

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 51 of 1988

Shib Sadhan Ghose & Ors.

-Vs-

The State of West Bengal & Ors.

For the Appellants : Mr. Tapan Duttagupta
Ms. Rituparna Ghosh

For the State : Ms. Faria Hossain
Ms. Kanchan Roy

Judgment on : 22.05.2026

Ananya Bandyopadhyay, J.:-

1. This appeal is preferred against the judgment and order dated 17.12.1987 passed by the Learned Additional Sessions Judge, 2nd Court, Hooghly in Sessions Trial No.71 of 1984 convicting the appellants under Sections 148/323/149/307 of the Indian Penal Code and sentencing appellant no.2 and 3 to suffer rigorous imprisonment for 2 years each for their offence under Section 324 of the Indian Penal Code and sentencing appellant no.1, 4, 5 to pay a fine of Rs.500/- each in default to suffer simple imprisonment for 2 months for their offence under Sections 324 of the Indian Penal Code read with Section 149 of the Indian Penal Code and sentencing appellant

no.5 to pay fine of Rs.250/- in default to suffer simple imprisonment for 1 month for her offence under Section 323 of the Indian Penal Code. Furthermore, sentencing appellant nos.2, 3 and 4 to pay a fine of Rs.500/- each in default to suffer rigorous imprisonment for 2 months each for their offence under Section 148 of the Indian Penal Code and sentencing appellant no.1 and 5 to pay a fine of Rs.250/- each in default to suffer simple imprisonment for 1 month each for their offence under Section 147 of the Indian Penal Code. Out of the fine amounts, if released, a sum of Rs.500/- be paid to each of the victims i.e. PW-3 and PW-6. The period of detention of the appellants in custody in connection with that case be set off from the sentence of imprisonment.

2. The prosecution case, as presented before the Court, had its genesis in a prolonged and embittered dispute over landed property between the de facto complainant, Mahadeb Ghosh, and his cousin brother, appellant no.1. It was asserted that civil litigation concerning the disputed land had already been pending between the parties and that the simmering hostility between the two branches of the family ultimately culminated in the violent occurrence dated 19th September, 1983.
3. According to the prosecution narrative, the sequence of events commenced during the morning hours of the said day when Smt. Kanak Lata Ghosh, wife of appellant no.1, allegedly began directing abusive expressions towards the de facto complainant and members of his household. At approximately 11:00 a.m., while Sankar Ghosh, brother of the de facto complainant, was engaged

in agricultural work upon the disputed land situated to the east of the family homestead, appellant no.5 allegedly arrived there and deliberately provoked a quarrel by showering vulgar abuses upon him. The prosecution asserted that when Sankar Ghosh protested against such conduct, appellant no.1 immediately rushed to the spot and openly threatened him with physical assault.

4. The prosecution further alleged that appellant no.1 thereafter summoned appellants nos.2, 3 and 4 from their residence with exhortations to finish Sankar Ghosh. In response to such call, the remaining accused allegedly emerged armed with deadly weapons, namely a katari, an iron kenchha or khonch, and a hansua. The prosecution version proceeds on the footing that, upon seeing the armed assailants advancing towards him, Sankar Ghosh attempted to flee from the place of occurrence. At that juncture, appellant no.3 allegedly thrust the iron weapon into the chest of Sankar Ghosh with the avowed intention of causing his death, thereby inflicting severe bleeding injuries. The injured victim reportedly cried out in agony and collapsed upon the ground.
5. The de facto complainant, Mahadeb Ghosh, who was stated to be working at some distance within the same disputed field, allegedly witnessed the occurrence and rushed towards the spot. Simultaneously, Padmabati Ghosh, the mother of Sankar Ghosh, hurried forward in an effort to rescue her injured son. The prosecution alleged that appellant no.2 then struck Padmabati Ghosh on her head with a katari, causing profuse bleeding

injuries. It was further alleged that appellant no.5 thereafter assaulted Padmabati Ghosh with a ghoti upon various parts of her body, as a consequence whereof she too fell upon the ground in an injured condition.

6. The prosecution narrative also records that upon witnessing the assault, the de facto complainant raised alarm and attracted several villagers who happened to be passing along the village road. Among those named were Lakshmi Ram Singh, Sudarsan Singh, Subal Singh and Shibo Prosad Das, who allegedly witnessed the aftermath and assisted the injured persons. With the aid of those villagers, Sankar Ghosh and Padmabati Ghosh, both stated to have become unconscious due to the injuries sustained, were removed to Chopa Hospital for medical treatment.
7. The prosecution further maintained that, upon regaining consciousness at the hospital, Sankar Ghosh narrated the details of the occurrence to those present there, thereby furnishing an immediate account of the assault and the identity of the assailants. Through this sequence of facts, the State endeavoured to establish that the accused persons acted in concert, armed with lethal weapons, and executed a deliberate attack springing from longstanding animosity relating to the disputed land.
8. On the basis of the de-facto complaint, the Dhaniakhali P.S. Case No.19 dated 09.09.1983 under Sections 147/148/341/342/506/109/307 of the Indian Penal Code was initiated for investigation against the appellants.
9. After completion of investigation, the investigating authority submitted charge-sheet against all the appellants.

10. Charges were framed against the appellants to which they pleaded not guilty and claimed to be tried.
11. In order to prove its case, the prosecution examined as many as 8 witnesses and exhibited certain documents.
12. Learned Advocate for the appellants commenced his submissions by unfolding the background of a long-standing and embittered family discord between the de facto complainant (PW-1) and his cousin brother, late Shibsadhan Ghosh. According to the defence narrative, the genesis of the occurrence lay not in any premeditated criminal enterprise but in a sudden eruption of domestic hostility on 19th September, 1983, when the wife of Shibsadhan Ghosh allegedly engaged in altercation with the de facto complainant and hurled abusive expressions, thereby provoking a quarrel within the family fold. It was contended that, in the course of such tumultuous exchange, the accused persons arrived at the place of occurrence with a katari, and injuries were allegedly sustained by Shankar Ghosh and by Padmabati Ghosh (PW-6), the mother of the injured.
13. Developing the challenge to the judgment of conviction, learned Counsel painstakingly drew attention to what was described as fundamental infirmities permeating the prosecution case from its very inception. The first and foremost criticism was directed against the legality of the investigation itself. Referring to the deposition of PW-8, it was argued that there existed no lawful entrustment authorising him to undertake investigation in accordance with Clause 377 of the Police Regulations of Bengal. Such absence of formal

empowerment, according to the appellants, struck at the root of the prosecution and rendered the entire proceeding incurably defective and void in the eye of law.

14. The submissions further proceeded to assail the investigation on the ground that no sketch map of the place of occurrence had been prepared or produced, despite the mandatory requirements of the Police Regulations of Bengal. Learned Counsel argued that neither PW-8 nor PW-9 furnished any satisfactory explanation for such omission. It was urged that failure to prepare a sketch map at the threshold of investigation obscured the geographical setting of the alleged occurrence, deprived the Court of an objective understanding of the situs of the incident, and cast a persistent shadow over the authenticity of the prosecution narrative.
15. Attention was thereafter invited to the nature of the charges framed against the appellants. It was submitted that while charges under Section 307 of the Indian Penal Code had initially been framed against certain accused persons, the prosecution evidence itself failed to disclose the essential ingredients necessary to sustain such grave accusation. Learned Counsel emphasised that the appellants ultimately stood acquitted of the charge under Section 307 IPC owing to the conspicuous absence of material establishing intention or knowledge requisite for commission of the offence of attempt to murder.
16. Equally emphatic submissions were advanced with regard to the charge under Section 149 of the Indian Penal Code. Learned Counsel argued that

conviction with the aid of Section 149 IPC could not legally survive when only three accused persons remained before the Court, whereas the statutory conception of an unlawful assembly necessarily postulates participation of five or more persons. It was thus contended that the indispensable numerical foundation for invocation of Section 149 IPC stood completely absent, thereby eroding the legal sustainability of the conviction founded thereupon.

17. The appellants also sought to demonstrate that the prosecution had withheld material witnesses whose testimony could have illuminated the truth surrounding the occurrence. Specific reference was made to Laxmi Singh and Subal Singh, whose names appeared in the First Information Report but who were never produced before the Trial Court. Learned Counsel submitted that such omission invited an adverse presumption under Section 114(g) of the Indian Evidence Act, for the withholding of natural and material witnesses inevitably weakened the prosecution version and generated doubt as to whether their testimony would have supported the case sought to be projected by the prosecution.

18. A further limb of the argument centred upon the inconsistency between ocular and medical evidence. Learned Counsel submitted that the oral testimony of the witnesses stood irreconcilably at variance with the medical materials brought on record. According to the appellants, the prosecution failed to establish the ingredients of the offence punishable under Section 324 IPC, and the contradictions between the medical evidence and the

eyewitness account rendered the prosecution version uncertain and unsafe for sustaining conviction.

19. Reliance was also placed upon certain observations recorded by the learned Trial Judge himself, particularly the finding that the prosecution case revolved around the injuries allegedly sustained by PW-3 and PW-6, though those witnesses had not disclosed material particulars before the Investigating Officer examined as PW-8. Learned Counsel contended that such omissions constituted material contradictions affecting the core of the prosecution story and substantially impaired the credibility of the witnesses.
20. In conclusion, learned Counsel appealed to the equitable conscience of the Court by drawing attention to the extraordinary passage of time since the occurrence dated 19th September, 1983. It was submitted that the appellants had endured prolonged mental agony and uncertainty for more than four decades during the pendency of the criminal proceeding. The Court was informed that appellant no. 1, Shibsadhan Ghosh, had expired during the pendency of the appeal and the proceeding against him had already abated. The remaining appellants, now advanced in age, were stated to have suffered immeasurably under the weight of protracted litigation. On the cumulative strength of the aforesaid submissions, learned Counsel urged that the impugned judgment and order of conviction be set aside and the appeal be allowed.
21. Learned Advocate appearing for the State resisted the appeal with considerable emphasis upon the consistency of the prosecution narrative,

the gravity of the assault, and the corroborative value of the medical and ocular evidence adduced during trial. The prosecution submissions sought to portray the occurrence not as an isolated village quarrel arising out of sudden provocation, but as the culmination of a deeply entrenched land dispute between two branches of the same family, which, according to the State, ultimately erupted into a deliberate and violent attack on 19th September, 1983.

22. At the threshold, learned Counsel for the State recapitulated the findings recorded by the learned Trial Court with regard to the individual culpability of each accused person. It was submitted that accused Sushil Ghosh and Neul @ Probhat Ghosh had rightly been found guilty of offences punishable under Section 324 of the Indian Penal Code, while the remaining accused persons, namely Shib Sadhan Ghosh, Sunil Ghosh and Smt. Kanaklata Ghosh, were correctly held liable under Section 324 read with Section 149 IPC. The prosecution further contended that Smt. Kanaklata Ghosh was independently liable under Section 323 IPC for physical assault, and that the findings relating to unlawful assembly under Sections 147 and 148 IPC had been appropriately returned against the respective accused persons. Although acquittal had been recorded with respect to the charge under Section 307 IPC, the State maintained that the evidence unmistakably disclosed an intention sufficiently grave to attract the ingredients of attempt to murder.

23. The prosecution then unfolded the factual setting of the incident in considerable detail. It was argued that on the date of occurrence, between 11:00 a.m. and 12:00 noon, the accused persons assembled near the eastern field adjoining the residence of the informant at Uttar Jagannathpur under Dhaniakhali Police Station. According to the State, the incident commenced with verbal provocation by accused Kanaklata Ghosh, who allegedly subjected the victims to persistent abuse from the early hours of the morning. Matters, however, assumed a far more sinister complexion when Shib Sadhan Ghosh allegedly arrived at the scene and exhorted his sons to bring deadly weapons, proclaiming that Sankar Ghosh should be “finished” then and there. Learned Counsel submitted that such exhortation clearly revealed premeditation, common object, and a collective intention to inflict fatal injuries upon the victims.
24. Elaborating upon the role attributed to each accused, learned Counsel submitted that Sushil Ghosh directly assaulted Sankar Ghosh with an iron khonch, described as a spear-like weapon, and struck him on the chest while uttering threats of death. Neul alias Probhat Ghosh was alleged to have attacked Padmabati Ghosh with a katari when she rushed forward to rescue her son. Sunil Ghosh, according to the prosecution, actively participated as a member of the unlawful assembly while armed with a hansua, whereas Kanaklata Ghosh not only instigated the occurrence through verbal abuse but also participated in the assaultive conduct. The prosecution maintained that the collective actions of the accused unmistakably demonstrated

formation of an unlawful assembly armed with deadly weapons and acting in furtherance of a common object.

25. The State thereafter placed substantial reliance upon the evidence of the prosecution witnesses. Learned Counsel emphasised that PW-1 Mahadeb Ghosh, being the de facto complainant and brother of injured witness PW-3, furnished a coherent account of the occurrence. PW-3 Sankar Nath Ghosh and PW-6 Smt. Padmabati Ghosh, both injured witnesses, were projected as natural witnesses whose presence at the scene could not be doubted. The prosecution also referred to the testimonies of independent villagers, including Lakhshi Ram, Sudarshan Singh and Subal Singh, who were stated to have witnessed the assault while passing through the locality. Though some neighbouring witnesses were declared hostile, learned Counsel argued that hostility of individual witnesses could not eclipse the substantive worth of the injured eyewitnesses whose testimony stood reinforced by medical evidence.
26. Considerable emphasis was also laid upon the prompt lodging of the First Information Report. Learned Counsel pointed out that the FIR was registered at approximately 2:45 p.m. on the very same day, within nearly three hours of the incident. According to the State, such promptitude excluded the possibility of embellishment, fabrication or external tutoring, and lent intrinsic assurance to the truthfulness of the prosecution version.
27. The prosecution further relied upon the medical evidence adduced through PW-7, the attending doctor. It was argued that the bleeding injuries

sustained by the victims and the nature of the wounds corroborated the use of sharp and lethal weapons such as the khonch and katari. Learned Counsel submitted that the targeting of vital parts of the body, particularly the chest region, unmistakably revealed the requisite intention and knowledge contemplated under Section 307 IPC, even if the victims ultimately survived the attack.

28. On the legal aspect of common object and constructive liability, the State contended that the liability of the accused could not be diluted merely because individual acts had been attributed to particular accused persons. Learned Counsel argued that once the evidence established formation of an unlawful assembly armed with deadly weapons and acting in concert, every member thereof became vicariously liable for offences committed in prosecution of the common object within the meaning of Section 149 of the Indian Penal Code. The prosecution further submitted that the conduct of Shib Sadhan Ghosh and Kanaklata Ghosh clearly disclosed active instigation and abetment within the ambit of Section 109 IPC.

29. Learned Counsel also criticised the defence for having failed to offer any plausible explanation regarding the injuries sustained by the victims or the presence of the accused persons at the scene of occurrence armed with weapons. It was urged that the plea of innocence remained a bare denial unsupported by any defence evidence capable of dislodging the prosecution case.

30. In culmination, the Learned Advocate for the State asserted that the prosecution had succeeded in establishing motive arising from the land dispute, formation of an unlawful assembly armed with deadly weapons, specific overt acts attributable to individual accused persons, and injuries of a grave nature sustained by the victims. The Learned Advocate for the State thus prayed for affirmation of the findings of guilt and for sustaining the conviction of the accused persons under the relevant provisions of the Indian Penal Code, including Sections 147, 148, 149, 323, 324, 307 and 109 of the Indian Penal Code.

31. A circumspection of the evidence of the prosecution witnesses revealed as follows:

- i. PW-1 Mahadeb Ghosh, the de facto complainant and brother of injured witness Sankar Ghosh, furnished a detailed account concerning the longstanding land dispute between the parties and the circumstances immediately preceding the occurrence. His testimony establishes that on the date of occurrence his brother Sankar Ghosh was working upon the disputed land situated on the eastern side of their homestead when appellant no.5, Kanaklata Ghosh, arrived there and began hurling abusive expressions. PW-1 further stated that when Sankar Ghosh protested, appellant no.1, Shib Sadhan Ghosh, appeared at the scene and threatened him with physical harm. According to PW-1, the remaining accused persons thereafter rushed to the place of occurrence armed with deadly weapons. He

categorically described the assault inflicted upon his brother and mother and identified the accused persons who wielded the respective weapons. The testimony of PW-1 carries significance not merely because he lodged the written complaint, but because his account retained coherence upon material particulars despite extensive cross-examination. Nothing substantial emerged from his evidence to shake the core of the prosecution narrative.

- ii. The evidence of PW-3 Sankar Nath Ghosh occupies a position of considerable importance within the prosecution structure. Being the injured victim who sustained the principal assault, his testimony possesses strong evidentiary value. PW-3 stated before the Court that while he was engaged in agricultural work upon the disputed land, Kanaklata Ghosh arrived there and directed filthy abuses towards him. When he protested against such behaviour, appellant no.1 exhorted the remaining accused persons to bring weapons and kill him. PW-3 thereafter described how Sushil Ghosh attacked him with an iron khonch and thrust the weapon into his chest, causing severe bleeding injury. He stated that he collapsed upon the ground due to the force of the assault. His deposition also refers to the assault inflicted upon his mother when she attempted to rescue him. The evidence of PW-3 bears the stamp of spontaneity and carries persuasive force, for a victim who himself suffered serious injuries

would scarcely permit the actual assailant to escape and falsely implicate another person in his place.

- iii. PW-6 Smt. Padmabati Ghosh, another injured witness and mother of PW-3, furnished evidence that materially corroborates the testimony of PW-3. She deposed that upon hearing commotion she rushed to the place of occurrence in an effort to save her son and was immediately attacked by Neul @ Probhat Ghosh with a katari, causing bleeding injuries upon her person. She further stated that Kanaklata Ghosh assaulted her with a ghoti. Her evidence concerning the participation of the accused persons and the manner in which the assault took place remains consistent with the prosecution case from the very beginning. Her testimony also derives strength from the injuries sustained by her during the occurrence, thereby placing her presence at the scene beyond serious challenge.
- iv. The evidentiary worth attached to injured witnesses in criminal law requires no elaborate restatement. Evidence of a witness who sustained injuries during the occurrence ordinarily commands greater reliability because the injuries borne upon his person establish his presence at the place of occurrence. Such testimony draws assurance from ordinary human conduct and surrounding probabilities. In the present case, both PW-3 and PW-6 consistently identified the accused persons, described the weapons used, and narrated the sequence of

assault without material contradiction affecting the substance of the prosecution case.

- v. The medical evidence adduced through PW-7, Dr. Sankar Nath Bhar, substantially reinforces the ocular testimony. The doctor proved the injuries sustained by the victims and confirmed that the wounds were bleeding injuries caused by sharp and hard weapons. The injury upon the chest region of PW-3 assumes particular significance since the chest constitutes a vital part of the human body. The nature, location and character of the injuries described by the medical witness lend strong corroboration to the prosecution version regarding the use of sharp lethal weapons such as the khonch and katari. The medical evidence, therefore, fortifies the prosecution narrative upon material particulars.
- vi. The evidence of PW-8, the Investigating Officer, also carries relevance insofar as it establishes the procedural aspects of investigation and the steps taken after receipt of the written complaint. Learned Counsel for the appellants criticised certain omissions in investigation, particularly the absence of a sketch map and the alleged defect regarding formal entrustment of investigation. Such lapses may invite criticism concerning the quality of investigation, yet they do not erode the evidentiary value of direct testimony furnished by injured witnesses whose evidence remains trustworthy and receives corroboration from medical materials.

32. It is true that certain neighbouring witnesses did not fully support the prosecution during trial. Yet such circumstance does not demolish the prosecution case where the evidence of injured witnesses remains credible and receives support from medical evidence and surrounding circumstances. Criminal adjudication proceeds upon the quality and reliability of evidence rather than numerical strength of witnesses.
33. The written complaint lodged promptly after the occurrence also assumes considerable importance. The names of the accused persons, the sequence of events, the weapons used and the injuries inflicted find mention at the earliest available opportunity. Such prompt narration considerably reduces the possibility of later embellishment or calculated fabrication and lends assurance regarding the truthfulness of the prosecution version.
34. Upon cumulative assessment of the evidence of PW-1, PW-3, PW-6, PW-7 and PW-8, this Court finds that the prosecution succeeded in establishing a coherent chain of events pointing clearly towards the participation of the accused persons in the assault. The evidence reveals a concerted attack arising out of longstanding hostility over land, executed with deadly weapons and resulting in serious bleeding injuries to the victims. The learned Trial Court, therefore, committed no error in placing reliance upon the testimony of the prosecution witnesses and recording the order of conviction.
35. Having regard to the totality of the circumstances, this Court is also not oblivious of the considerable passage of time since the occurrence dated 19th September, 1983. More than four decades have elapsed during the

pendency of the criminal proceeding. The appellants have remained under the shadow of prosecution throughout this prolonged period and have faced the burdensome consequences of continuing litigation for a substantial part of their lives. Two of the appellants have expired during the pendency of the appeal and the surviving appellants have presently reached an advanced stage of life. Two of the respondents too have expired during the pendency of the appeal.

36. Although this Court finds no legal infirmity in the findings of guilt recorded by the learned Trial Court and affirms the conviction of the appellants, the question of sentence nevertheless deserves consideration in the backdrop of the extraordinary lapse of time, the family nature of the dispute, and the circumstances presently prevailing. The ends of justice, therefore, would be adequately served if the substantive sentence imposed upon the surviving appellants is modified to the period of imprisonment already undergone by them.

37. Accordingly, while the judgment of conviction stands affirmed, the substantive sentence imposed upon the surviving appellants is modified to the extent of imprisonment already undergone. The appellants are discharged from their bail bonds, if not required in connection with any other case.

38. Accordingly, the instant criminal appeal being CRA 51 of 1988 is dismissed. The appeal stands abated against appellant no.1 Sib Sadhan Ghosh and

appellant no.5 Smt. Kanaklata Ghosh since they have expired on 08.05.2022 and 30.03.2009 respectively.

39. There is no order as to costs.

40. Trial Court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.

41. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)