.

77. In fact, in the case of **Naresh Kumar v. State (NCT of Delhi)**, reported in **2024 SCC OnLine SC 1641**, cited by the appellants, the Supreme Court has held that the accused cannot plead prejudice of not being examined on an incriminating circumstance when evidence of the PWs have been recorded in presence of the accused and he had the opportunity to cross examine the PWs. Paragraph no. 22 of **Naresh Kumar decision(supra)** is set out in this context, :-

22. The decision of this Court in State of Punjab v. Swaran Singh, constrain us to consider one another factor while considering the question of prejudice. In Swaran Singh's case (supra), **this Court held that where the evidence of the witnesses is recorded in the presence of the accused who had the opportunity to cross examine them but did not cross examine them in respect of facts deposed, then, omission to put question to the accused regarding the evidence of such witnesses would not cause prejudice to such an accused** and, therefore, could not be held as grounds vitiating the trial qua the convict concerned.

Emphasis Applied

78. The incriminating circumstances appearing against the accused are taken from the evidence led by the Prosecution. Thus, when the defense had the opportunity to cross examine the PWs, it must be deemed that the accused had the opportunity to explain every incriminating circumstance. As a result, the

chances of the accused being prejudiced due to an ineffective examination under Section 313 are reduced if not negated.

79. The decision in **Nar Singh v. State of Haryana, reported in (2015) 1 SCC 496**, cited by the appellants, will also not apply to the facts of the present case. At paragraph nos. 16, 20, and 30.2, it was held that the accused must demonstrate that prejudice has been caused, due to the Trial Court having not put a incriminating circumstances to him. The appellants have not demonstrated that any prejudice has been caused to them, as a result of alleged improper examination under Section 313, CrPC.
80. It is now well settled that each member of an unlawfully assembly need not inflict similar grievous injuries to be punished for the parent offence. The basis of Section 149 is founded on common object but not common actions. In this context paragraph 14 of the decision of **Parshuram Versus State Of M.P. reported in 2023 INSC 973** is set out herein below:-

14. It could thus clearly be seen that the Constitution Bench has held that **it is not necessary that every person constituting an unlawful assembly must play an active role for convicting him with the aid of Section 149 of IPC. What has to be established by the prosecution is that a person has to be a member of an unlawful assembly, i.e. he has to be one of the persons constituting the assembly and that he had entertained the common object along with the other members of the assembly, as defined under Section 141 of IPC. As provided under Section 142 of IPC, whoever, being aware of facts which render any assembly an unlawful assembly, intentionally joins that assembly, or continues in it, is said to be a member of an unlawful assembly.**

15. Undisputedly, from the evidence of Chironji (PW-6) and Ramhet (PW-12), it is clear that the present appellants were members of the unlawful assembly. No doubt that there is no specific role attributed to the present appellants of assaulting the deceased Madan. However, since the appellants were members of the unlawful assembly, in view of the law laid down by this Court in the case of Masalti (supra), it is not necessary that such a person, for being convicted, must have actually assaulted the deceased

81. In **Haribhau @ Bhausaheb Dinkar Kharuse & Anr. v. The State of Maharashtra, reported in 2025 INSC 1266**, the SC has dealt with a similar set of facts as obtaining in the present case. The Court held as follows:-

35. ...They consistently deposed that on 27.04.1999, the accused persons, including the present appellants, arrived at the scene on two motorcycles armed with deadly weapons such as knives and sattur. The appellants actively facilitated the commission of the offence by accompanying the co accused persons, ensuring the confinement of the victims and participating in the coordinated assault.

36. **PW-1 and PW-7 categorically stated that appellant no. 1 and 2 (accused no. 3 and 4) were among those who surrounded the deceased and the injured witnesses, thereby preventing their escape and were fully aware that the co-accused persons were armed.** The evidence further establishes that appellant (accused no.6) inflicted grievous injuries upon PW-7, demonstrating his direct participation in the attack. PW-9 corroborated these accounts and unambiguously identified all three appellants as members of the group acting in concert and sharing a common objective.

37. **The consistent narrative of these eyewitnesses leaves no room for doubt that appellants no. 1 and 2 (accused no. 3 and 4), by transporting the armed assailants to the spot and facilitating the attack, and appellant (accused no. 6), by inflicting injuries during the assault, were integral participants in the execution of the unlawful design.**

43. In the present case, **the evidence conclusively establishes that all three appellants were members of an unlawful assembly that carried out a premeditated and violent attack resulting in the death of the deceased and grievous injuries to PW-7 and PW-9. The role of appellant (accused no. 6) in inflicting serious injuries upon PW-7 demonstrates his direct involvement and awareness of the collective design. The appellant no. 1 and 2 (accused no. 3 and 4), who transported the armed assailants to the scene, played an equally crucial role by facilitating the attack and ensuring its execution in furtherance of the common object.**

44. **The cumulative evidence clearly shows that the appellants were not passive spectators but active participants and facilitators in a deliberate and planned assault.** Their conduct and presence at the scene, in concert with the armed co-accused persons, establish their common intention and vicarious liability under Sections 302 and 307 read with Section 149 of the IPC

82. Mr. Banerjee next argued that all the appellants did not have the intention to kill the victims or else all the victims would have died. Akalu alone would not have died. He, therefore, argues that the appellants herein may be punished only under the second part section 304 of the IPC.

83. The reason why Akalu has suffered murderous injuries is available on record. Akalu lodged a complaint against the Gudar for the snatching away of Rs 800 and a bicycle. Further, Gudar and Akalu entered into an altercation when the victim and the appellants assembled in the house of Chand Miya. Thus, Akalu was the main target of the appellants.

84. Section 299 of the IPC defines culpable homicide. The definition thereof has three parts. The first two parts use the expression 'intention' to say that the accused must have the intention to cause death or cause such bodily injury which has resulted in death. The last part uses the expression 'knowledge' to say that the accused must have the knowledge that his acts will result in death of the victim. Sec. 299, IPC is set out below:-

299. Culpable homicide.—

Whoever causes death by doing an act with the **intention** of causing death, or with **the intention** of causing such bodily injury as is likely to cause death, or **with the knowledge** that he is likely by such act to cause death, commits the offence of culpable homicide.

Emphasis applied

85. The act of an accused falling within the scope of the first part of Sec. 299, IPC will amount to murder when the accused had the intention to cause death. However, the act of an accused under the second and third part of Section 299 constitute culpable homicide not amounting to murder. We shall advert to the last two parts presently.

86. Section 300, IPC enumerates four circumstances under which culpable homicide would amount to murder. The first three circumstances deal with a situation where the accused either had the intention to cause death or intended to cause such bodily injury, which he knew will result in death. The fourth circumstance deals with a situation where the accused knows that his acts are so dangerous or murderous, that the death of the victim is inevitable as a result of such acts. Thus, the fourth circumstance presumes the accused to have the knowledge that his act will end the life of the victim. Section 300, IPC is set out below:-

Section 300- Murder-

Except in the cases hereinafter excepted, culpable homicide is murder—

1. If the act by which the death is caused is done with the **intention** of causing death, or
2. If it is done with the **intention** of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or
3. If it is done with the **intention** of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or
4. If the person committing the act **knows** that it is so imminently dangerous that it must, in all probability, cause death, or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

87. Thus, intent is a *sin qua non* for proving a charge of murder. Clear and informed knowledge of the accused of the consequences of his murderous act is also murder. For example, when a person mixes life-threatening poison in food, or deliberately hits the vital and sensitive organs of the victim.

88. In **Anbazhagan v. State, reported in 2023 SCC OnLine SC 857**, the Supreme Court dealt with the difference between ‘intention and

'knowledge', inter alia, under **Para nos. 25, 28, and 31**. The said paragraphs are set out below as under:-

25. Bearing in mind the test suggested in the aforesaid decision and also bearing in mind **that our legislature has used two different terminologies 'intent' and 'knowledge' and separate punishments are provided for an act committed with an intent to cause bodily injury which is likely to cause death and for an act committed with a knowledge that his act is likely to cause death without intent to cause such bodily injury as is likely to cause death, it would be proper to hold that 'intent' and 'knowledge' cannot be equated with each other. They connote different things.** Sometimes, if the consequence is so apparent, it may happen that from the knowledge, intent may be presumed. But it will not mean that 'intent' and 'knowledge' are the same. **'Knowledge' will be only one of the circumstances to be taken into consideration while determining or inferring the requisite intent.**

28. Thus, while defining the offence of culpable homicide and murder, **the framers of the IPC laid down that the requisite intention or knowledge must be imputed to the accused when he committed the act which caused the death in order to hold him guilty for the offence of culpable homicide or murder as the case may be.** The framers of the IPC designedly used the two words 'intention' and 'knowledge', and it must be taken that the framers intended to draw a distinction between these two expressions. **The knowledge of the consequences which may result in the doing of an act is not the same thing as the intention that such consequences should ensue.** Except in cases where mens rea is not required in order to prove that a person had certain knowledge, he "must have been aware that certain specified harmful consequences would or could follow." (Russell on Crime, Twelfth Edition, Volume 1 at page 40).

31. The phraseology of Sections 299 and 300 respectively of the IPC leaves no manner of doubt that under these Sections **when it is said that a particular act in order to be punishable be done with such intention, the requisite intention must be proved by the prosecution. It must be proved that the accused aimed or desired that his act should lead to such and such consequences. For example, when under Section 299 it is said "whoever causes death by doing an act with the intention of causing death" it must be proved that the accused by doing the act, intended to bring about the particular consequence, that is, causing of death. Similarly, when it is said that "whoever causes death by doing an act with the intention of causing such bodily injury as is likely to cause death" it must be proved that the accused had the aim of causing such bodily injury as was likely to cause death.**

(Emphasis Applied)

89. The intention to commit an act implies that the person is determined to achieve something out that act. Thus, when an accused had the intent to cause murderous bodily injuries, he will be charged for offence of murder.
90. Knowledge of the consequences of one's own acts connotes that the person was informed about what he or she is up to. Thus, an accused having the knowledge of his acts but did not intend the consequences thereof to ensue, for illustration the accused, as matter common sense, knew that stabbing with a knife in the belly of the victim may cause death, may excuse him from the charge for murder. He may be tried for the charge of culpable homicide not amounting to murder, provided he used the knife in the belly without having any intent to end the life of the victim.
91. The Court in **Anbazhagan (supra)** has however a sounded a note of caution that when the accused did have the knowledge of the consequences of his acts and the acts are found, clearly murderous, the court from the attending circumstances may infer the intent of the accused to kill the victim.
92. To demonstrate a death as culpable homicide not amounting to murder and thus the punishment prescribed under Section 304, IPC should be imposed, an accused has to show that he falls under any of the exceptions to murder, provided under Sec. 300. In the present case, the acts of the appellants need to be considered in light of the exception nos. 1 and 4.
93. In the present case, the victims did not provoke the appellants. The alleged theft of a bicycle and Rs 800 a few months before the incident does

not constitute, a sudden and grave provocation to cause the death of the victim. The incident occurred five months earlier.

94. If at all the complaint against the alleged act of theft is taken to have given any provocation to the appellants, the same has to be taken to have supplied a motive to the appellants to kill the victim. The same would be evident from the fact that the appellants went to the Salishi with several sharp like Sulpi, Ballam and other sharp cutting agricultural implements. They also carried Bows and Arrows. It is, therefore, a clear case of premeditated murder.

95. In **Narayan Yadav V. State Of Chhattisgarh** reported in **2025 INSC 927**, the Supreme Court explained as follows:-

40. Exception 4 to Section 300 of the IPC applies in the absence of any premeditation. This is very clear from the words used in the provision itself. It contemplates that the sudden fight must occur in the heat of passion, or upon a sudden quarrel. The Exception deals with a case of provocation not covered by Exception 1, although it would have been more appropriately placed after that exception. It is founded upon the same principle, as both involve the absence of premeditation. However, while Exception 1 involves total deprivation of self-control, Exception 4 refers to that heat of passion which clouds a person's sober reason and urges them to commit acts they would not otherwise commit. There is provocation in Exception 4, as there is in Exception 1, but the injury caused is not the direct consequence of that provocation. In fact, Exception 4 addresses cases where, notwithstanding that a blow may have been struck or provocation given at the outset of the dispute, regardless of how the quarrel originated, **yet the subsequent conduct of both parties' places them on an equal footing with respect to guilt.**

41. **A "sudden fight" implies mutual provocation and the exchange of blows on both sides. In such cases, the homicide committed is clearly not attributable to unilateral provocation, nor can the entire blame be placed on one side.** If it were, Exception 1 would be the more appropriate provision. There is no prior deliberation or intention to fight; the fight breaks out suddenly, and both parties are more or less to blame. **One party may have initiated it, but had the other not aggravated the situation by their own conduct, it may not have escalated to such a serious level.** In such scenarios, there is mutual provocation and aggravation, making it difficult to determine the precise share of blame attributable to each participant. The protection of Exception 4 may be invoked if death is caused: (a) without premeditation; (b) in a sudden fight; (c) without the offender having taken

undue advantage or acted in a cruel or unusual manner; and (d) the fight must have been with the deceased.

42..... For the application of Exception 4, it is not enough to show that there was a sudden quarrel and no premeditation. **It must also be shown that the offender did not take undue advantage or act in a cruel or unusual manner. The expression “undue advantage” as used in the provision means “unfair advantage”.**

Emphasis applied

96. In the present case, the victims did not invite a fight with the appellants.

Rather, the victims were waiting for a Salish. There was no fight at all between the appellants and the victims. The appellants were not injured. The victims ran away to save themselves as they were intimidated and scared by the aggression of the appellants and other accused persons. The appellants and other accused grievously assaulted them. Hence, it was a one-sided and heavy-handed murder on the victims by the appellants.

97. The decision **Narayan Yadav decision (supra)** held that that culpable homicide not amounting to murder may fall under the second or third part of Sec. 299. In the present case, the appellants fall under the first part of Sec.299 read with the first circumstance of Sec. 300. The appellants had the intention to cause death as evident from their encirclement of and manner of entry to house of Rabikanta. They carried weapons to execute their common object. The case of the appellants therefore cannot come under Sec.304 unless any of the exceptions to murder under Sec 300, IPC are demonstrated. None of the exceptions to murder under section 300, IPC, is attracted to the appellants.

98. The decision of **Chikkarange Gowda and Ors. Vs. State of Mysore reported in 1956 SCC OnLine SC 65**, cited by Mr. Banerjee is distinguishable on facts. In the said case, the accused persons were acquitted by the Supreme Court since they were admittedly only desirous of chastising the victims. They were

carrying Kerosene Oil with them to light up the house of the victims. Their intention was primarily to threaten the victims and not to murder them.

99. The decision in the case of **Santosh Vs. State of MP reported in (1975) 3 SCC 727**, is also clearly distinguishable. In the **Santosh decision (supra)** there was some doubt as to whether the common object of unlawful assembly and killing of the victims was to the knowledge and intention of the accused persons therein. The facts of the said case are quite different from the facts of the instant case. The accused in the instant case formed the unlawful assembly with the specific object and motive of causing murderous bodily harm, which they were aware, will result in death. The user of the aforesaid weapons, carried by the appellants, must be deemed to be aware of the consequences of the weapons on the victim.

100. The decision in **Mahbub Shah v. King-Emperor, 1945, reported in SCC OnLine PC 61** cited by the appellants has no application to the present case. The Court in **Mahbub Shah decision (supra)** has held that the common intention of all is not equivalent to common acts of all. The criminal act may do by one person. The intention behind such an act however may be shared by all, apart from the person who actually committed that act.

101. In **Mahbub Shah decision (supra)**, the court did not find any evidence of pre-concert between the accused persons. In present case, however Umakanta, went back to his hamlet to bring the appellants and other accused persons to the Salishi. They arrived along with Umakanata, armed with sharp cutting weapons. They chased the victims, when the victims tried to escape. They encircled the house Ramakanta Rabidas, where the victims took shelter.

Thus, there was clear a pre-concert amongst the accused and they have acted on the basis thereof.

102. The decision of **Laxmi Singh and Ors. Vs. State of Bihar reported in 1976 4 SCC 394** cited by counsel for the appellants, is equally inapplicable in the facts, in the light of Paragraph 12 and 18, thereof. The prosecution story in the said case was found to suffer from several infirmities. There was no explanation of the injuries suffered by the victim beyond reasonable doubt. As far as the present case is concerned the fact of Akalu Mondal being chopped to death by Jiten and the accused persons actively assisting him apportion the liability under Section 302 read with Section 149 on all of them. All the appellants formed a joint assembly against the victims.

103. The decision of **Vadla Chandraiah Vs. State of AP reported in 2008 13 SCC 587** is also distinguishable in the facts. In the said case there was a grave provocation and lack of premeditation amongst the accused persons. The cruel and unusual injuries inflicted on the victim were done in the heat of the moment. There was no motive or object established on prior consult or premeditation in harming the victims therein. It is in that context that the conviction of the appellants therein was altered from Section 302 to the part 2 of Section 304 of the IPC.

104. The decision of **Ankush Shiaji Gaikawad Vs. State of Maharastra reported in 2013 6 SCC 770** is also distinguishable since there was no premeditation or intention to cause death of the victim.

105. In **Goverdhan v. State of Chattisgarh reported in 2025 SCC Online Sc 69**, the death of the victim was not instantaneous. The victim survived for three days after the assault by the accused. Most importantly, the motive of the

crime was not proved. The victim and the accused were on talking terms and used to visit each other. Some of the injuries found on the victim were not grievous. The court found that the cumulative effect of the injuries led to the death. Contents of motive help in ascertaining the real intent of the acts.

106. In **Goverdhan (supra)**, the death of the victim was not the outcome of the intent of the accused. In the present case, the victims were assaulted and killed because they raised their voice against the appellants. The appellants wanted to bury the matter of the snatching of money and a bicycle, with the victims.

107. Having regard to the aforesaid, this Court is of the view that the conviction of the appellants under Section 302 calls for no interference. The appellants cannot take advantage of an error committed by the Trial Judge in not sentencing all the accused persons under Section 302 read with Section 149 of the IPC. Negative equality cannot be claimed by the appellants as held by the Supreme Court in the case of **Khujji v. State of M.P., (1991) 3 SCC 627:-**

To put it differently, this Court came to the conclusion that the High Court was not bound by the appreciation of the evidence made by the trial court and it was free to reach its own conclusions as to the proof or otherwise of the circumstances relied upon by the prosecution on a review of the evidence of the prosecution witnesses. This Court, therefore, held that when several persons are alleged to have committed an offence in furtherance of their common intention and all except one are acquitted, it is open to the appellate court under sub-section (1)(b) of Section 386 of the Code to find out on a reappraisal of the evidence who were the persons involved in the commission of the crime and although it could not interfere with the order of acquittal in the absence of a State appeal it was entitled to determine the actual offence committed by the convicted person. Where on the reappraisal of the evidence the appellate court comes to the conclusion that the appellant and the acquitted accused were both involved in the commission of the crime, the appellate court can record a conviction with the aid of Section 34

notwithstanding the acquittal of the co-accused. While the appellate court cannot reverse the order of acquittal in the absence of a State appeal, it cannot at the same time be hedged by the appreciation of the evidence by the lower court if that appreciation of evidence is found to be erroneous. This Court, therefore, pointed out that in such a fact situation it is open to the appellate court to record a finding of guilt with the aid of Section 34 notwithstanding the acquittal of the co-accused since the English doctrine of repugnancy on the face of record has no application in this country as we are governed by our own statutory law. On this ratio this Court confirmed the conviction of the appellant under Section 302, IPC, but with the aid of Section 34, IPC. The fact-situation before us is more or less similar.

The failure on the part of the prosecution witnesses PWs 3 and 4 to identify the others does not alter the situation. We are, on the other hand, convinced from the evidence of PW 1 Komal Chand that some of the co-accused, particularly, Gunda, Parsu and Gopal had participated in the commission of the crime. It is another matter that in the absence of a State appeal the High Court could not, nor can we, interfere with their acquittal, but as rightly pointed in Brathi case [(1991) 1 SCC 519 : 1991 SCC (Cri) 203] this Court is not bound by the facts found proved on the appreciation of evidence by the courts below and is, in law, entitled to reach its own conclusion different from the one recorded by the court's below on a review of the evidence. In that view of the matter we think that the conviction of the appellant can be sustained with the aid of Section 34 or 149, IPC, as the case may be. In the present case we feel it safe to confirm the conviction of the appellant with the aid of Section 34, IPC. We, therefore, cannot agree with the submission of the learned counsel for the appellant that at best the conviction can be recorded under Section 324, IPC. We confirm the conviction of the appellant under Section 302, IPC, with the aid of Section 34 and maintain the sentence awarded to him.

Emphasis Applied

108. **In R. Muthukumar v. TANGEDCO**, 2022 SCC OnLine SC 151, it was held as follows:- -

28. A principle, axiomatic in this country's constitutional lore is that there is no negative equality. **In other words, if there has been a benefit or advantage conferred on one or a set of people, without legal basis or justification, that benefit cannot multiply, or be relied upon as a principle of parity or equality.**

109. The appellants have lastly pleaded that the punishment imposed on them may be considered for reduction. One of the appellants is stated to be 80 years old and is suffering from Alzheimer's disease. The other appellant is 83 years old and has undergone several cataract surgeries and has become partially blind. The prayer for reduction of punishment

is thus based on health grounds. The appellants have taken the same plea of advanced age before the learned Trial court for the reduction of sentence.

110. Indeed, age and health of a convict are relevant considerations while deciding his or her punishment. The nature of and the manner in which the crime was committed, and the criminal would however be of paramount consideration. The appellants have been found guilty of a heinous crime. They attacked and killed the victim and seriously injured 2 others by forming a group armed to the teeth with a view to overpower and overawe the victims. Pursuant thereto they killed and injured the victims. The assault was aimed at silencing the victims not to be able to claim the bicycle and the money earlier stolen from the victims. A lenient view on punishment could have been taken if the appellants had only intimidated the victims.

111. However, the act of chasing the victims and the manner of entry to the house of Ramakanta Rabidas, where the victim took shelter, and the way the Akalu was killed and other victims were assaulted only indicates that the appellants are savagely cruel. They went on to assault and kill the victims with a view to set an example for the victims and others to note. Thus, the crime committed by the appellants was barbaric and inhuman. It was in calculated and pre-meditated. After assaulting victims, the appellants stole a motorcycle of the victims and also stole from the house of Rabidas. The appellants are hardened criminals who have no regard or fear of the law. Hence, the punishment imposed on the appellants does not deserve to be reduced.

112. The medical concerns of the appellants can be appropriately addressed by the Jail authorities. The concerned correctional home is, thus directed to extend all medical facilities that a convict is entitled to under the law and jail rules.
113. For the reasons as stated above, CRA 203 of 2015 with CRA 220 of 2015 failed and hereby dismissed.
114. The appellants if on bail shall surrender forthwith before the jurisdictional court or they shall be taken into custody forthwith. The jurisdictional Trial court shall ensure that the appellants undergo their sentence as aforestated, in terms of the applicable rules and laws.
115. A copy of this judgment shall be sent to Trial Court for information and appropriate action in accordance with law.
116. There shall be no order as to costs.
117. Urgent certified photocopy of this judgment, if applied for, be supplied to the parties upon completion of all requisite formalities.
118. All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)

I agree.

(Ajay Kumar Gupta, J.)