

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 326 of 2013

**Bhabani Barman
-Vs-
The State of West Bengal**

For the Appellant : Mrs. Suman Sehanabis (Mondal)

For the State : Mr. Avishek Sinha

Judgment on : 08.06.2026

Ananya Bandyopadhyay, J.:-

1. This appeal is directed against the judgment and order dated 21.01.2013 passed by the Learned Additional Session Judge, 2nd Fast Track Court, Cooch Behar in Sessions Trial No.3(03)2008 arising out of Sessions Case No.17 of 2008, convicting the appellant for commission of alleged offence punishable under Section 304 (Part-II) of the Indian Penal Code and sentenced to suffer rigorous imprisonment for 5 years and also to pay fine of Rs.5,000/- in default to suffer simple imprisonment for another 6 months more.
2. The prosecution case precisely traces its genesis to a discord that allegedly erupted on 20th May 2007 at about 7:00 a.m. between the appellant and the members of the family of the de facto complainant. The occurrence was not portrayed as an isolated episode but as the culmination of an atmosphere of

hostility. According to the prosecution, during the altercation the appellant openly threatened the *de facto* complainant with grave consequences, thereby sowing the seeds of a confrontation that was soon to assume a tragic dimension. On the following morning, namely 21st May 2007 at about 7:00 a.m., Ramchandra Barman, the youngest son of the *de facto* complainant Dhiren Barman, was proceeding towards the field for grazing cattle. At that juncture, the appellant allegedly intercepted him and dealt a forceful blow on his head with a bamboo stick. The assault, according to the prosecution, was sudden and directed at a vital part of the body, resulting in a grievous head injury.

3. The cries of the injured Ramchandra Barman reportedly drew the attention of his father and a neighbouring resident, who hastened to the place of occurrence. By the time they arrived, the assailant had allegedly fled from the scene. The injured victim was thereafter removed to M.J.N. Hospital, Cooch Behar, where initial medical assistance was provided. Owing to the seriousness of the cranial injury, he was referred to the North Bengal Medical College and Hospital, Siliguri, for specialised treatment. While being transported to Siliguri, and before reaching the referral hospital, the condition of the injured deteriorated irreversibly. Near Dhupguri, he succumbed to the injury sustained in the incident. His body was thereafter taken back to M.J.N. Hospital, where he was formally declared dead by the attending medical officer.

4. Based on the aforesaid complaint, Kotwali Police Station Case No.235/07 dated 22.05.2007 under Section 304 of the Indian Penal Code was initiated for investigation.
5. Upon conclusion of the investigation, the Investigating Agency submitted a charge-sheet against the appellant under Section 304 of the Indian Penal Code.
6. Charge was framed against the appellant to whom he pleaded not guilty and claimed to be tried.
7. In order to prove its case, the prosecution examined as many as 19 witnesses and examined certain documents.
8. The Learned Counsel appearing for the appellant assailed the judgment of conviction contending that the prosecution evidence, fell short of standard of proof required in a criminal trial and left substantial doubt regarding the manner of occurrence and the complicity of the appellant.
9. At the forefront of the challenge, it was argued that the prosecution case rests almost entirely upon the testimonies of PW-1 Dhiren Barman, PW-2 Arati Barman, PW-3 Narayan Barman and PW-4 Bijoy Barman, all of whom belong to the immediate family of the deceased. According to the appellant, the evidence of these witnesses lacks the degree of consistency and mutual corroboration necessary to sustain a conviction for an offence punishable under Section 304 Part II of the Indian Penal Code. It was submitted that the conviction has been founded upon evidence which is neither wholly reliable nor adequately supported by independent testimony, thereby rendering the prosecution version susceptible to serious doubt.

10. The Learned Counsel representing the appellant further contended that the essential ingredients constituting the offence under Section 304 Part II of the Indian Penal Code have not been established. It was urged that the prosecution failed to prove beyond reasonable doubt that the appellant had either the requisite knowledge contemplated under the provision or that the alleged act was committed in circumstances attracting criminal liability of the nature found by the prosecution. The evidence, according to the defence, does not conclusively demonstrate that the appellant caused the death of the deceased with the degree of knowledge necessary to attract the penal consequences of the said provision.
11. A substantial emphasis was laid upon the delay in lodging the First Information Report. Learned counsel submitted that no satisfactory or convincing explanation emerges from the prosecution evidence regarding the interval between the occurrence and the registration of the case. Such delay, it was argued, assumes significance in a prosecution resting principally upon oral testimony and creates a legitimate possibility of embellishment, consultation and reconstruction of events.
12. The Learned Counsel for the appellant also questioned the prosecution's attempt to weave together a chain of circumstances linking the appellant with the fatal injury. It was argued that the evidence on record does not form a coherent and unbroken narrative and that material contradictions emerge from the depositions of the principal witnesses. According to the defence, these discrepancies strike at the root of the prosecution case and render unsafe any conclusion regarding the appellant's guilt.

13. Particular attention was drawn to the evidence of PW-1, the father of the deceased. The Learned Counsel submitted that while PW-1 claimed to have witnessed the assault upon his son Ramchandra Barman and narrated the presence of several family members and neighbours at the scene, his testimony does not receive consistent support from the other witnesses. The defence maintained that the version advanced by PW-1 suffers from infirmities which diminish its evidentiary value.
14. The testimony of PW-2 Arati Barman, the mother of the deceased, was also subjected to criticism. Learned counsel pointed out that during cross-examination she admitted that she did not remember whether she had narrated to the authorities the alleged incident of the preceding day concerning the dispute over the cow and further acknowledged that she had not informed the police regarding that earlier occurrence. According to the appellant, such omissions assume significance because the prosecution sought to project the previous day's altercation as the genesis of the fatal incident.
15. Serious reliance was placed upon the discrepancies between the evidence of PW-3 Narayan Barman and his earlier statement recorded under Section 164 of the Code of Criminal Procedure. Learned counsel submitted that in his deposition before the Court, PW-3 stated that upon hearing cries he came out and saw the appellant repeatedly assaulting Ramchandra Barman with a bamboo stick. However, in his statement under Section 164 of the Code of Criminal Procedure, he had narrated a materially different sequence of events, namely that his elder brother Bijoy was first attacked and that

Ramchandra sustained injuries while intervening in an attempt to rescue him. These divergent versions, according to the appellant, create a substantial doubt regarding the true genesis of the occurrence.

16. The defence highlighted similar inconsistencies in the evidence of PW-4 Bijoy Barman. Reference was made to his statement recorded under Section 164 of the Code of Criminal Procedure wherein he had allegedly stated that he was first assaulted by the appellant while proceeding to work and that Ramchandra came forward to save him. In contrast, his testimony before the Court projected a different narrative in which the deceased was directly attacked while proceeding towards the grazing field. The appellant submitted that these irreconcilable versions materially affect the credibility of the prosecution account and raise doubt regarding the actual sequence of events.
17. The Learned Counsel representing the appellant further emphasised that PW-2's statement under Section 164 of the Code of Criminal Procedure did not support the version advanced by PW-3 and PW-4 regarding the alleged initial assault upon Bijoy Barman and the subsequent intervention by the deceased. According to learned counsel, the lack of harmony among the statements of the principal witnesses demonstrates that the prosecution story underwent significant variation at different stages of the proceedings.
18. Another important limb of the defence argument concerned the absence of independent witnesses. It was submitted that although several persons from the locality were allegedly present or had assembled at the place of occurrence, no reliable independent witness was examined to corroborate

the prosecution version. The case thus remained dependent upon the testimony of close relatives of the deceased whose accounts, according to the appellant, were themselves beset with inconsistencies.

19. Learned counsel also relied upon the medical evidence, particularly the testimony of PW-10, the attending doctor. Attention was invited to the doctor's statement in cross-examination that the nature of injury found on the deceased could also be caused by a fall upon a hard surface if the impact occurred on the head. It was argued that this medical opinion introduces an alternative possibility regarding the causation of the injury and consequently weakens the certainty sought to be attributed to the prosecution case.
20. On the cumulative assessment of the oral and documentary evidence, learned counsel submitted that the prosecution has not succeeded in establishing an unbroken and trustworthy chain of facts leading irresistibly to the guilt of the appellant. The contradictions among the principal witnesses, the divergence between their courtroom testimony and their statements under Section 164 of the Code of Criminal Procedure, the absence of independent corroboration, the medical evidence suggesting an alternative cause of injury, and the delay in lodging the First Information Report were all pressed into service to contend that the prosecution has failed to prove its case beyond reasonable doubt.
21. It was, therefore, urged that the conviction and sentence imposed upon the appellant do not rest upon evidence of such quality and certainty as the criminal law demands and that the appellant is entitled to the benefit of doubt and the consequential relief available in law.

22. The Learned Counsel appearing for the State stoutly defended the conviction and sentence, contending that the prosecution evidence, viewed in its entirety, presents a coherent, cogent and compelling account of the occurrence, leaving no reasonable doubt regarding the identity of the assailant, the manner of assault, and the causal connection between the injuries inflicted and the death of the victim.
23. At the very threshold, it was submitted that the name of the appellant surfaced with remarkable consistency from the earliest stage of the prosecution case. The First Information Report, the inquest proceedings, and the medical history furnished to the attending doctor uniformly attributed the assault to the appellant, namely Bhabani Barman, the paternal uncle of the deceased. According to the State, these contemporaneous documents, prepared at different stages and for distinct purposes, furnish intrinsic assurance regarding the authenticity of the prosecution narrative and demonstrate that the appellant was identified as the assailant from the inception of the criminal process.
24. The Learned Counsel emphasised that the prosecution case consistently portrays a singular act of assault directed at a vital part of the body. The evidence discloses that the appellant followed the deceased and struck him on the head with a bamboo-*lathi*, causing a severe cranial injury which ultimately proved fatal. The head being an exceedingly vulnerable region of the human body, the nature of the assault itself lends assurance to the prosecution version and furnishes the requisite nexus between the act complained of and the fatal consequence that followed.

25. Particular reliance was placed upon the recovery of the offending weapon. It was submitted that the bamboo stick used in the commission of the offence was recovered from the residence of the appellant at his own instance. The seizure, according to the State, was not merely a formal investigative step but a significant incriminating circumstance connecting the appellant with the occurrence. Learned counsel further pointed out that even PW-9, though declared hostile, admitted the factum of seizure and was a signatory to the seizure list. Such admission by a witness not wholly supporting the prosecution was urged as a circumstance lending additional assurance to the genuineness of the recovery.
26. The State further contended that the medical evidence stands in complete harmony with the ocular account. The post-mortem examination revealed a fatal head injury situated in the parietal region, and the autopsy surgeon unequivocally opined that the death resulted from such injury. According to learned counsel, the medical findings neither dilute nor contradict the prosecution version; rather, they reinforce the testimony of the eyewitnesses regarding the situs of the blow, the nature of the weapon employed, and the fatal outcome of the assault.
27. Considerable emphasis was laid upon the evidence of PW-1 Dhiren Barman, PW-2 Arati Barman, PW-3 Narayan Barman, and PW-4 Bijoy Barman. The Learned Counsel submitted that these witnesses consistently narrated the essential features of the occurrence and furnished a substantially uniform account regarding the identity of the assailant, the weapon used, and the infliction of the head injury upon the deceased. The State argued that their

testimonies mutually reinforce one another on all material particulars and therefore constitute a reliable evidentiary foundation for sustaining the conviction.

28. Addressing the criticism that these witnesses are closely related to the deceased, learned counsel submitted that relationship by itself neither disqualifies a witness nor renders testimony inherently suspect. The law, it was argued, recognises that evidence must be assessed on the touchstone of truthfulness and intrinsic worth rather than on the basis of familial association. Where the evidence of related witnesses remains natural, consistent and trustworthy, there exists no legal principle warranting its exclusion merely because such witnesses share kinship with the victim.
29. The State further submitted that the evidence of the local witnesses, including those who did not wholly support the prosecution, nevertheless corroborates significant aspects of the occurrence. Even the hostile witnesses admitted that the deceased had sustained grievous injuries. Their testimony, according to learned counsel, demonstrates the existence of a violent incident resulting in serious bodily harm and thereby lends indirect support to the prosecution narrative.
30. It was additionally contended that the presence of PW-1, PW-2, PW-3 and PW-4 at or near the place of occurrence remains firmly established. Their presence immediately after the assault and their participation in the efforts to rescue and transport the injured victim to the hospital constitute circumstances that naturally explain their knowledge of the incident. The State argued that nothing has emerged from the record to suggest that these

witnesses were falsely implicating the appellant while suppressing the identity of the actual assailant.

31. The Learned Counsel further submitted that the alleged discrepancies highlighted by the defence pertain only to peripheral details and do not touch the core of the prosecution case. According to the State, minor variations are a natural consequence of individual perception and the passage of time and, far from undermining credibility, often indicate that the witnesses were recounting events from their own recollection rather than rehearsing a fabricated version.
32. On a cumulative assessment of the documentary evidence, the seizure of the weapon, the medical findings, the post-mortem report, the testimony of the eyewitnesses, and the circumstances surrounding the occurrence, learned counsel contended that the prosecution has succeeded in establishing an unbroken chain of incriminating facts pointing unmistakably towards the guilt of the appellant. The evidence, according to the State, proves beyond reasonable doubt that the appellant assaulted Ramchandra Barman with a bamboo-*lathi* on the head, resulting in injuries which culminated in his death.
33. It was, therefore, urged that the prosecution has discharged its burden in accordance with law and that the conviction and sentence imposed upon the appellant under Section 304 Part II of the Indian Penal Code rest upon a firm evidentiary foundation warranting no interference.
34. The circumspection of evidence of the prosecution witnesses revealed as follows:-

- i. PW-1, Dhiren Barman, had been the de facto complainant and the bereaved father of the deceased Ramchandra Barman. His testimony unfolded the prosecution narrative from its inception and traces the events that culminated in the death of his son. He deposed that on 5th *Jaistha*, corresponding to 20th May 2007, an altercation arose between his family and the appellant, during which the appellant allegedly threatened that he would finish them. According to him, on the following morning, namely 6th *Jaistha* at about 7:00 a.m., his son Ramchandra Barman was proceeding towards the field for grazing cattle. At that time PW-1 was present in the courtyard of his house while his wife remained indoors. He claimed that the appellant suddenly appeared carrying a bamboo stick and struck Ramchandra on the head. The victim immediately fell to the ground and raised cries of distress.
- ii. PW-1 stated that upon hearing the alarm, he, along with his sons Narayan and Dejoy, his wife Arati Barman, and neighbouring villagers including Nirmal, Dhananjay, Yunus and Satyen, rushed to the place of occurrence. The injured Ramchandra was removed to M.J.N. Hospital, Cooch Behar. Owing to the seriousness of the head injury, he was referred to Siliguri Medical College. While being transported in an ambulance, the victim succumbed to his injuries near Dhupguri. The body was thereafter brought back to M.J.N. Hospital, where the attending doctor declared him dead.

- iii. PW-1 further deposed that he subsequently lodged the written complaint at the police station. The complaint was scribed by PW-13 at his dictation, read over to him and, finding it correctly recorded, he affixed his left thumb impression thereon. He also identified the bamboo stick allegedly used in the assault, marked as Material Exhibit-I. He further participated in the inquest proceedings conducted by the police.
- iv. During cross-examination, PW-1 disclosed that there was no boundary dispute between the families and that the existing discord concerned agricultural matters relating to jute and paddy. He acknowledged the existence of several neighbouring houses in the vicinity and admitted that he had not informed the police about the threat allegedly extended on the previous day, although he claimed to have narrated the same to certain villagers. He also admitted that no written complaint had been lodged before either the police authorities or the Gram Panchayat concerning the earlier dispute. He stated that immediately after the occurrence he proceeded with his injured son to the hospital and thereafter towards Siliguri Medical College, returning to M.J.N. Hospital only after the death of Ramchandra. According to him, the written complaint was lodged on the following day.
- v. PW-2, Arati Barman, the mother of the deceased, substantially supported the version narrated by PW-1. She stated that on 5th *Jaistha* there had been a quarrel concerning cattle, during which the appellant threatened the family and declared that on the following

day he would teach them a lesson. On the next morning, while Ramchandra was proceeding towards the grazing field after taking the cattle out from the cowshed, the appellant allegedly approached from behind and struck him on the head with a bamboo stick.

- vi. PW-2 deposed that she was inside her house at the relevant time. Upon hearing the cries of her son she rushed to the spot accompanied by her husband, her two sons and neighbouring residents including Dhananjay, Nirmal and Yunus Mia. She found Ramchandra lying injured with a grievous head wound. According to her, she took the injured boy on her lap and, together with Narayan Barman, transported him to M.J.N. Hospital. The attending doctor referred him to Siliguri Medical College due to the seriousness of his condition. During the journey near Dhupguri, Ramchandra expired. Thereafter the body was brought back to M.J.N. Hospital where he was formally declared dead.
- vii. PW-2 identified the bamboo stick marked as Material Exhibit-I and stated that she subsequently made a statement before the Magistrate narrating the facts of the occurrence.
- viii. In cross-examination, PW-2 conceded that she did not recollect whether she had informed the authorities regarding the alleged quarrel of the previous day concerning the cow. She further admitted that she had not stated before the police about the incident of 5th *Jaistha*. She also disclosed that the field was situated beside a road and that several houses surrounded their residence.

- ix. PW-3, Narayan Barman, another son of PW-1 and brother of the deceased, testified as an eyewitness to the occurrence. He deposed that on 20th May 2007 the appellant had threatened the family. On the following morning Ramchandra left the house with the cattle for grazing. PW-3 stated that he was inside the house when he heard a loud scream. On coming out, he allegedly saw the appellant repeatedly assaulting Ramchandra on the head with a bamboo stick.
- x. According to PW-3, several neighbours, including Satyen Das, Yunus Mia, Dhananjay Darman and Nirmal Darman, arrived at the place of occurrence. The injured victim was then taken to M.J.N. Hospital in a motor vehicle. By that time Ramchandra had become senseless and had sustained visible swelling on the head. As his condition deteriorated, he was referred to Siliguri Medical College. However, during transit near Dhupguri, he succumbed to his injuries. The body was subsequently brought back to M.J.N. Hospital.
- xi. PW-3 identified the seized bamboo stick and further stated that the police recovered the same from the cowshed of the appellant under a seizure list. He also deposed that he had given a statement before the Magistrate.
- xii. In cross-examination, PW-3 stated that he had narrated the incident before the Magistrate. He denied that his elder brother Bijoy had sustained injuries in the occurrence and stated that nobody assaulted Bijoy. He admitted that no complaint had been lodged

regarding the incident of 20th May 2007 and that the family disclosed the previous day's incident only to villagers on the following day.

- xiii. PW-4, Bijoy Barman, another brother of the deceased, also supported the prosecution case. He deposed that there existed strained relations between the family and the appellant and that the appellant had threatened them on 5th *Jaistha*. On the morning of 6th *Jaistha*, while he himself was proceeding towards his work and Ramchandra was taking the cattle towards the field, the appellant suddenly emerged from behind and struck Ramchandra on the head with a bamboo stick.
- xiv. PW-4 stated that the victim cried out in pain and that, upon hearing the alarm, his parents, his brother and neighbouring residents including Dhananjay, Nirmal and Yunus Mia reached the spot. Ramchandra was thereafter taken to M.J.N. Hospital and subsequently referred to Siliguri Medical College. During transit near Dhupguri, he died. The witness identified the bamboo stick marked as Material Exhibit-I and stated that the police had seized it from a place near the appellant's cowshed. He also affirmed that he had made a statement before the Magistrate, which was reduced into writing.
- xv. During cross-examination, PW-4 admitted that he had not informed the Magistrate regarding the alleged threat extended on 5th *Jaistha*. He also acknowledged that no diary or written complaint had been lodged concerning the previous day's occurrence and that no written

intimation had been furnished to the Panchayat or any authority regarding the earlier dispute.

- xvi. PW-5 was a neighbouring resident acquainted with both the complainant and the appellant. He deposed that a family dispute existed between PW-1 and the appellant. On hearing cries in the morning, he rushed to the spot and found the victim lying on the road. He noticed the presence of the victim's parents, brothers and other villagers. According to him, water was poured on the victim's head and thereafter he was taken to the hospital. PW-5 later learnt that the victim had been referred to Siliguri Medical College and had died on the way.
- xvii. In cross-examination, PW-5 admitted that he had not stated before the police that he had actually seen the appellant assaulting the victim simultaneously when he reached the spot. His evidence thus primarily establishes his arrival immediately after the occurrence and the condition in which he found the victim.
- xviii. PW-6 testified he knew both PW-1 and the appellant, who were brothers. He deposed he came to know that Ramchandra Barman had died but could not independently state the exact cause of death. During cross-examination, however, he stated that upon hearing of a sudden commotion he went near the house of Dhiren Barman and found the victim lying on the ground while family members were crying. Upon enquiry he learnt that the appellant had struck the victim on the head with a bamboo stick, causing him to fall.

- xix. PW-6 further stated that there had been a long-standing domestic dispute between the appellant and PW-1. According to him, Ramchandra was first taken to M.J.N. Hospital and thereafter towards North Bengal Medical College, but expired on the way. His testimony is thus largely derivative in nature and based upon what he learnt from others immediately after the occurrence.
- xx. PW-7 deposed he knew PW-1 and was aware of the incident leading to the death of the victim. He stated that after hearing a hue and cry he reached the spot and saw the appellant beating the younger son of Dhiren Barman with a bamboo stick. According to him, the victim fell to the ground and family members thereafter arrived. He further stated that the victim sustained blows on the head and was subsequently removed to the hospital.
- xxi. In cross-examination, PW-7 admitted certain omissions in his earlier statement to the police, particularly regarding his assertion that he had witnessed the assault after hearing the cries. Nevertheless, he maintained that the appellant had assaulted the victim with a bamboo stick and had fled when villagers gathered.
- xxii. PW-8 was a neighbour whose house stood adjacent to the residences of both PW-1 and the appellant. He testified that relations between the two brothers were strained owing to an ongoing family dispute. He stated that the son of PW-1 was killed, but candidly admitted that he had not witnessed the occurrence with his own eyes.

- xxiii. During cross-examination, PW-8 was confronted with portions of his police statement wherein he had allegedly stated that upon hearing cries he rushed to the place and found the victim lying on the ground while the appellant was beating him with a bamboo piece. He also allegedly stated that the appellant fled towards his house carrying the bamboo. PW-8 acknowledged that he had been examined by the Investigating Officer but maintained that he had not personally witnessed the occurrence.
- xxiv. His testimony, therefore, principally establishes the background of family discord and the circumstances immediately surrounding the aftermath of the incident rather than the actual assault itself.
- xxv. PW-9 was a co-villager acquainted with both PW-1 and the appellant. His evidence did not advance the prosecution case on the actual occurrence and remained confined principally to the aspect of seizure and the existence of prior discord.
- xxvi. He deposed that he had learnt from co-villagers namely, Anil Barman and Sahaj Ali Mia, that a dispute existed between PW-1 and the appellant. According to him, the victim lost his life in the course of the hostility prevailing between the two families. He candidly admitted that he could not state who had actually assaulted the victim.
- xxvii. The witness further stated that the victim expired at M.J.N. Hospital, Cooch Behar. Thereafter, he accompanied police personnel to the village where, in his presence, a bamboo-*lathi* was seized from the

house of the appellant. The seizure list was proved and marked as Exhibit-2/2, and he identified the seized bamboo stick marked as Material Exhibit-I.

- xxviii. During cross-examination, PW-9 acknowledged that bamboo sticks were commonly available in almost every household in the village, a circumstance which bears relevance while evaluating the evidentiary value of the alleged recovery.
- xxix. PW-10 was the Medical Officer who conducted the post-mortem examination over the dead body of Ramchandra Barman on 22.05.2007 at M.J.N. Hospital, Cooch Behar in connection with Kotwali P.S. U.D. Case No.151/07. The witness deposed that upon examination he found the scalp to be externally intact. However, beneath the scalp there existed a hematoma in the right parietal region. He further noticed haemorrhage within the brain substance situated in the right hemisphere in the parasagittal area. In his considered medical opinion, death resulted from the head injury situated in the right parietal region, the injury being ante-mortem and homicidal in character. He proved the post-mortem report prepared and signed by him, which was marked as Exhibit-4.
- xxx. PW-10 further opined that such an injury could be caused by an impact from a hard substance upon the head.
- xxxi. In cross-examination, he conceded that a similar injury might also be occasioned if a person were to fall upon a hard surface and sustain impact on the head. This admission furnished a possible alternative

mechanism of injury, though the primary opinion regarding the cause of death remained unchanged.

- xxxii. PW-11 was attached to Kotwali Police Station as Constable No.185. He stated that on 22.05.2007, acting under official directions, he transported the dead body of Ramchandra Barman from M.J.N. Hospital to the morgue. He identified the corpse before the doctor conducting the post-mortem examination. The dead body challan under which the corpse was transported was proved and marked as Exhibit-5. His evidence is purely formal in nature and pertains to the chain of custody of the dead body.
- xxxiii. PW-12 was attached to Kotwali Police Station as an Assistant Sub-Inspector. He deposed that upon receipt of information from the Superintendent of M.J.N. Hospital regarding the unnatural death of Ramchandra Barman, and pursuant to the direction of the Officer-in-Charge, he proceeded to the hospital on 22.05.2007.
- xxxiv. The witness conducted the inquest (Surathal) over the dead body of the deceased in the presence of relatives and prepared the Surathal Report. He proved the said report, which was marked as Exhibit-6.
- xxxv. He further stated that U.D. Case No.151/07 was registered upon receipt of the information concerning the death and that the dead body was thereafter forwarded to the morgue through Constable Narsingh Bhutia under a proper challan marked Exhibit-5/1.
- xxxvi. During cross-examination, PW-12 stated that although he mentioned the U.D. Case number in the Surathal Report, the record produced

before the Court did not contain any reference as to who actually initiated the U.D. case. He reiterated that he had gone to the hospital pursuant to instructions received from the Officer-in-Charge.

- xxxvii. PW-13 was an advocate's clerk. He deposed at the dictation of Dhiren Barman (PW-1), he wrote the written complaint. After reducing the complaint into writing, he read it over to the complainant who, upon finding it correctly recorded, appended his signature thereto. The written complaint was proved and marked as Exhibit-1/1.
- xxxviii. In cross-examination, PW-13 admitted that the complaint did not contain any note indicating the place or time at which it was written. He further stated that prior to the incident he did not know Dhiren Barman personally and was unaware of the educational qualifications of the neighbouring villagers. His evidence lends formal proof to the authorship and execution of the First Information Report.
- xxxix. PW-14 was a van puller by occupation. He deposed that on 22.05.2007 he transported a dead body to the morgue under instructions issued by Kotwali Police Station. He further stated that police seized the wearing apparel of the deceased in his presence and prepared a seizure list on which he affixed his left thumb impression.
- xl. During cross-examination, he candidly admitted that he could not identify the person whose dead body had been transported in his van and that he had merely acted in compliance with police directions. His testimony is thus confined to the formal aspects of transportation and seizures.

- xli. PW-15 was a Medical Officer posted at M.J.N. Hospital, Cooch Behar on the date of occurrence. He deposed that on 21.05.2007, Ramchandra Barman was admitted to the hospital and was brought by Arati Barman. The patient was admitted in the Surgical Ward under his supervision.
- xlii. Upon examination, he found that Ramchandra had sustained a head injury and was in a semi-conscious condition. The patient's condition was grave and deteriorating. He advised an immediate C.T. Scan and continued treatment. The C.T. Scan report revealed acute subdural hematoma with mass effect, indicating a serious intracranial injury. In view of the critical condition, he referred the patient to North Bengal Medical College and Hospital for advanced treatment. The witness proved the bed-head ticket and treatment sheets marked as Exhibit-8. He specifically stated that he had recorded that the patient was in a very serious condition and had informed the patient's relatives accordingly.
- xliii. During cross-examination, PW-15 clarified that the documents produced were xerox copies of the bed-head ticket. He admitted the patient had initially been examined by the Emergency Medical Officer and not by him. He further stated that the treatment records did not contain the names of the persons accompanying the patient, nor did they contain any recorded history regarding the cause of injury. The patient had been admitted at approximately 8:57 a.m. on 21.05.2007. Although he referred the patient to North Bengal Medical College, the

exact time of referral was not recorded. His evidence constitutes a crucial medical link demonstrating the severity of the cranial injury immediately after the occurrence.

- xliv. PW-16 was an employee attached to the Record Room of M.J.N. Hospital. He deposed that he was duly authorised by the Superintendent of the Hospital to produce official records relating to Ramchandra Barman, including the Admission Register, injury report and bed-head ticket. He produced the Admission Register wherein the name of Ramchandra Barman appeared against Serial No.11633 dated 21.05.2007. The register was marked as Exhibit-7. According to him, all such documents were maintained in the ordinary course of hospital business and preserved in the record room in accordance with hospital rules. His testimony served to formally prove the hospital records.
- xliv. PW-17 was serving as a Medical Officer in the Emergency Ward of M.J.N. Hospital. He deposed that on 22.05.2007, while on emergency duty, Ramchandra Barman was brought before him. Upon examination, he found the patient to have been brought dead at about 3:30 a.m. The accompanying persons informed him that the patient had sustained head injuries on 21.05.2007 at about 7:30 a.m. The witness prepared the injury report in his own handwriting and proved the same, which was marked as Exhibit-9. His evidence establishes the fact that the patient was brought back to the hospital

in a dead condition after the unsuccessful attempt to transfer him for advanced treatment.

- xlvi. PW-18 was the Emergency Medical Officer on duty at M.J.N. Hospital on 21.05.2007, the day of occurrence. He deposed that Ramchandra Barman was brought to the Emergency Room with a head injury. Recognising the seriousness of the condition, he immediately advised admission to the Surgical Ward and prescribed preliminary treatment. The Emergency Ticket prepared and signed by him was proved and marked as Exhibit-10.
- xlvi. During cross-examination, PW-18 stated that he had nearly two decades of medical service. He clarified that preliminary first aid was administered in the Emergency Ward. He further admitted that the Emergency Ticket did not mention the precise dimensions of the injury. His testimony furnishes the earliest medical record relating to the victim after the occurrence. PW-19 was the Investigating Officer and constituted the principal official witness of the prosecution. He deposed that on 22.05.2007, while attached to Kotwali Police Station, he received the written complaint lodged by Dhiren Barman. Acting upon the endorsement of the Officer-in-Charge, he registered Kotwali P.S. Case No.235/07 under Section 304 IPC. He proved the endorsement on the complaint, marked Exhibit-1/2, and the formal First Information Report, marked Exhibit-11. The witness stated that he visited the place of occurrence, prepared a rough sketch map with index marked collectively as Exhibit-12, examined witnesses under

Section 161 Cr.P.C., and undertook the investigation. According to him, acting on identification by eyewitnesses Narayan Barman, Bijoy Barman and the complainant, he seized the alleged weapon of offence, namely a bamboo stick, under a seizure list dated 22.05.2007 marked Exhibit-2. The seized bamboo was identified as Material Exhibit-I. He also arrested the appellant and forwarded him before the Court.

- xlvi. PW-19 further deposed that he recorded statements of witnesses and collected statements recorded under Section 164 of the Code of Criminal Procedure. He obtained the injury report, inquest report, dead body challan, post-mortem report and other medical documents. After completion of investigation, he submitted charge-sheet against the appellant under Section 304 IPC. He also narrated statements allegedly made during investigation by witnesses such as Nirmal Barman, Unish Mia, Dhananjay Barman and Satyen Das, all of whom had allegedly stated that upon hearing cries they rushed to the place of occurrence and found Ramchandra Barman lying injured after being assaulted by the appellant with a bamboo stick.
- xli. During cross-examination, PW-19 admitted the label affixed upon the seized bamboo stick did not bear the signatures of witnesses. He further stated that the bamboo measured approximately three cubits in length. He also acknowledged that the sketch map did not indicate the distances between the houses situated near the place of occurrence.

35. The prosecution case rests upon a narrow yet coherent factual foundation. The appellant and PW-1, Dhiren Barman, stood related as brothers. Evidence adduced throughout the trial reveals the existence of a simmering familial discord concerning agricultural affairs and allied matters. The occurrence, according to the prosecution, was preceded by an altercation on the previous day, during which the appellant is stated to have uttered words of menace directed towards the family of PW-1. On the following morning, Ramchandra Barman, the youngest son of PW-1, proceeded towards the field with cattle for grazing. It is at that juncture that the prosecution alleges that the appellant assaulted him by means of a bamboo stick, inflicting a blow upon his head which ultimately proved fatal.
36. The Learned Advocate representing the appellant assailed the judgment of conviction on several fronts. It was contended that the prosecution evidence suffers from embellishments, omissions and contradictions of substantial character. Attention was drawn to the fact that several witnesses are close relatives of the deceased and therefore interested in securing conviction. It was further argued that the alleged threat on the previous day finds no contemporaneous reflection in the earliest version and emerged subsequently. The seizure of a bamboo stick from the residence of the appellant was also questioned, particularly in view of the admission that bamboo sticks are commonly available in almost every rural household. Learned counsel further submitted that the medical evidence does not conclusively exclude the possibility of a fall, especially in view of the concession elicited from PW-10 during cross-examination. On the strength of

these circumstances, it was argued that the prosecution failed to establish guilt beyond reasonable doubt.

37. The Learned Advocate for the State supported the judgment of the Trial Court and submitted that the prosecution evidence presents a consistent narrative from the moment of assault till the death of the victim. It was urged that the ocular account of the family members receives substantial corroboration from the medical evidence, the hospital records, the post-mortem findings and the conduct of the parties immediately after the occurrence. The State further submitted that minor discrepancies are a natural feature of truthful testimony and do not erode the central substratum of the prosecution case.

38. Upon scrutiny of the entire record, this Court finds that the prosecution evidence cannot be discarded merely because several witnesses belong to the family of the deceased. Relationship by itself does not render a witness unworthy of credit. On the contrary, a close relation who has witnessed an occurrence is often the last person to permit the actual assailant to escape and implicate an innocent person in his place. The evidence of a related witness requires careful evaluation, not automatic rejection.

39. PW-1, the father of the deceased and the de facto complainant, furnished a vivid account of the occurrence. He stated that the appellant came armed with a bamboo stick and struck Ramchandra Barman on the head while the latter was proceeding towards the field. His testimony also narrates the immediate steps taken for medical treatment, the referral to Siliguri Medical College and the eventual death of the victim during transit. Cross-

examination did not succeed in demolishing the core of his testimony. Though certain omissions were elicited regarding the previous day's threat and the absence of any earlier complaint, those aspects pertain principally to motive and not to the actual assault.

40. PW-2, the mother of the deceased, furnished an account substantially in accord with that of PW-1. She described the quarrel on the previous day, the assault with a bamboo stick, the alarm raised by the victim, and the subsequent transportation to the hospital. Her evidence reflects the natural reaction of a mother witnessing the catastrophic injury suffered by her son. Certain omissions concerning the previous altercation were brought on record during cross-examination, yet the narrative concerning the assault itself remained steadfast.

41. PW-3 and PW-4, brothers of the deceased, also attributed the assault to the appellant. Both witnesses described the victim proceeding towards the field with cattle, the appellant approaching and striking him with a bamboo stick, and the subsequent efforts to secure medical assistance. Their evidence bears internal consistency and harmonizes with the account of PW-1 and PW-2 regarding the essential features of the occurrence.

42. The defence sought to draw strength from the evidence of PW-5, PW-6, PW-7 and PW-8. A close examination of their testimonies, however, does not advance the defence case to any significant degree. PW-5 reached the place after hearing commotion and found the victim lying on the road. PW-6 deposed regarding the existence of longstanding discord between the families and stated that he learnt that the appellant had struck the victim with a

bamboo stick. PW-7 made reference to mutual fighting, yet his evidence also records that he saw the appellant beating the victim on the head with a bamboo stick. PW-8 similarly spoke of the strained relationship between the brothers and referred to the appellant beating the victim on the head. The evidence of these witnesses, when read in its entirety rather than in isolated fragments, furnishes support to the prosecution version.

43. The medical evidence assumes considerable significance. PW-18 first examined the injured victim in the Emergency Room and advised immediate admission. PW-15, the treating surgeon, found the victim in a semi-conscious state with a serious head injury. The CT scan revealed acute subdural hematoma with mass effect, compelling referral to a higher medical centre. PW-17 recorded that the victim was brought dead. PW-10, the autopsy surgeon, detected hematoma beneath the scalp in the right parietal region and haemorrhage within the brain substance. In his opinion, death resulted from the head injury sustained by the deceased.

44. The suggestion that the injury could also result from a fall does not, in the facts of the present case, create a doubt sufficient to displace the prosecution case. Medical evidence serves principally as corroborative material. Where reliable ocular testimony stands supported by medical findings, a theoretical possibility extracted during cross-examination cannot eclipse the cumulative force of the evidence.

45. The investigative record also furnishes corroboration. PW-19 proved the registration of the case, the preparation of the sketch map, the seizure of the bamboo stick and the collection of medical and documentary evidence.

Though certain lapses surfaced during cross-examination, including absence of witness signatures on the label attached to the seized bamboo and lack of precise measurements in the sketch map, such deficiencies do not strike at the heart of the prosecution case. Investigation is a means to ascertain truth; imperfections in procedure do not automatically extinguish otherwise reliable evidence.

46. The question that then arises concerns the nature of the offence. The evidence discloses that the assault consisted of a blow with a bamboo stick. The occurrence arose against the backdrop of a rural family dispute. The material on record does not indicate repeated blows with a deadly weapon, nor does it reveal a carefully orchestrated design aimed at ensuring death. At the same time, a forceful blow directed at the head, an eminently vulnerable part of the human body carries with it the knowledge that such an act is likely to cause death.

47. The Trial Court, therefore, committed no error in recording conviction under Section 304 of the Indian Penal Code. The evidentiary fabric woven through the testimonies of PW-1 to PW-19, reinforced by the medical records and post-mortem findings, establishes beyond reasonable doubt that the appellant inflicted the head injury which resulted in the death of Ramchandra Barman.

48. The principal question that falls for consideration is not whether Ramchandra Barman died as a consequence of the injury inflicted by the appellant, for the evidence of the eyewitnesses, reinforced by the medical testimony of PW-10, PW-15, PW-17 and PW-18, places that aspect beyond

the sphere of legitimate controversy. The real issue concerns the degree of criminality attributable to the act and the precise provision of the Penal Code within which such conduct may be accommodated.

49. The architecture of criminal homicide under the Indian Penal Code proceeds upon carefully graduated distinctions. The law draws a marked line between intention and knowledge. Though both are states of mind, they occupy distinct juridical domains. Intention denotes a conscious objective to bring about a particular consequence. Knowledge, on the other hand, signifies an awareness that a particular consequence is likely to ensue from the act performed, even though the actor may not specifically desire that result.
50. Section 304 Part II occupies that intermediate field where death is caused by an act done with the knowledge that it is likely to cause death, yet without any intention to cause death or to cause such bodily injury as is likely to result in death.
51. The evidence in the present case does not disclose features ordinarily associated with a deliberate design to extinguish life. The weapon employed was not a firearm, a sharp-cutting weapon, or any instrument intrinsically fashioned for lethal assault. The weapon was a bamboo stick commonly available in a rural household. The occurrence arose in the background of a longstanding family discord between two brothers. Nothing on record suggests prior preparation, concealment, pursuit of the victim over a distance, or a concerted plan reflecting a settled determination to kill.
52. Equally significant is the nature of the assault as emerging from the prosecution evidence. The witnesses principally speak of a blow directed at

the head of the deceased. The prosecution case does not portray a sustained and relentless attack continuing after the victim became incapacitated. Nor does the evidence reveal repeated infliction of injuries upon several vital parts of the body. The post-mortem report itself records a solitary fatal injury manifested by hematoma beneath the scalp and intracranial haemorrhage in the right parietal region.

53. These circumstances assume importance because intention, being a mental element, is rarely proved through direct evidence. Courts ascertain intention from the weapon employed, the part of the body targeted, the force used, the multiplicity of injuries, the surrounding circumstances and the conduct of the assailant before and after the occurrence.

54. In the present case, while the act of striking the head with force certainly demonstrates recklessness of a grave degree, the surrounding circumstances stop short of establishing a conscious objective to bring about death.

55. At the same time, the appellant cannot seek refuge behind the absence of intention. A grown individual wielding a bamboo stick and directing a forceful blow upon the head of another person cannot plausibly plead ignorance regarding the probable consequences of such conduct. The head houses the most delicate and vital organs of the human body. Any substantial impact upon that region carries a manifest risk of fatal consequences.

56. Knowledge, within the meaning of Section 304 Part II, therefore emerges naturally from the proved facts. The appellant may not have desired the death of Ramchandra Barman; nevertheless, he must be deemed to have

possessed awareness that a forceful strike upon the head was likely to place the victim's life in jeopardy.

57. The medical evidence lends considerable support to this conclusion. PW-15 found the victim in a semi-conscious condition and the CT Scan disclosed acute subdural hematoma with mass effect. PW-10 detected intracranial haemorrhage and opined that death occurred due to ante-mortem head injury. These findings reveal that the injury was neither superficial nor trivial. It penetrated beyond the external structures and produced catastrophic damage within the cranial cavity.
58. The legal distinction between murder under Section 302 and culpable homicide punishable under Section 304 Part II frequently turns upon the degree of *mens rea* discernible from the facts proved. Where the evidence demonstrates a calculated intention to kill or to inflict a bodily injury sufficient in the ordinary course of nature to cause death, the offence ascends to the category of murder. Where intention remains elusive but knowledge is unmistakably present, Section 304 Part II furnishes the appropriate statutory framework.
59. The factual matrix of the present case fits more appropriately within the latter category.
60. The previous day's altercation and threat, though relevant as evidence of hostility, do not by themselves elevate the act into murder. Rural disputes frequently generate impulsive acts born of anger, resentment and familial friction. Criminal courts must distinguish between a homicidal act emerging from a moment of violent confrontation and one executed pursuant to a

deliberate and settled design. The evidence here points more convincingly towards the former.

61. Another circumstance which cannot escape notice is that after the assault the immediate concern of the family centred upon securing medical assistance for the victim. The record reflects that the victim was first taken to M.J.N. Hospital, thereafter referred to a higher medical institution, and ultimately succumbed during transit. The chain of events portrays a situation where death followed the consequences of a grievous head injury rather than a systematic assault intended to ensure the victim's demise. Thus, when the entire body of evidence is viewed as an integrated whole, the following propositions stand firmly established:-

- a. The appellant inflicted the injury upon the deceased.
- b. The injury was directed at a vital part of the body, namely the head.
- c. The injury caused intracranial haemorrhage and resulted in death.
- d. The circumstances do not establish a deliberate intention to cause death.
- e. The circumstances unmistakably establish knowledge that such an act was likely to cause death.

62. These ingredients satisfy the requirements of Section 304 Part II of the Indian Penal Code.

63. The conviction, therefore, rests upon a sound legal foundation. The evidence neither permits an acquittal nor justifies conversion of the offence into one of lesser gravity. Simultaneously, the material on record does not furnish a basis for elevating the offence to murder punishable under Section 302. The

conviction under Section 304 Part II thus achieves fidelity to both the factual realities disclosed by the evidence and the nuanced gradation of criminal liability contemplated by the Penal Code.

64. The sentence, however, may legitimately be tempered in view of the passage of time, the familial setting of the occurrence, the nature of the weapon employed, and the absence of circumstances indicative of exceptional depravity. Such considerations bear upon punishment and not upon culpability. The finding of guilt under Section 304 Part II consequently remains immune from interference, though the ends of justice stand adequately served by confining the substantive sentence to the period already undergone. Court warrants affirmation, though the sentence calls for modification.

65. Accordingly, the appeal fails on merits and the finding of guilt recorded against the appellant under Section 304 of the Indian Penal Code stands affirmed. The sentence imposed by the Trial Court is, however, modified. The appellant shall suffer imprisonment for the period already undergone by him in custody. Subject to payment of any fine, if imposed and remaining unpaid, the appellant shall stand discharged from his bail bonds upon compliance with the directions of the Trial Court.

66. The appeal is, therefore, dismissed with the aforesaid modification in sentence. The conviction is affirmed; the sentence is confined to the imprisonment already undergone.

67. In view of the above discussions, the instant criminal appeal is dismissed. However, considerable time has elapsed from the date of occurrence of the

offence and the sentence is reduced to the period of incarceration undergone by the appellant.

68. There is no order as to costs.

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

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

(Ananya Bandyopadhyay, J.)