

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

**PRESENT:**

***The Hon'ble Justice Rajarshi Bharadwaj***  
***And***  
***The Hon'ble Justice Apurba Sinha Ray***

***C.R.A. 396 of 2013***  
***Kaikobad Sk. & Ors.***  
***-Vs-***

***The State of West Bengal***

For the Appellants : Mr. Partha Sarathi Bhattacharyya  
Ms. Sukla Das Chandra  
Mr. Bhaskar Seth  
Ms. Swarnali Saha

For the State : Mr. Abhishek Sinha  
Ms. Afreen Bengum

Reserved On : 21.05.2025

Pronounced On : 14.08.2025

**Rajarshi Bharadwaj, J.:**

1. At the outset, it is informed that the appellant nos.1 and 3 have expired. Death certificates of the appellants have been placed on record. The Appeal stands abated so far as the appellant nos. 1 and 3 are concerned.

2. The appeal is directed against the judgment and order dated 20.03.2013 passed by the Learned Additional Sessions Judge, 1<sup>st</sup>Fast Track Court, Rampurhat Birbhum, in Sessions case no.39 of 2009 convicting the appellants

for commission of offences punishable under sections 147/148/323/324/326/302/149 of the Indian Penal Code (hereinafter referred to as 'IPC') and sentencing them to undergo Rigorous Imprisonment for life and to pay a fine of ₹10,000/- each, in default of which they are to suffer Rigorous Imprisonment for a further period of two and a half years, for the offence punishable under Section 302/149 of the Indian Penal Code. In addition, they were also sentenced to undergo Rigorous Imprisonment for ten years each and to pay a fine of ₹5,000/- each, in default whereof to further suffer Rigorous Imprisonment for one and a half years, for the offence under Section 326/149 IPC. By the same order, the appellants were further sentenced to Rigorous Imprisonment for three years each and to pay a fine of ₹500/- each, in default to suffer Rigorous Imprisonment for 50 days each, for the offence punishable under Section 324/149 IPC. Additionally, all the accused persons, including the appellants, were sentenced to Rigorous Imprisonment for one year each and a fine of ₹500/- each, in default to suffer Rigorous Imprisonment for 50 days each, for the offence under Section 323/149 IPC; Rigorous Imprisonment for two years each and a fine of ₹500/- each, in default to suffer Rigorous Imprisonment for 50 days each, for the offence under Section 147 IPC; and Rigorous Imprisonment for three years each and a fine of ₹500/- each, in default to suffer Rigorous Imprisonment for 50 days each, for the offence punishable under Section 148 IPC.

**3.** The prosecution case, in brief, is that on 16th April 2008 at around 2:00 P.M., the de facto complainant Abdul Mannan, son of Kayem Sk., of village Kanakpur, P.S. Murarai, District Birbhum, was taking a bath along with his uncle Kajibul Sk. in Talbona Pukur. A dispute arose between Abdul Mannan and one Lalan Sk. Herein the appellant no. 2 of the same village regarding the spoiling of pond water, allegedly due to a prior grudge. Following this altercation, appellant no. 2 returned to his house and brought with him five

others namely Kuddus Sk., Wohab Sk., Kailobad Sk., Milan Sk., and Dolon Sk. herein the appellants all armed with lathi, tangi, sabal and a bottle of acid.

**4.** As the de facto complainant was approaching his house, his uncle Kajibul Sk. also rushed back towards the residence. The accused persons herein the appellants forcibly dragged Kajibul Sk. from the house and began to assault him with lathis, inflicting injuries to his chest and head. The de facto complainant's father, one Kayem Sk., upon witnessing the assault, rushed to the spot, only to find himself similarly attacked. The accused used tangi to strike Kajibul on the mouth and head and assaulted other parts of his body. The de facto complainant himself was injured on his back with tangi and sabal when he attempted to intervene. The accused persons also allegedly assaulted the de facto complainant's mother and aunt during the incident.

**5.** Notably, Kuddus Sk. is alleged to have thrown acid on Kajibul Sk., causing burn injuries, while Wohab Sk. struck him with a tangi. The remaining accused assaulted him with lathi and sabal, which ultimately led to the death of Kajibul Sk. at the doorway of his house. Upon hearing the commotion, local residents arrived at the scene, prompting the appellants to flee the village. The injured, including Kayem Sk., were admitted to Murarai Hospital.

**6.** Based on the written complaint filed by the de facto complainant at around 4:05 p.m. on the same day, Murarai P.S. Case No. 51/08 dated 16.04.2008 was registered under sections 147/148/149/323/324/326/302 of the IPC.

**7.** Upon conclusion of the investigation, a charge sheet was filed under the aforesaid sections and the case, being a Sessions triable one, was committed to the Court of Sessions and later transferred to the Court of the Additional Sessions Judge for trial.

**8.** Charges were framed under Sections 147/148/149/323/324/326/302 IPC against the accused persons, all of whom pleaded not guilty and claimed to

be tried. In the course of the trial, the prosecution examined 14 witnesses and exhibited several documents. The defence of the accused persons was that of complete denial and false implication, contending that the incident was a result of a mutual quarrel.

**9.** Upon completion of the trial, the learned Additional Sessions Judge, by judgment and order dated 20.03.2013, convicted and sentenced the appellants in accordance with law as mentioned above.

**10.** The Learned Counsel for the appellants submits that the impugned judgment suffers from non-application of judicial mind and is based on uncorroborated, interested testimonies of closely related witnesses, whose versions were identical despite differing timelines of arrival at the scene. It was contended that the Trial Court overlooked material inconsistencies, including the absence of bloodstains at the alleged place of occurrence, non-disclosure of the assailants' names to the medical officer and the fact that most injuries were simple in nature with no evidence of sharp weapons or acid, as alleged. The appellants also questioned the credibility of the FIR, which was purportedly lodged while the complainant was hospitalized and pointed to a pending kidnapping case against one of the appellants as indicative of motive for false implication. Lastly, it has been submitted that, having undergone nearly 13 years of detention, the sentence is unduly harsh.

**11.** Learned Counsel for the State submits that the entire prosecution case is founded on the cogent and corroborated testimony of multiple injured eyewitnesses, most of whom are independent in nature and share no prior animosity or inimical relationship with the appellants. The presence of these witnesses at the place of occurrence has been duly established and their credibility remains intact, as their depositions have withstood the rigours of cross-examination. The State relies primarily on the ocular version of the de

facto complainant, PW 1, who is also an injured eyewitness and whose testimony lays the foundation of the incident leading to the homicidal assault.

**12.** PW 1, as submitted by the counsel, was a witness to the initial altercation between the deceased, Kajibul Sk and the convict, Lalan Sk, concerning the contamination of pond water. After a verbal exchange, Lalan Sk had left the spot and while PW 1 and the deceased were returning, Lalan Sk reappeared with the other accused persons—Kuddus Sk, Ohab Sk @ Wahab, Milan Sk, Dolon Skand Kaikobad Sk @ Kaiprovat, all of whom were armed with deadly weapons including *tangi*, *sabal*, *hasua* and *lathi*. PW 1 has clearly assigned specific overt acts to each of the appellants, implicating them in the fatal assault on the deceased. It has been further contended that when PW 1, along with other witnesses (PWs 2, 6, 7, 8 and 9), attempted to save the deceased, they too were assaulted by the appellants. From his cross-examination, it has emerged that although he was apprehensive during the sudden onslaught, he did not flee the scene but remained at the spot, reinforcing the naturalness of his presence and his courage under duress. He further confirmed that the incident continued for approximately 10 to 15 minutes, which negates the defence's attempt to trivialize or cast doubt upon the duration and gravity of the occurrence.

**13.** It is further submitted that PW 2, another injured eyewitness, has fully corroborated the version of PW 1 and described in detail the manner in which the deceased and other injured persons were assaulted. Although PW 2 claimed to have suffered acid burns, the lack of medical evidence in support thereof may be treated as an embellishment, without detracting from the core narrative. PW 6, who also sustained injuries, has attributed specific acts of assault to each of the appellants. PW 7, a neighbour, deposed that upon hearing the commotion, she rushed to the spot and witnessed the entire assault unfold before her residence. Her version is consistent with the

depositions of the earlier witnesses and also highlights the active participation of each of the appellants. PW 8, another injured eyewitness, has narrated the same sequence of events and sustained injuries while attempting to intervene and protect the deceased. PW 9, the brother of the deceased, stated unequivocally that the attack took place in front of his house and described the roles of the appellants with clarity and coherence.

**14.** It is submitted by the State that the lapse of over two years between the date of the incident and the examination of witnesses during trial may account for minor discrepancies in the depositions with regard to individual acts. However, such inconsistencies are only natural and cannot dilute the weight of the otherwise consistent and credible prosecution case. It is also pointed out that in a case involving an unlawful assembly, where a group of armed persons engage in indiscriminate assault, it is not always feasible to precisely identify the individual act of each participant. The charge under Sections 147, 148 and 149 of the IPC is thus entirely justified, as the evidence demonstrates that the appellants formed an unlawful assembly, armed with deadly weapons and in furtherance of their common object, mercilessly attacked and killed the deceased, while also injuring several others.

**15.** Learned Counsel for the State has also refuted the defence contention that the fatal blows were inflicted only by two appellants being Kaikobad Sk and Wahab Skand that, consequently, the others should not be convicted under Section 302 IPC. It is submitted that to seek the benefit of a lesser charge under Section 304 IPC, the defence must demonstrate either an absence of intention, knowledge or bring the act within one of the exceptions under Section 300 IPC. No such plea has been made out or substantiated. On the contrary, the nature and extent of injuries found on the deceased, including eight grievous injuries with fractured ribs, as deposed by the autopsy surgeon

herein PW 5, unmistakably indicate a brutal and concerted assault by multiple assailants.

**16.** The medical evidence, as tendered by PW 4 and PW 12, further corroborates the testimony of the injured witnesses. PW 4, who examined PW 9, confirmed injuries consistent with an attack by weapons such as *lathi* or *tangi*. The counsel for the State submits that these injuries lend substantial support to the ocular version of the events and lend further credibility to the statements of the injured witnesses.

**17.** The counsel also submits that the suggestion of previous enmity raised by the defence, namely that the complainant's side was previously involved in a kidnapping and rape case allegedly filed by the appellants' side, cannot per se be a ground to discard the testimony of witnesses. It is submitted that prior enmity is a double-edged sword and may equally furnish a motive for the assault committed by the appellants. Further, it has not been established that the injured eyewitnesses, most of whom are neighbours, bore any personal grudge against the accused so as to falsely implicate them in a serious offence like murder. On the question of motive and premeditation, the State asserts that the narrative emerging from the prosecution witnesses clearly indicates that the assault was not spontaneous but a premeditated act. After the initial altercation at the pond, appellant Lalan Sk returned home and mobilized the other appellants, who all came armed and collectively assaulted the deceased near the entrance of his house. This sequence of acts reflects not a sudden quarrel, but a calculated design to commit murder.

**18.** The prosecution further contends that the argument raised by the defence that some appellants did not individually participate in the fatal assault or share the common object is untenable in law. It is well established that the common object of an unlawful assembly can be formed on the spot and need not be pre-planned. Every member of such assembly is liable for the acts

committed in furtherance of that common object, including murder, irrespective of the specific role played by them. It is not incumbent upon the prosecution to prove which specific member inflicted which injury. In support of this proposition, reliance is placed on the decisions of the Hon'ble Supreme Court in **Lalaji and Others vs. State of U.P.** reported in **(1989) 1 SCC 437** and **Charan Singh and Others vs. State of U.P.** reported in **(2004) 4 SCC 205**, where it was held that:

*“13. Section 149 IPC has its foundation on constructive liability which is the sine qua non for its operation. The emphasis is on the common object and not on common intention. Mere presence in an unlawful assembly cannot render a person liable unless there was a common object and he was actuated by that common object and that object is one of those set out in Section 141...A common object may be formed by express agreement after mutual consultation, but that is by no means necessary. It may be formed at any stage by all or a few members of the assembly and the other members may just join and adopt it.*

*14. What the common object of the unlawful assembly is at a particular stage of the incident is essentially a question of fact...It is not necessary under law that in all cases of unlawful assembly, with an unlawful common object, the same must be translated into action or be successful...An assembly which, at its commencement or even for some time thereafter, is lawful, may subsequently become unlawful. In other words, it can develop during the course of incident at the spot eo instanti.”*

**19.** In view of the aforesaid submissions and the legal position emerging therefrom, it is urged by the prosecution that the case has been proved beyond reasonable doubt.

**20.** We have heard learned Advocates for the parties and have gone through the evidence of record meticulously which reveals as follows:

**I.** P.W.1, is the de facto complainant in the instant case and a resident of Kanakpur village. He is also an eyewitness to the brutal assault which forms the foundation of the prosecution case. He has identified all the

accused persons present in court namely Kuddus Sk, Ohab Sheikh, Kaipravat Sk, Milan Sk, Dolon Sheikh and Lalan Sheikh as residents of the same village. PW1 deposed that on the night of 16.04.2008 at around 1:55 A.M., while he was bathing with his uncle Kajibul Sk, the accused Lalan Sheikh and a neighbourhood child Nur Alam in the Talbonapukur pond at Kanakpur, a verbal altercation broke out between Lalan Sheikh and Kajibul Sk regarding contamination of the pond water. Following this quarrel, Lalan Sheikh left for his house. PW1 and his uncle, having completed their bath, were walking home when Kajibul Sk, just as he was about to enter his house, was attacked by the accused persons. From a distance, PW1 observed the accused persons armed with tangi, sabol, acid bulb, hasua and lathi dragging his uncle Kajibul Sk from the entrance of his house. Ohab Sk first struck Kajibul with a tangi, causing him to fall. Kaipravat Sk then assaulted him with a sabol on the chest. Thereafter, other accused persons began to mercilessly beat him with lathis. Kuddus Sk further poured acid on Kajibul Sk's body, causing grievous injuries. PW1's father, Kayem Sk, upon witnessing the attack, attempted to intervene but was also assaulted. He sustained injuries from being hit with a tangi by Ohab Sk and a lathi by Kuddus Sk. Milan Sk inflicted injury on his left leg using a hasua. PW1 himself was then attacked, he was struck on the upper portion of his left leg with a tangi by Ohab Sk, on his back with a sabol by Kaipravat Sk, and on his left wrist with a lathi by Kuddus Sk. His mother, Jahanara Bibi alias Janefa Bibi, his aunt Ajema Bibi, his uncle Jahangir Sk and his cousin Lalu Sk alias Lalchand Sk also arrived at the spot and were assaulted by the accused persons. Ohab Sk struck Ajema Bibi with a tangi below the knee. Kuddus Sk injured his mother with a lathi while Milan Sk dragged her by her hair and Kuddus Sk further assaulted her in her private parts. Ohab

Sk also attacked Jahangir Sk and Kuddus Sk poured acid on Lalu Sk, causing burn injuries. Hearing the commotion, local residents rushed to the spot, following which the accused persons fled. Kajibul Sk succumbed to his injuries at the scene. PW1, along with the injured, went to Murarai Hospital for treatment and later lodged an FIR at Murarai Police Station, which he wrote and signed himself. He also identified the photo copy of the inquest report conducted by police in his presence over the body of Kajibul Sk. PW1 further stated that the injured were subsequently referred to Rampurhat Hospital and then to Burdwan Hospital. He accompanied them throughout. He clarified that there were existing tensions between his family and the accused prior to the incident and asserted that he had disclosed the complete incident in his complaint without suppressing any facts.

- II.** P.W.2, Lalu Sk @ Lalchand Sk, deposed that he had personal knowledge of the deceased Kajibul Sk, who, according to him, succumbed to injuries caused by a blow from a sabal. He stated that the incident occurred on the 3rd day of Baishakh, approximately two years ago, at around 2 P.M., in front of Kajibul's residence. He named the accused persons Lalan, Dolon, Milan, Kuddus, Wohab and Kaikobad as having collectively assaulted the deceased. He further testified that the same accused also physically assaulted Kayem, Mannan and Mannan's mother. Upon hearing the commotion, he rushed to the spot and attempted to rescue the victims. According to his account, Kajibul died on the spot. PW2 specifically stated that accused Kuddus poured acid on the deceased, causing burn injuries, and that accused Lalan and Milan inflicted lathi blows. The injured persons, namely Mannan, Kayem, and Ajema, were subsequently taken to Murarai Hospital for medical treatment.

- III.** P.W.3, Najrul Islam, father-in-law of accused Abdul Kuddus, is a witness to the inquest proceedings. However, he expressed his inability to depose anything material concerning the actual occurrence of the incident.
- IV.** P.W.4, Dr. Krishna Kamal Dey, Associate Professor and Surgeon at Burdwan Medical College and Hospital, examined Kayem Sk on 26.04.2008. Upon examination, he found injuries on Kayem's head, chin and right foot and advised a CT scan. He opined that the injuries sustained could be attributed to the use of explosives, lathi or sharp-edged weapons such as a tangi.
- V.** P.W.5, is the Medical Officer who was posted at Rampurhat Sub-Divisional Hospital on the date of the incident. He is the doctor who both treated the injured and conducted the post-mortem examination of the deceased in this case. On 17.04.2008, PW5 examined and admitted Kayem Sk, who had sustained a head injury and had a history of assault. The patient had been referred from the Murarai B.E.R.H.C. to the Department of Surgery. PW5 prepared an Admission Ticket under his own handwriting and signature in this regard, which has been marked as Exhibit 4. On the same day, PW5 also conducted the post-mortem examination of the deceased, Kajibul Sk, a 32-year-old male Muslim, whose dead body had been identified by Constable 469, Dilip Kumar Saha of Murarai Police Station. The post-mortem was conducted in connection with Murarai P.S. U.D. Case No. 7/08 dated 16.04.2008 and the specific case being Murarai P.S. Case No. 51/08 dated 16.04.2008 under Sections 147, 148, 149, 323, 324, 326, and 302 of the IPC. Upon examination, the following injuries were detected as follows-bleeding from the nose and mouth, several cylindrical bruise marks on the chest and right arm, extravasation of blood on the occipital region and near the right ear, a haematoma above the right eyebrow, a hairline fracture of the

frontal bone with intracranial haemorrhage and fractured ribs (4<sup>th</sup> to 8<sup>th</sup>) on the left side with laceration of the left lung. PW5 opined that all injuries were ante-mortem and homicidal in nature and were sufficient in the ordinary course of nature to cause death. He further stated that the injuries could be caused by hard substances such as a lathi, sabol or an iron rod.

During cross-examination, PW5 confirmed that cylindrical instruments could cause cylindrical injuries and that he conducted the post-mortem in consultation with the inquest report.

- VI.** P.W.6, Jahangir Sk, deposed that the incident occurred on the 3rd day of Baishakh, approximately two years prior, around 2:00 p.m., in front of his residence near a mosque. He witnessed the accused persons Wohab, Kaikobad, Kuddus, Lalan, Milan and Dolon brutally assaulting the deceased, Kajibul Sk. Each accused was armed with distinct weapons: Kaikobad with a sabal, Lalan with acid, Wohab with a tangi, Milan with a bhojali and both Kuddus and Dolon with lathis. PW6 reached the scene upon hearing commotion and witnessed the ongoing assault. He sustained a cut injury on the right finger of his left hand when assaulted by accused Wohab with a tangi. He stated that Kajibul Sk succumbed to injuries on the spot. Several others, including himself, Kayem, Mannan, Ajema, Jeneefa and Lalu, were also subjected to physical assault. The injured were transported to Murarai Hospital for medical attention.
- VII.** P.W.7, Jeneefa Bibi, stated that the incident occurred on the 3rd of Baishakh approximately two years and seven months ago at around 2:00 p.m. from her residence, situated adjacent to the place of occurrence. She testified to having seen accused Wohab attack Kajibul with a tangi and accused Kuddus assault him with a hasua. Kajibul succumbed to the injuries sustained. She further observed Kaikobad striking Kajibul with a

sabal. When Kayem Sk attempted to intervene, he was assaulted by Wohab and Kuddus. PW7 was also assaulted by accused Wohab, Kuddus and Kaikobad.

**VIII.** P.W.8, Ajema Bibi, corroborated the previous testimonies, stating she arrived at the scene upon hearing cries and saw accused Wohab attacking Kajibul with a tangi. She further stated that Milan was armed with a hasua, Kuddus with an acid bulb, Lalan and Dolon with tangis and Kaikobad with a sabal. PW8, the sister-in-law of the deceased, suffered a tangi blow on her leg from Wohab. Milan assaulted Janefa Bibi with a lathi and Kuddus allegedly struck the private part of Jenefa Bibi. Kayem Sk fell unconscious at the scene and all injured parties were taken to Murarai Hospital.

**IX.** P.W.9, Kayem Sk, testified that the incident occurred in front of his residence at Kanakpur on the 3<sup>rd</sup> of Baishakh, approximately two and a half years prior, around 2:00 p.m. The accused persons Kaikobad, Lalan, Wohab, Milan and Dolon allegedly dragged his father, Kajibul Sk, from their home and collectively assaulted him. Specific acts included Wohab striking Kajibul with a tangi on the head, Kaikobad attacking with a sabal, Kuddus with a hasua and Lalan, Milan and Dolon inflicting lathi blows. Additionally, Lalan reportedly threw acid on both Kajibul and PW9. Kayem further detailed assaults on Mannan, Jenefa, Jahangir, Ajema and Lalu by various accused using different weapons. PW9 was assaulted by Wohab with a tangi and Kaikobad with a sabal. Kuddus assaulted and kicked him. He fell unconscious and was taken to Murarai BPHC, later shifted to Burdwan Medical College and Hospital. His statement was recorded by the police after he regained consciousness.

- X.** P.W.10, Nurul Islam, is an inquest witness. He failed to disclose any material fact during investigation and was declared hostile by the prosecution.
- XI.** P.W.11, Sub-Inspector Faijalbin Ahmad, is the recording officer who formally registered the First Information Report in connection with the instant case.
- XII.** P.W.12, is a postgraduate trainee affiliated with the School of Tropical Medicine, College Street, Kolkata. On 16.04.2008, he was posted as a Medical Officer at Murarai Rural Hospital, where he undertook the medical examination of several individuals alleged to have sustained injuries in the incident under scrutiny, namely Abdul Mannan, Jahanara Bibi, Kayum Sk, Jahangir Sk and Ajema Bibi. According to PW12, upon examination of Abdul Mannan, cut injuries on the scalp along with abrasions and lacerations on the back were found. The injuries were treated conservatively and the corresponding injury report was prepared under his handwriting and signature. The injuries were opined to be simple in nature. With respect to Jahanara Bibi, PW12 found a cut injury on her scalp. She too was treated conservatively and the injury report recorded the injuries as simple in nature. As for Kayum Sk, PW12 stated that the patient presented with a cut injury on the scalp and was found unconscious at the time of examination. The accompanying persons also reported that the patient had experienced vomiting. Four stitches were administered on his scalp and he was referred to Rampurhat Sub-Divisional Hospital for further medical management and a CT scan. PW12 candidly admitted that the exact nature of injury could not be determined without expert opinion. Regarding Jahangir Sk, a cut injury was noted over the palmar aspect of the index finger of his left hand, which was classified as simple in nature. Injury report was prepared accordingly.

Upon examining Ajema Bibi, PW12 observed a cut injury on her left leg, which was also designated as simple in nature. PW12 further opined that the injuries sustained by the aforementioned individuals could have been caused by blunt objects such as lathi and sabal, while also stating that there was no indication of the use of sharp-cutting instruments. PW12 also fairly deposed that the injured persons did not disclose the identity of their assailants during the course of their medical examination. All the above patients were examined at approximately 7:00 PM on 16.04.2008 at the Murarai Rural Hospital.

- XIII.** P.W.13, Dr. Abdul Latif, a Medical Officer attached to Rampurhat Sub-Divisional Hospital, clinically examined the injured Kayem Sk and, upon assessment of his medical condition, referred him to Burdwan Medical College and Hospital for advanced diagnostic evaluation and further specialized treatment.
- XIV.** P.W.14, is the Sub-Inspector of Police who was posted at Murarai Police Station on the date of occurrence, i.e., 16.04.2008. He was entrusted with the investigation of Murarai P.S. Case No. 51/08 dated 16.04.2008, registered under Sections 147, 148, 149, 323, 324, 336, and 302 of the IPC, pursuant to a written complaint lodged by Abdul Mannan. PW14 has deposed that he conducted the investigation as per the direction of the Officer-in-Charge Faisel Bin Ahmed. He prepared the formal FIR and undertook several investigative steps including visiting the place of occurrence and preparing a sketch map, conducting the inquest over the dead body of the deceased Kajibul Sk at Kanakpur village at 4:45 p.m. on 16.04.2008 and sending the dead body for post-mortem to S.D. Hospital, Rampurhat under a duly prepared challan. The inquest was conducted in the presence of witnesses Nurul Islam Khan, Nazrul Islam and the complainant Abdul Mannan. The inquest revealed that a scuffle had

ensued on account of polluting the water of a pond, during which the deceased was assaulted with *lathis* and *sabol*, leading to his death. PW14 further stated that he seized the wearing apparel of the deceased, arrested six of the accused persons including the appellants, identified them in Court, and collected the injury reports of multiple injured persons. After completing the investigation, he submitted the charge sheet under Sections 147, 148, 149, 323, 324, 326, and 302 IPC against six accused persons.

During cross-examination, although certain minor discrepancies regarding the spot of occurrence and omission to examine some witnesses were pointed out, none of these shake the core of the prosecution's case. The witness stood firm on material aspects such as the recovery of the body, inquest findings and seizure of evidence.

**21.** The prosecution case, as unfolded through the deposition of a consistent line of ocular witnesses including injured witnesses, is clear, credible and corroborated by contemporaneous medical and forensic evidence. The testimony of PW1, the de facto complainant and an injured eyewitness, is detailed and precise. He not only identified each of the accused persons but attributed specific roles to each, which are in consonance with the nature of injuries suffered by the victims. His version of the events was corroborated on all material particulars by PWs 2, 6, 7, 8 and 9, all of whom are witnesses to various stages of the incident and some of whom are also victims of the same occurrence.

**22.** The Court notes that PW1 clearly stated that while he and his uncle Kajibul Sk. were returning home after a bath, the accused persons armed with dangerous weapons forcibly dragged his uncle and inflicted fatal and grievous injuries. The details of the weapons such as tangi, sabal, lathi, acid bulb and the manner in which each was used on specific parts of the body by identified

assailants demonstrate premeditated and organized violence. The injuries inflicted were not random or superficial but targeted and lethal, thereby negating any theory of sudden provocation or mutual altercation.

**23.** The argument of the appellants that the eyewitnesses are interested or related to the deceased does not, in the considered view of this Court, diminish the evidentiary value of their testimony. It is settled law that evidence of related witnesses, if found truthful and consistent, cannot be discarded solely on the ground of relationship. On the contrary, the presence of these witnesses at the scene is natural and expected given the incident occurred at the entrance of the victims' residence.

**24.** The medical evidence provided by PW5, who conducted the post-mortem of the deceased, clearly establishes that the injuries were ante-mortem, grievous and sufficient in the ordinary course of nature to cause death. The findings, which include a haematoma on the frontal bone, fractured ribs, laceration of lung tissue and intracranial haemorrhage are entirely consistent with the ocular version of a coordinated and deadly assault. The opinion of PW4 further supports the possibility of the use of sharp weapons such as tangi and sabal.

**25.** Injury reports of the other victims, examined by PWs 12 and 13, indicate that the injuries suffered by them, although opined to be simple in nature in some cases, were consistent with blunt force and sharp-edged trauma and further reinforce the prosecution case regarding the indiscriminate assault upon multiple members of the family by the accused.

**26.** The contention of the defence regarding non-disclosure of the names of the assailants to the attending doctors at the first instance is not substantial. It is well recognized that doctors, especially those providing emergency medical aid, are primarily concerned with clinical diagnosis and immediate treatment. The omission of names of accused persons in medical records, absent any

suggestion of manipulation, is not fatal to the prosecution's case when eyewitness accounts remain cogent and unshaken.

**27.** The criticism of the FIR by the appellant on the grounds of delay or fabrication is unfounded. The FIR was lodged by PW1 himself within a few hours of the incident, following the necessary hospitalization of the injured. The contents of the FIR are coherent and are borne out by the subsequent investigation, depositions and medical reports. The defence has failed to establish any enmity or motive so grave as to falsely implicate multiple villagers in a murder case of such gravity.

**28.** Moreover, the theory propounded by the defence that the incident was a result of a free fight or mutual scuffle is a bald assertion devoid of evidentiary support. The nature of the injuries, the weaponry used, and the fact that the assailants dragged the deceased from his house and launched a sustained and brutal attack rules out any possibility of a spontaneous or bilateral altercation. It is further established that the accused fled the scene upon arrival of villagers, indicative of a consciousness of guilt.

**29.** Minor inconsistencies regarding the exact time of incident or the precise sequence of blows are not only natural but expected in a traumatic event and do not detract from the core reliability of the prosecution's narrative. The Supreme Court has time and again held that such variations, when not relating to the substratum of the prosecution case, should not result in acquittal of otherwise proven offenders.

**30.** The Supreme Court in **State of U.P. v. Krishna Master** reported in **(2010) 12 SCC 324** held:

*"17. In the deposition of witnesses, there are always normal discrepancies, howsoever honest and truthful they may be. These discrepancies are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition, shock and horror at the time of occurrence and threat to the life... unless the evidence is really so confusing or conflicting that the*

***process cannot reasonably be carried out.*** *In the light of these principles, this Court will have to determine whether the evidence of eyewitnesses examined in this case proves the prosecution case.”*

**31.** The argument regarding the absence of bloodstains at the place of occurrence also fails to persuade this Court. The evidence on record reveals that the place of occurrence was a domestic threshold and that the inquest and seizure of blood-stained soil was duly carried out by PW 14 herein the Investigating Officer. The defence has not demonstrated any procedural lapse that would render the recovery unreliable.

**32.** The conviction under Section 302 read with Section 149 IPC is sustainable in law. The unlawful assembly, armed with deadly weapons and with the common object of committing murder, is clearly established. The prosecution has sufficiently proved the formation of such an assembly and the active participation of the appellants therein. The ingredients of Section 149 IPC stand satisfied both in terms of common object and overt acts.

**33.** Lastly, the plea for leniency on the ground of prolonged incarceration is untenable. The offence committed is heinous and resulted in the loss of human life. The brutality of the act, the use of dangerous weapons including acid and the collective and targeted nature of the assault justifies the sentence imposed. In the considered opinion of this Court, the sentence of life imprisonment with fines is not excessive and commensurate with the gravity of the offence.

**34.** In view of the foregoing discussion, this Court finds no infirmity in the findings of the Learned Trial Court either on facts or law. The prosecution has successfully discharged its burden of proof and all the appellants have failed to create any doubt of substance that would warrant interference with the well-reasoned judgment of conviction.

**35.** Accordingly, CRA 396 of 2013 is dismissed. The conviction and sentence passed by the Learned Additional Sessions Judge, 1st Fast Track Court, Rampurhat, Birbhum, in Sessions Case No. 39 of 2009, are affirmed.

**36.** Let a copy of this judgment along with the Trial Court Records be sent back to the Trial Court forthwith for necessary compliance.

**37.** Urgent certified photostat copy of this order, if applied for, be supplied expeditiously upon due compliance with all requisite formalities.

**[Rajarshi Bharadwaj, J.]**

**I Agree.**

**[Apurba Sinha Ray, J]**