

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 411 of 2014

Abu Taleb Mondal & Ors.

-Vs-

The State of West Bengal

For the Appellants : Mr. Kallol Kumar Basu
Md. Jannat Ul Firdous

For the State : Mr. Madhusudan Sur
Mr. Manaranjan Mahata

Judgment on : 27.02.2026

Ananya Bandyopadhyay, J.:-

1. This appeal is preferred against judgment and order of conviction dated 17.05.2014 & 19.05.2014 passed by the Learned Additional District & Sessions Judge, Fast Track Court-III, Basirhat, North 24 Parganas in Sessions Trial No.05(01)2013 arising out of Sessions Case No.01(06)2012 convicting the appellants under Sections 148, 325/149, 326/149, 307/149 & 354/149 of the Indian Penal Code and sentencing them to suffer rigorous imprisonment for a period of 2 years each, for the offence under Section 149 of the Indian Penal Code, rigorous imprisonment for a period of 7 years for the offence under Section 307/149 of the Indian Penal Code and rigorous imprisonment for a period of 5 years each and to pay a fine of Rs.1,000/-

each in default to suffer rigorous imprisonment for a period of 2 months each for the offence under Section 326/149 of the Indian Penal Code respectively and all the sentences shall run concurrently.

2. The prosecution case precisely stated one Rahima Bibi lodged a complaint before the I/C Basirhat P.S. on 25.02.2010 alleging to have been possessing the land being Plot No.1166 and 444 measuring 11 *Katha* within Madhyampur mouza and cultivating the same over years. On 22.02.2010 at about 09:00 a.m., in the morning Abu Taleb Mondal, Firoj Mondal, Saifudding Mondal, Sariful Mondal, Abu Khalek Mondal, Abu Kalam Mondal illegally entered into the said land for reaping the Khariff Crops and they while they were severing Mustard Seed Crops from the land, elder brother-in-law protested. Firoj Mondal instructed the other offenders to kill him hurling abusive languages. Thereafter, Abu Taleb Mondal assaulted her elder brother-in-law Bhasur with a "Shovel" on his head with successive blows and as a result fell down on the ground sustaining profused bleeding injury. Abu Khalek Mondal assaulted her husband on his head with a "Lathi" made of bamboo. Saifuddin assaulted with a "Kaste". When her husband came to rescue one of his fingers of his right hand was cut off. The complainant and her family members immediately rushed to the place of occurrence and the miscreants also assaulted them with weapons in their respective hands. As a result of which, her mother-in-law, sister-in-law, son-in-law fell down on the ground sustaining bleeding injury being unconscious. At the alarm of her daughter, local persons came to the place of occurrence and took them to Basirhat

P.S. by a hired Maruti vehicle wherefrom they were admitted at Basirhat Hospital. All five injured persons were admitted at Basirhat Hospital and were medically treated.

3. On the basis of the said written complaint a case being Basirhat Police Station Case No.68 of 2010 dated 25.02.2010 was initiated under Sections 147/148/149/323/325/326/307/354 of the Indian Penal Code against the appellants and an investigation was taken up.
4. After completion of the investigation a charge-sheet was submitted by the investigating officer against the appellant under Sections 147/148/149/323/324/307/354 of the Indian Penal Code to which the appellants pleaded not guilty and claimed to be tried.
5. In order to prove its case, the prosecution examined as many as 9 witnesses and exhibited certain documents.
6. Learned Advocate for the appellants submitted as follows: –
 - i. On 22.02.2010 at about 09:00 a.m., in the morning the petitioner Abu Taleb mondal along with Firoj Mondal, Saifuddin mondal, Sariful Mondal, Abu Khalek Mondal, Abu Kalam Mondal, allegedly infringed into a “land” for cutting poppy seeds. Samsur Mondal (PW-1), the brother-in-law of Rahima Mondal (PW-2) raised alarm and protest while trying to stop the miscreants. Allegedly Firoj Mondal asked the other petitioners to kill PW-1 while hurling abuses at him. Immediately thereafter Abu Taleb Mondal allegedly assaulted PW-1 with shovel on his head with successive blows which made PW-1

- unconscious. The husband of de facto tried to save his brother, during which he was allegedly attacked by Abu Khalek Mondal and Saifuddin. During which allegedly one of his finger got amputated. The de facto complainant along with her mother-in-law Sonovan Bibi, Sufia Bibi and Rajiv Gazi, the relatives of the victim, went to the place. They were also allegedly assaulted by the miscreants. It was Bilkis Bibi (PW-8), the daughter of Samsur Mondal, who in her statements on oath claimed on the way to her market found de facto complainant along with Ansar, Sonovan, Samsur, Sufia to the hospital. She took them to the hospital with help of others to Basirhat SD hospital. Thereafter, the complaint got registered on 25.02.2010 written by Scribe named Ohidul Sahaji two days after the incident and the police commenced the investigation.
- ii. The deposition of PW-1 disclosed material omissions with regard to the assault and injuries that he received. PW-1 didn't state about his condition of being senseless before police and about the fact he was admitted in hospital on the first occasion to the police. His statements contradicted with that of the Investigating officer.
 - iii. PW-2, Rahima Bibi in her deposition claimed she was on the way to market when she found the informants in injured conditions after which she took them to Basirhat Hospital and Sufia Bibi allegedly went to the point of occurrence ten minutes after receiving the news, however she did not mention the name of Rajiv Gazi which was mentioned in the complaint. After which they were also allegedly

attacked by the miscreants. They were taken to the hospital whereby her husband and brother-in-law were admitted for around 15 days. PW-2 deposed and agreed that they were granted bail in the criminal case filed by the accused. She also admitted the presence of the accused person admitted in the hospital.

- iv. PW-2 also admitted that she was not aware about what is written in the complaint and the same is not read over and explained to her. While Rahima Bibi claims that her mother in Law was admitted in Jadavpur K.B.C. hospital for 2 years, PW-3 herself states the same to be only one month creating another major contraction. Further agreed that there was a dispute which existed between the complainant and the petitioners.
- v. PW-3, Sonavan Bibi, the mother of PW-1 also speaks about the incident. But the incident she mentions on dock contradicts with that of the statement given by one PW-2 and one mentioned in written complaint. PW-2 also said that they went to the place after hearing the assault on PW-1 and hearing that her husband's finger was amputated by the miscreants. After which they were assaulted. The statement of PW-3 stated otherwise creating a doubt with regard to the chain of circumstances. Her statements were also found in contradictions with the investigating officer. The fact that she was admitted in hospital for a month for treatment, the medical report pertaining to the same had not been exhibited.

- vi. PW-4, Dr. Bikas Chandra Gain who had examined Ansar Ali Mondal who was brought by Fajer Ali Dhali and another Samser Mondal. Although he claims that there were multiple injuries but injury report shows only one injury. No light about amputation of any finger of Ansar Ali Mondal getting amputated, nor the person has deposed any statement with regard to the same. As per the deposition of the Doctor from Badartala hospital, he claimed there were only three injured persons namely - Samsur Mondal, Ansar Mondal, And Sonavan Bibi. Also, there was no mention of the fact that there was any finger of one Ansar Mondal that was at all being amputated. The patients didn't disclose to the doctor the name of the miscreants during the treatment. In the injury report there was only one injury that was mentioned, the same was admitted by the medical examiner during the examination.
- vii. PW-5, Ohidul Sahaji, scribe of complaint given by PW-2, was informed by the de facto complainant about the dispute and quarrel allegedly between the petitioners and that of the alleged victims.
- viii. PW-6, Fajer Ali Mondal happened to be a chance witness to be present in the tea stall near the P.O. PW-7 stated that there were no stalls or shops or house by the side of the P.O. all of which were at least 500 m away from the point of occurrence, who had allegedly taken Ansar Mondal to the hospital. PW-6 had taken the persons to the hospital at the request of I.O. but there was yet a delay in lodging the FIR.

- ix. PW-7, Din Islam Dhali's statement contradicted and created suspicion in the statement of Fajer Ali Mondal who was cultivating in the land near the point of occurrence. He claimed that it was the de facto upon whose hue and cry, they entered the field.
- x. PW-8, Bilkis Bibi claimed that she was on the way to the market when she found Rahima Bibi, Samsur Ali Mondal, Ansar Ali, Sonavan Bibi and Sufia Bibi injured in the P.O., which implied she had not seen the incident. PW-8 admitted that there happened to be a long standing dispute between the victim and the petitioners.
- xi. PW-9, Chittaranjan Das, started investigation two days after the incident despite the fact that the victims were taken to the hospital at the instruction of the police station as evident from the deposition of PW-5. The entire deposition of PW-5 pertaining to the same was called into question as the I.O. claimed that PW-5 had not stated about the instruction of P.S. to him.

The deposition of the I.O. brought out multiple omissions and contradictions and the fact that several facts deposed by the witnesses were at all informed to him by the witnesses at the first instance.

The I.O. stated that Samsur Mondal didn't depose about his injuries and his days in hospital before him. The I.O. deposed that Sonavan Bibi never mentioned about her hand injury during her interrogation, or about the amputation of the finger of Ansar Mondal. The fact that Fajer Ali Mondal happened to be an eye witness and

there was a tea stall near the point of incident had not been stated by the witness before the I.O. during the investigation. One Din Islam Dhali happened to be an eye witness and the petitioners fled after the incident was not stated by the witness before the I.O. during the investigation. Nowhere in the statement of Bilkis Bibi, she had ever mentioned that Rahima Bibi was at all being assaulted. Bilkis Bibi was going to the market while she found the injured persons; were also not informed to the Investigating Officer. Further the Investigating Officer admitted that the medical examiner was not examined by him. No weapon was at all recovered in the alleged incident.

- xii. In *State of M.P. v. Mishrilal*, (2003) 9 SCC 426: 2003 SCC (Cri) 1829: 2003 SCC OnLine SC 467 at page 431

“8. In the instant case, it is undisputed, that the investigating officer submitted the challan on the basis of the complaint lodged by the accused Mishrilal in respect of the same incident. It would have been just, fair and proper to decide both the cases together by the same court in view of the guidelines devised by this Court in Nathi Lal case [1990 Supp SCC 145: 1990 SCC (Cri) 638]. The cross-cases should be tried together by the same court irrespective of the nature of the offence involved. The rational behind this is to avoid the conflicting judgments over the same incident because if cross-cases are allowed to be tried by two courts separately there is likelihood of conflicting judgments. In the instant case, the investigating officer submitted the challan against both the parties. Both the complaints cannot be said to be right. Either one of them must be false. In such a situation, legal obligation is cast upon the investigating officer to make an endeavour to find out the truth

and to cull out the truth from falsehood. Unfortunately, the investigating officer has failed to discharge the obligation, resulting in grave miscarriage of justice.”

- xiii. In *Nathi Lal v. State of U.P.*, 1990 Supp SCC 145: 1990 SCC (Cri) 638 at page 145

“2. We think that the fair procedure to adopt in a matter like the present where there are cross cases, is to direct that the same learned Judge must try both the cross cases one after the other. After the recording of evidence in one case is completed, he must hear the arguments but he must reserve the judgment. Thereafter he must proceed to hear the cross case and after recording all the evidence he must hear the arguments but reserve the judgment in that case. The same learned Judge must thereafter dispose of the matters by two separate judgments. In deciding each of the cases, he can rely only on the evidence recorded in that particular case, The evidence recorded in the cross case cannot be looked into. Nor can the judge be influenced by whatever is argued in the cross case. Each case must be decided on the basis of the evidence which has been placed on record in that particular case without being influenced in any manner by the evidence or arguments urged in the cross case. But both the judgments must be pronounced by the same learned Judge one after the other.

It is clear that the accused had also filed a case regarding the same incident and a fair trial has not been held in that instance. The case had genesis due to which cognigence was taken and the trial commenced but due to lack of prosecution it was closed. The same case has not been taken into consideration.

2. Ante-timed FIR.

Promptness of an FIR is essential in such cross cases. Delay in lodging FIR also sometimes cast doubt in the case of the prosecution. It shall be statement that it was observed in the judgement of Meghaji Godadji Thakore v. State of Gujarat, the importance of “satisfactory explanation” for the delay.”

- xiv. In *Meghaji Godadji Thakore v. State of Gujarat*, 1992 SCC OnLine Guj 164; 1993 CriLJ 730; (1992) 33 (2) GLR 1347 at page 736

“21. The prosecution had also relied on the FIR produced at Ex. 9. It is dated 3-7-1986. The FIR is filed by the complainant Gandabhai Mevabhai, who stated in his complaint that the theft in his house occurred almost is 15 days before. No reasonable explanation is given as to why FIR is lodged very late. In absence of any explanation for delay in FIR the version of the prosecution is weakened. In the present case it will be unsafe to place reliance on such FIR. Delayed FIR does not help the prosecution. Mere delay is not fatal in every case. Delay has to be explained. It is found from the facts of the present case that the complainant could have given the FIR on the same day as there is an outpost in village Bhotwa, where complainant is residing. The FIR is lodged after almost 15 days before Police Inspector Mr. Parmar on 3-7-1986. That in the present case delay in lodging FIR also creates suspicion about the version of the prosecution. The Trial Court as well as the Sessions Court have committed serious illegality in not considering this aspect in favour of the accused in the present case.

22. The FIR in a criminal case is an extremely vital and valuable piece of evidence for the purpose of corroborating the oral evidence adduced at the trial. The importance of the above report can hardly be over emphasised from the standpoint of the accused. The object of insisting upon prompt lodging of the report to the Police in respect of commission of an offences is to obtain prior information regarding the circumstances

in which the crime was committed the names of the actual culprits and the part played by them as well as the names of eye-witnesses present at the scene of occurrence, Delay in lodging the FIR often results in embellishment which is the creature of an after-thought. On account of delay the report only gets bereft and the advantage of spontaneity danger creeps in and the introduction of coloured version, exaggerated account or concocted story as a result of deliberation and consultation. It is therefore, essential that the delay in the lodging of the FIR should be satisfactorily accounted for. This proposition of law is very well settled. It is true that FIR is not substantive piece of evidence. It is also true that the FIR need not be elaborate with meticulously prepared. Nonetheless the importance of FIR made promptly cannot be minimised. The underlying object of Section 154 of the Code is to obtain earlier information of an alleged criminal activity on record the circumstances before there is time for them to embellishment the prosecution story. The learned P.P. has not been able to show any reason why FIR came to be lodged 15 days after the occurrence of the alleged theft in the house of the complainant. It appears that the P.S.I. on suspicion arrested the accused persons and thereafter in view of the alleged confession of the accused the FIR is lodged without explaining the delay. In such a situation the FIR cannot be said to be reliable. Courts below have seriously erred in placing reliance on such FIR.”

In Shankarlal Deolal v. State of M.P., 1981 SCC OnLine MP 9: 1981 MP LJ 736: 1982 Cri LJ 254 at page 737

“6. In my opinion, the explanation given for lodging the first information report after two days is a lame excuse. It has not come in the evidence of the complainant himself that it was not possible for him to reach the Police Station which was at a short distance of seven miles from the place of incident, immediately and he had to wait for about two days to reach the Police Station. The result of filing the first information report late is that no reliance can be placed on the report which is lodged after

an inordinate delay. It clearly shows that the complainant along with his witnesses, thought over the matter and after seeing that the appellants are on inimical terms with them, they might have included their names in the first information report. Curiously enough, the Prosecution has not examined the Investigating Officer in this case. If he would have been examined, the accused party could have cross-examined on the point of delay. This clearly has prejudiced the defence of the petitioners. Further, the alleged weapons of offence were also not recovered from any of the petitioners. Therefore, there is no direct evidence to connect the petitioners with the alleged offence through the weapons of offence. Added to these facts, Laxman (P.W. 2) has admitted in his evidence that the relations between the petitioners and Laxman are strained one and these strained relations between the parties existed for the last so many years. If all these facts are taken into consideration, in my opinion, it cannot be held that the petitioners were rightly convicted as having taken part in the alleged incident.

Also it shall be mostly highlighted if the witness went to hospital with the instruction of the police station as per the versions of two witness (darogababu), thereby the investigating body had some knowledge about the same incident. But there was a delay which cannot be substituted by the mere illness of Rahima Bibi.

xv. In *Nandlal and Ors., v. State of Chattisgarh*, 2023 SCC Online 2620:-

“It can thus be seen from the evidence of PW-14, 10 that the police had information about the incident at least prior to 11.45 PM on 3rd November 2006. No doubt that mere delay in registering FIR would not be fatal to the prosecution case. The effect of delay in lodging the FIR would differ in the facts and circumstances of each case. In the present case, admittedly, accused No. 11 Naresh Kumar had received grievous injuries which have not been explained by the prosecution. A specific defence has been taken by accused No. 11 Naresh Kumar that when he was coming after consuming liquor, he was assaulted by Atmaram (PW-

1). Thereafter, he went to the Police Station along with accused No. 7 Charnu Jangde, accused No. 12 Paltan Jangde, Ashwini and Vinod, whereafter he was referred for medical treatment. Looking at the injuries of accused No. 11 Naresh Kumar, it appears difficult that he could have taken part in the second part of the incident. The prosecution has suppressed the first report lodged by Atmaram (PW-1) as well as by accused No. 11 Naresh Kumar. If Naresh Kumar was examined at 11.45 PM, the police must have had some information about the incident at least by 11.00 PM. As such, there is a delay of at least four hours in lodging the FIR.”

It can also be stated that when such disputed scenario has been taken into consideration, the ante- timed nature of it shall be considered with greater scrutiny.”

xvi. In *Ramesh Baburao Devaskar v. State of Maharashtra*, (2007) 13 SCC 501: (2009) 1 SCC (Cri) 212: 2007 SCC OnLine SC 1285 at page 509

“19. In a case of this nature, enmity between two groups is accepted. In a situation of this nature, whether the first information report was ante-timed or not also requires serious consideration. First information report, in a case of this nature, provides for a valuable piece of evidence although it may not be substantial evidence. The reason for insisting on lodging of first information report without undue delay is to obtain the earlier information in regard to the circumstances in which the crime had been committed, the name of the accused, the parts played by them, the weapons which had been used as also the names of eyewitnesses. Where the parties are at loggerheads and there had been instances which resulted in death of one or the other, lodging of a first information report is always considered to be vital.

Testimony of Interested and related witnesses where there is a previous or longstanding enmity between the parties-

In a case where the related and interested witness may have some enmity with the assailant, the bar would need to be raised and the evidence of the witness would have to be examined by applying a standard of discerning scrutiny. (Parmeshwar Das @ Bhura vs State Of M.P.)”

- xvii. *In Darya Singh v. State of Punjab, (1964) 3 SCR 397: AIR 1965 SC 328: (1965) 1 Cri LJ 350*

“6. There can be no doubt that in a murder case when evidence is given by near relatives of the victim and the murder is alleged to have been committed by the enemy of the family. criminal courts must examine the evidence of the interested witnesses, like the relatives of the victim, very carefully. But a person may be interested in the victim, being his relation or otherwise, and may not necessarily be hostile to the accused. In that case, the fact that the witness was related to the victim or was his friend, may not necessarily introduce any infirmity in his evidence. But where the witness is a close relation of the victim and is shown to share the victim's hostility to his assailant, that naturally makes it necessary for the criminal courts examine the evidence given by such witness very carefully and scrutinise all the infirmities in that evidence before deciding to act upon it. In dealing with such evidence. Courts naturally begin with the enquiry as to whether the said witnesses were chance-witnesses or whether they were really present on the scene of the offence. If the offence has taken place, as in the present case, in front of the house of the victim, the fact that on hearing his shouts, his relations rushed out of the house cannot be ruled out as being improbable, and so, the presence of the three eyewitnesses cannot be properly characterised as unlikely. If the criminal court is satisfied that the witness who is related to the victim was not a chance-witness, then his evidence has to be examined from the point of view of probabilities and the account given by him as to the assault has to be

carefully scrutinised. In doing so, it may be relevant to remember that though the witness is hostile to the assailant, it is not likely that he would deliberately omit to name the real assailant and substitute in his place the name of the enemy of the family out of malice. The desire to punish the victim would be so powerful in his mind that he would unhesitatingly name the real assailant and would not think of substituting in his place the enemy of the family though he was not concerned with the assault, It is not improbable that in giving evidence, such a witness may name the real assailant and may add other persons out of malice and enmity and that is a factor which has to be borne in mind in appreciating the evidence of interested witnesses. On principle, however, it is difficult to accept the plea that if a witness is shown to be a relative of the deceased and it is also shown that he shared the hostility of the victim towards the assailant, his evidence can never be accepted unless it is corroborated on material particulars. We do not think it would be possible to hold that such witnesses are no better than accomplices and that their evidence, as a matter of law, must receive corroboration before it is accepted. That is not to say that the evidence of such witnesses should be accepted light-heartedly without very close and careful examination;

4. Statements of witness shall be taken either as a whole and not in part.

It is a settled principle that 'Evidence of a witness has to be read as a whole. Words and sentences cannot be truncated and read in isolation. In a plethora of judgement the Hon'ble lordships of Apex Court has dealt with the appreciation of evidences.'

xviii. In *Rakesh v. State of U.P.*, (2021) 7 SCC 188: (2021) 3 SCC (Cri) 149: 2021 SCC OnLine SC 451 at page 197

"14. It is also the case on behalf of the defence that according to the witnesses/eyewitnesses the weapon used was "dagger" and not "knife" and what is recovered is "knife" and PW 2 has subsequently

improved his deposition that the other accused caused injuries by knives. It is the case on behalf of the defence that even the doctor in his cross-examination has stated that it is very doubtful to say that the injuries were by sharp cutting weapon on both sides. However, it is to be noted that the doctor answered the question which was put to him. One is required to consider the entire evidence as a whole with the other evidence on record. Mere one sentence here or there and that too to the question asked by the defence in the cross-examination cannot be considered stand alone. Even otherwise it is to be noted that what is stated by the doctor/medical officer can at the most be said to be his opinion. He is not the eyewitness to the incident. PW 1 and PW-2 have categorically stated that the other accused inflicted the blows by knives. The same is supported by the medical evidence and the deposition of PW 2. Injuries 2 to 8 are sufficient by the sharp cutting weapon. Injuries 2 to 8 are on different parts of the body which show the intention and conduct on the part of the other accused A-2 and A-3. Therefore, they are rightly convicted for the offence punishable under Section 302 IPC with the aid of Section 34 IPC. Their presence and participation have been established and proved by the prosecution by examining PW 1 and PW 2 who are found to be reliable and trustworthy witnesses.”

- xix. *In Shamim v. State (NCT of Delhi), (2018) 10 SCC 509: (2019) 1 SCC (Cri) 319: 2018 SCC OnLine SC 1559 at page 513*

“12. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole inspires confidence. Once that impression is formed, it is undoubtedly necessary for the court to scrutinise the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence and whether the earlier evaluation of the

evidence is shaken as to render it unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case, hypertechnical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error without going to the root of the matter would not ordinarily permit rejection of the evidence as a whole. Minor omissions in the police statements are never considered to be fatal. The statements given by the witnesses before the police are meant to be brief statements and could not take place of evidence in the court. Small/trivial omissions would not justify a finding by court that the witnesses concerned are liars. The prosecution evidence may suffer from inconsistencies here and discrepancies there, but that is a shortcoming from which no criminal case is free. The main thing to be seen is whether those inconsistencies go to the root of the matter or pertain to insignificant aspects thereof. In the former case, the defence may be justified in seeking advantage of incongruities obtaining in the evidence. In the latter, however, no such benefit may be available to it.”

- xx. In the following case, the Learned Sessions Judge has himself pointed out material contradictions, omissions and exaggerations in versions of several prosecution witnesses viz. PW-1, PW-3, PW-6, PW-7 but has considered part of witness for convicting the accused.
- xxi. It was clear on the face of the case that the accused were also admitted in the hospital and that they received injuries. The Ld. Sessions Judge had only relied on some mere statements of the PW-2 which was a very light approach.
- xxii. It was the duty of the prosecution and the same was a settled law that when there had been any injury upon the accused the same should be explained by that of the prosecution. If the prosecution fails to explain

the same, it shall be considered that the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version.

xxiii. In *Nandlal and Others v State of Chattisgarh*, 2023 SCC Online 262

"26. We will first consider the issue with regard to non-explanation of injuries sustained by accused No. 11 Naresh Kumar. In the case of Lakshmi Singh v. State of Bihar, which case also arose out of a conviction under Section 302 read with Section 149 of the IPC, this Court had an occasion to consider the issue of non-explanation of injuries sustained by the accused. This Court, after referring to the earlier judgments on the issue, observed thus:

"12.....It seems to us that in a murder case, the non-explanation of the injuries sustained by the accused at about the time of the occurrence or in the course of altercation is a very important circumstance from which the court can draw the following inferences:

"(7) that the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version;

(2) that the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and therefore their evidence is unreliable,

(3) that in case there is a defence version which explains the injuries on the person of the accused it is rendered probable so as to throw doubt on the prosecution case."

The omission on the part of the prosecution to explain the injuries on the person of the accused assumes much greater importance where the evidence consists of interested or inimical witnesses or where the defence gives a version which competes in probability with that of the prosecution one. In the instant case, when it is held, as it must be, that the appellant Dasrath Singh received serious injuries which have not been explained by the prosecution, then it will be difficult for the court

to rely on the evidence of PWs 1 to 4 and 6, more particularly, when some of these witnesses have lied by stating that they did not see any injuries on the person of the accused. Thus neither the Sessions Judge nor the High Court appears to have given due consideration to this important lacuna or infirmity appearing in the prosecution case. We must hasten to add that as held by this Court in Stare of Gujarat v. Bai Fatima [(1975) 2 SCC 7: 1975 SCC (Cri) 384] there may be cases where the non-explanation of the injuries by the prosecution may not affect the prosecution case. This principle would obviously apply to cases where the injuries sustained by the accused are minor and superficial or where the evidence is so clear and cogent, so independent and disinterested, so probable, consistent and creditworthy, that it far outweighs the effect of the omission on the part of the prosecution to explain the injuries. The present, however, is certainly not such a case, and the High Court was, therefore, in error in brushing aside this serious infirmity in the prosecution case on unconvincing premises.”

- xxiv. To conclude it shall be stated that the maxim falsus in Uno, falsus in omnibus' which means that 'false in one thing will lead to false in everything', is greatly witnessed in this case.
- xxv. The Hon'ble Courts have time and again stated when there is a doubt in truth and falsity, benefit of doubt shall be given to the accused. It shall be implied that the prosecution has failed to separate the grain from the chaff.
- xxvi. The contradictions of statement among the witness, even with regard to the point of occurrence and its surrounding cast a serious doubt whether the same were at all present in the incident or has been a planted witness. Alongside this, there are major contradictions,

omissions and exaggerations in the statement of witness and most of the same differs from one another.

- xxvii. Further, there was no mention about amputated finger of one Ansar by the medical examiner in his report. Nor, Ansar has at all deposed anything before the same. Two other witnesses Rajiv Gazi and Sufia Bibi who were also allegedly victims of the case had also not been examined before the Hon'ble Court.
- xxviii. The story of the Ante timed FIR and the cause of delay doesn't satisfy the same as the Investigating Authority already had information about the alleged incident and the same shall not be taken as a 'satisfactory explanation of delay.
- xxix. It was clear on the face of record that this F.I.R. was a counter blast FIR and the same should be subjected to major scrutiny.
- xxx. The weapons used in the incident plays a vital part and confusion among the witnesses shall cast a serious doubt. It shall be stated that in order to attract 307 IPC, the miscreant shall have the intention or knowledge that such act may cause death of the person. The nature of the weapons used plays a crucial part in the same. More so, there has been major omissions on part of the witnesses before the police by PW-1, PW-3 about the weapons used for assaulting them and the nature of the assault which further casts a doubt when the question of bringing home the ingredients of Section 307 Indian Penal Code are concerned.

- xxxi. In *Jage Ram v. State of Haryana*, (2015) 11 SCC 366: (2015) 4 SCC (Cri) 425: 2015 SCC OnLine SC 69 at page 370
- “12. For the purpose of conviction under Section 307 IPC, the prosecution has to establish (i) the intention to commit murder; and (ii) the act done by the accused. The burden is on the prosecution that the accused had attempted to commit the murder of the prosecution witness. Whether the accused person intended to commit murder of another person would depend upon the facts and circumstances of each case. To justify a conviction under Section 307 IPC, it is not essential that fatal injury capable of causing death should have been caused. Although the nature of injury actually caused may be of assistance in coming to a finding as to the intention of the accused, such intention may also be adduced from other circumstances. The intention of the accused is to be gathered from the circumstances like the nature of the weapon used, words used by the accused at the time of the incident, motive of the accused, parts of the body where the injury was caused and the nature of injury and severity of the blows given, etc.”*
- xxxii. More so, Section 325 of the Indian Penal Code can also not be attracted as there is no scope or findings how the conditions of Section 320 of the Indian Penal Code was satisfied.
- xxxiii. First - Emasculation. Secondly - Permanent privation of the sight of either eye. Thirdly - Permanent privation of the hearing of either ear. Fourthly -Privation of any member or joint. Fifthly - Destruction or permanent impairing of the powers of any member or joint. Sixthly -

Permanent disfiguration of the head or face. Seventhly - Fracture or dislocation of a bone or tooth. Eighthly - Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits,

- xxxiv. It shall be stated that there was no report that either of the victims has at all been subjected to any of the above conditions. Coming to the point of breaking of hand of PW-3 Sonavan Bibi was concerned, it should be taken as a material omission and also there was no corroboration or light thrown from the medical reports used as exhibits. The amputation of finger of one Ansar Ali is also not supported by the medical witness.
- xxxv. More so, the report of the doctor had specifically mentioned that there was only one injury which shall be considered in order to bring home the charges of Section 325 of the Indian Penal Code.
- xxxvi. Further it shall be held that the charges under Section 148 of the Indian Penal Code and Section 149 of the Indian Penal Code shall be understood specifically with its ingredient.
- xxxvii. Ingredients of Section 148 of the Indian Penal Code –
 Assembly of five or more persons. The assembly is unlawful. Use of force or violence. Accused was a member of such unlawful assembly. In prosecution of the common object such unlawful assembly used force.
- xxxviii. In the present case 6 persons were charged with the offence being punishable under Section 148 of the Indian Penal Code. PW-1 in his

evidence stated that he was assaulted by all the accused persons, who had entered the alleged land and while he went to stop him being armed with Lathi, Tangi, Sabol, rod. There was a major omission on part of PW-1 for not providing major details to the Investigating officer and major part of his statement was held contradictory. The prosecution has failed to provide any Seizure list as exhibits with regard to recovery of weapons. It was also deposed by the investigating officer that no articles/weapons were seized in the present case from any of the accused persons.

- xxxix. It was true that though the prosecution has adduced evidence that there was an assembly of more than 5 or more persons, the prosecution could not prove their case as stated by the complainant that the accused persons were armed with deadly weapons.
- xl. More so, it was not a doubt that the land in question was in dispute and that PW-1 had himself deposed that the land was not in his name.
- xli. Just by the gathering of five persons in the field cutting crops could not be said to be unlawful assembly when there was no charge of trespassing.
- xlii. The Trial Court believed the evidence of PW-1 that the accused persons were armed with deadly weapons, when no weapons, Rod, Bamboo etc. were seized from any of the accused persons. More so, the injuries stated also differed from the injury what the doctor stated.

xlili. The prosecution also could not prove from the evidence on record that there was an assembly and that it was unlawful or that they had any common object.

xliv. A similar situation was observed by this Hon'ble Court in *Shibnath Koley and Others v State of West Bengal, 2022 SCC Online Cal 1840* whereby the Hon'ble Court went on to say-

“Motive of Crime

From the evidence before the Trial court, this court finds:

(i) That there is evidence as admitted by the prosecution witnesses that there is a case and counter case between the parties in this case.

(ii) Admittedly there is also a dispute between the complainant Anil Mondal and accused Satya Nayek regarding construction of a latrine.

(iii) As stated by Arati Das (PW-9) that she had rebuked the accused persons in respect of setting fire to her stack of straw, the accused persons told that as she had abused them, the accused persons had assaulted her.”

xlvi. No evidence to prove that the accused persons had a common object.

xlvi. No evidence to indicate that there was an assembly of the accused persons or that it was unlawful,

xlvi. Certain witnesses have stated that two persons assaulted them and some have named all the accused persons.

xlvi. Admittedly there was a dispute between the complainant and accused Satya Nayek (personal dispute) regarding construction of a toilet.

xlvi. Admittedly there had been a case, counter case between the parties.

1. Evidence before Trial Court was that all of a sudden the accused person came and assaulted without any specific reasons.

- li. No articles/deadly weapons as alleged, were seized in this case,
 - lii. PW-12 (Doctor) had deposed regarding the alleged assault on PW-2, PW-8, PW-9 and PW-10 (tendered) though there were 11 injured persons as seen from the general injury report (Exhibit-8).
 - liii. PW-7 had deposed that there was a free fight between the parties.
7. The Learned Advocate representing the State contended the Trial Court carefully evaluated the evidence and rightly found the prosecution case to be proved beyond reasonable doubt. It was further submitted that the testimony of injured witnesses reflected substantial evidentiary value fortified by the corroboration of medical evidence. It was also argued that the discrepancies or omissions were inequitable in the testimony of rustic witnesses which did not affect the core of the prosecution case, since the evidence of injured witnesses, medical examiners and independent witnesses had been foundational to the establishment of the prosecution case beyond reasonable doubt.
8. A circumspection of evidence of the prosecution witnesses revealed as follows:-
- i. PW-1 deposed he lodged a written complaint before the Ld. A.C.J.M., Basirhat against the petitioners. In respect of self-same incident one Rahima Bibi also lodged a written complaint before I/C Basirhat P.S. The incident took place on 22.02.2010 at about 09:00 a.m. The petitioners went to his field for cutting crops. Then, he resisted the petitioners. Thereafter, the petitioners assaulted him and he became

senseless. Then, he was admitted at Basirhat S.D. Hospital. Police interrogated him after 3 days of incident.

- ii. PW-1 in his cross-examination stated he could show documents to prove that the land in Dag No.1166 & 444 under Mouza – Madhyampur belong to them. He also stated that “the land in question” was not recorded in his name. One Abu Khaleque Mondal also filed a criminal case against him in respect of the self-same incident and he got bail in that case.
- iii. PW-2 deposed to have lodged a written complaint at Basirhat P.S. against the petitioners. The incident took place on 22.02.2010 at about 09:00 a.m. The petitioners went to their field for cutting the mustard crops. Then, her husband resisted the petitioners. Thereafter, the petitioners assaulted her husband. Her husband suffered injury on his head and one finger of left hand was cut off. Thereafter, her husband and brother-in-law were admitted for 15 days at Badartala Hospital. She was interrogated by police after 3 days of incident. The written complaint was drafted as per her instruction but she could not state who wrote the F.I.R. The signature of the witness was marked as Exbt.-1.
- iv. PW-2 in her cross-examination stated PW-1 i.e. her brother-in-law filed a complaint case under Section 156(3) of Cr.P.C., before Court in respect of selfsame incident. PW-1 also filed a private complaint before Learned Court of A.C.J.M., Basirhat in respect of selfsame incident which was ultimately dismissed for non-prosecution in the court of

- Ld. J.M., 1st Court, Basirhat. She also stated that Abu Taleb Mondal, Firoj Mondal, Amena Bibi and Rahima Bibi W/o – Abu Khaleque Mondal were admitted at hospital but they were not injured. She reached at P.O. after 10 minutes of the alleged incident.
- v. PW-3 deposed PW-2 was the de-facto complainant of that case. PW-1 also lodged a complaint in respect of selfsame incident. The incident took place 3 years back at about 09:00 a.m. All the petitioners went to the victim's field for severing crops. PW-1 resisted the petitioners, then Taleb Mondal assaulted PW-1 by a "Shabol" . Khaleque Mondal assaulted both Samsur Mondal and Ansar Mondal by a Lathi on their head and hands. She also suffered fracture injury on her left hand. She was admitted at Badartala Hospital for 15 days. Police interrogated her after one month of incident.
 - vi. PW-3 in her cross-examination stated that she reached P.O. after 10 minutes of the incident. She stated before police that the Saifuddin Mondal assaulted her by a "Shabol" on her left hand.
 - vii. PW-4 deposed that on 22.02.2010 he was posted as M.O. Basirhat S.D. hospital. On that date he examined one Answer Ali Mondal, S/o - Fakir Ali Mondal of Matnia, Basirhat. The patient was examined at about 09:57 a.m., on 22.02.2010. As per statement of patient he was injured due to assault. On examination he found multiple injury with head injury over vault of the head, 3" long. The patient was treated by stitches and bandage and he was admitted at M.S.W. Injury was grave. The said injury report, prepared by him, was marked as Exbt.-

2. On the same date at about 09:23 a.m., he also examined one Samsur Mondal, S/o- Fakir Ahmed Mondal of Matnia, Basirhat. There was history of assault and head injury. On examination he found injury over the vertex 5" in length. He was treated by stitches and bandage, five stitches given, injury was grave. The patient was admitted at M.S.W. The said injury report, prepared by him, was marked as Exbt.-3.

On the same date at about 10:20 a.m., he also examined one Sonavan Bibi, Matnia, Basirhat. There was history of assault overhead and left humorous by "Tangi" and Lathi. On examination he found injury over the skull 3 inches in length with left shaft humorous and treated by stitches and dressing. Injury was grave. The said injury report, prepared by him, was marked as Exbt.-4.

- viii. PW-4 in his cross-examination stated that the patients did not disclose the name by whom they were assaulted. There was a remote possibility that the type of injury might be caused due to accident. There was a remote possibility that type of injury might be caused if anybody fell down from a height. In injury report only single injury was mentioned. He had no personal knowledge regarding that incident.
- ix. PW-5 deposed the incident took place on 22.02.2010 at 09:00 a.m. He was not present at the P.O. at the time of incident. Rahima Bibi informed him over telephone that there was a dispute and quarrel in between the petitioners and Rahima Bibi and her family members.

She also informed him that there was scuffle in between the parties. As per request of Rahima Bibi, he went to P.O. and found Samsur Mondal, his mother and Answer Mondal were lying in a Maruti Van in injured condition. He took those patients to Badartala Hospital as per requisition of police and they were admitted at hospital. He found Samsur Mondal suffered head injury stitches were given to him, Soleman Bibi suffered injury on her right hand and one finger of the left hand of Answer was amputated.

He informed the matter to P.S. and as per instruction of P.S. He came to P.S. and drafted the written complaint as stated by Rahima Bibi. The said complaint was marked as Exbt.-1/1.

- x. PW-5 in his cross-examination stated when he was informed by Rahima Bibi it was 10:00 a.m., he reached hospital at about 10.30 a.m. There were 10 to 12 persons who went to hospital including the injured. He went to P.S. at about 4/4.30 p.m. and called Rahima Bibi to come to P.S. for lodging the complaint but due to illness Rahima Bibi could not come to P.S. He had no personal knowledge regarding the alleged incident.
- xi. PW-6 deposed the incident took place on 22.2.2010 at about 09:00 a.m. in the land of PW-1. The petitioners went to the field for cutting crops and PW-1 resisted them. Then, the petitioners assaulted Samsur Mondal by "Shabol" , bamboo stick and "Kaste". Abu Taleque Mondal assaulted Samsur Mondal by "Shabol" on his head. Abu Khaleque Mondal assaulted Ansar by bamboo stick on his head when

Ansar went to rescue his brother. Saifuddin assaulted Ansar by “Kaste” and due to that one of the finger of Ansar was amputated. At the time of incident he was in the tea stall adjacent to the P.O. and hearing hue and cry he rushed there. Other villagers also went there. Then the petitioners escaped. They took Ansar and Samsur to Basirhat P.S. Thereafter, they took them to Basirhat hospital. Police interrogated him during investigation.

- xii. PW-6 in his cross-examination stated that the petitioners and de-facto complainant were relatives. He stated to police that he was in the tea stall adjacent to the P.O. He also stated to police that they took Samsur Mondal and Ansar Mondal to Basirhat P.S. He stated to police that they took Ansar Mondal and Samsur Mondal to Basirhat Hospital as per advice of Darogababu. About 50 persons gathered at P.O. after the incident.
- xiii. PW-7 deposed to have known the de-facto complainant. The incident took place on 22.2.2010 at about 9.00 a.m. He was cultivating in his own land which was adjacent to Samsur Mondal’s land. He found the petitioners armed with “Sabol”, Lathi, “Kaste” enter into the land of Samsur Mondal with intention to cut the mustard crops from the land of Samsur Mondal. Samsur Mondal raised protest. Then, the petitioners assaulted the victims. Thereafter, they went to P.O. and took the injured victims to Basirhat Hospital. During investigation, the police interrogated him.

- xiv. PW-8 deposed to have known the de-facto complainant. The incident took place on 22.2.2010 at about 9.00 a.m. The petitioners entered into the field of Samsur Mondal armed with "Dao", Lathi, "Kaste" etc., and with intention to murder Samsur Mondal and to take possession of the land of Samsur Mondal, they assaulted Samsur Mondal. He was proceeding towards market and found the victims injured in the field. He took the injured persons with help of other persons to Basirhat S.D. Hospital for their treatment. During investigation, the police interrogated him.
- xv. PW-9 deposed on 25.2.2010 he was posted as S.I. of police at Basirhat P.S. On that date, the then I.C. Basirhat P.S. endorsed to him Basirhat P.S. Case No.68/2010 dated 25.02.2010 for investigation. Taking the charge of investigation he had perused the F.I.R., visited P.O., examined the available witnesses and recorded their statement U/S 161 Cr.P.C. He had also drawn rough sketch map along with index which was marked as Exbt.-5. He also deposed that he attempted to arrest the F.I.R., named persons but failed. He had collected the injury report of injured persons from doctor of Basirhat S.D. Hospital. After completion of investigation as per advice of his superior he submitted charge sheet being no.594 dated 30.11.2010 under Sections 147/148/149/323/324/307/354 of the Indian Penal Code against the petitioners.
- xvi. PW-9 in his cross-examination stated Samsur Mondal never stated to him that Firoj Mondal assaulted him with Lathi in his leg and head.

Samsur Mondal stated to him that Saifuddin assaulted him with a Shovel in his head. Samsur Mondal never stated to him that he became senseless due to assault by the petitioners. Sonavan Bibi never stated to him that Samsur Mondal raised protest against the petitioners to cut the mustard crops from the field.

He had not examined the doctor who treated the injured persons. No weapon was seized during his investigation. He did not attempt to record statement of the witnesses under Section 164 Cr.P.C., by the Learned Magistrate.

9. The Hon'ble Supreme Court in the case of **Vahula Bhushan Vs. State Of Tamil Nadu**¹ held the following: -

“4. PW 1 is the only eyewitness to the incident. The trial court on weighing the evidence of PW 1 as well as the evidence of the doctor PW 7 held that the charge under Section 302 IPC has been proved against the accused A-2. Accused A-2 was, therefore, convicted under Section 302 IPC for committing the crime of murder of deceased, Chinnaiyan by stabbing him with the crowbar and sentenced him to undergo imprisonment for life. The trial court further held that so far as the charge under Section 302 read with Section 34 IPC and under Section 323 IPC against the accused A-1, it was not proved beyond reasonable doubt and so the accused A-1 was acquitted of all the charges.

5. Accused A-2 filed an appeal being Criminal Appeal No. 105 of 1980 in the High Court of Madras against the judgment of the trial court. The appeal was dismissed and the conviction and sentence awarded by the trial court were upheld.

¹1989 Supp(1) SCC 232

6. *The High Court held that PW 1 deposed in a cogent and reasonable manner regarding the occurrence in this case and his evidence was trustworthy. It was further held that the evidence of PW 1 on the whole is natural and acceptable. The evidence of PW 1 is corroborated by the medical evidence adduced through PW 7. The High Court further held that:*

“Although it is not the principle of law that a conviction cannot be sustained on the testimony of a single witness, yet it is a well known principle of criminal jurisprudence that before convicting a person on the sole testimony of a witness, the court must have implicit faith and reliance on his testimony. Only if the said sole witness is found to be interested, hostile to the accused, unreliable, not firm and discrepant, the benefit of doubt should be given to the accused. In the instant case, when we apply the above test, we find that the evidence unfurled through PW 1 is convincing, trustworthy and is amply corroborated by the medical evidence in this case as discussed above. In this view, we have no hesitation to hold that the sole witness PW 1 who had seen the occurrence in this case has satisfactorily withstood the strenuous cross-examination that had been done on behalf of accused Appellant 2 herein and nothing material has been elicited in his cross-examination so as to discredit his evidence. We have no hesitation to hold that the prosecution has established that it was A-2 the appellant herein, who had caused the fatal injuries on the deceased with MO 3. In the instant case, the offence under Section 302 of the Penal Code, 1860 has been proved to the hilt by the prosecution against A-2, the appellant herein.”

7. *The instant appeal on special leave has been filed against this judgment and order. It has been urged on behalf of the appellant that the courts below should not have convicted the accused on the sole testimony of PW 1 as the same was not corroborated by the evidence of any other witness. This contention is unsustainable*

inasmuch as there is no rule of law that the testimony of a single witness cannot be accepted and the conviction cannot be based on such evidence, if believed. The testimony of a single witness if it is straightforward, cogent and if believed is sufficient to prove the prosecution case, the conviction can be made on the testimony of such a single witness.

8. *In the case of Vadivelu Thevar v. State of Madras [(1957) SCR 981 : AIR 1957 SC 614 : 1957 Cri LJ 1000] the appellant was convicted on a charge of murder on the sole testimony of a witness. The question arose whether such a conviction can be sustained or not. It was held that there was no statutory requirement that a conviction cannot be made on the testimony of a single witness unless it is corroborated. The court can accept the evidence of a single witness though uncorroborated and convict an accused except in cases where the nature of the testimony of the single witness itself required, as a matter of prudence, that corroboration should be insisted upon, as in the case of a child witness, an accomplice or any others of an analogous character.*

9. *In the instant case, the High Court has appraised the evidence of PW 1 and accepted the same as it was cogent and trustworthy considering the facts and circumstances of the case. Furthermore, the evidence of PW 1 was corroborated by the medical evidence. In such circumstances, in our considered opinion this contention is devoid of any merit. The second contention is that MO 3, crowbar was found imbedded in the earth at the place where the deceased was first beaten by accused A-1 and A-2 with sticks MO 1 and MO 2. At the time when the crowbar was seized and taken possession of by the police it was found embedded in the earth in the same place. It was, therefore, submitted that the use of the crowbar by the accused A-2 in causing stab injuries on the person of the deceased is not possible. This submission was also made before the High*

Court and the High Court rightly repelled the submission by holding that in Ex. P. 1 it had been mentioned that MO 3 contained bloodstains. PW 1 has clearly stated in his evidence that it is accused A-2 who caused the stab injuries with the crowbar MO 3 on the person of the deceased, Chinnaiyan which resulted in his death on the spot. Furthermore, it is also evident from the evidence of PW 1 that accused A-2 while proceeding towards the house of Srinivasa Naidu took out the crowbar MO 3 in his right hand. There is, therefore, no iota of doubt that MO 3 i.e. crowbar was in the hands of accused A-2 and he assaulted the deceased with the said weapon. This submission, therefore, is not at all tenable.”

10. The Hon’ble Supreme Court in the case of **Uppari Venkataswamy And Others Vs. The Public Prosecutor, High Court Of A.P.**² held the following:-

“31. The aforesaid eyewitness account put forward consistently by all the injured prosecution witnesses PWs 1 and 4 to 7 could not be shown to be involving any inconsistency inter se as fairly stated by Shri Lalit, learned Senior Counsel for the accused. He, on the contrary, stated that the version was so parallel and accurate that it appeared to be too good to be true and, therefore, according to him it could be dubbed as unnatural. However, he had to concede that version of all these prosecution witnesses did establish that they were subjected to attacks by bombs on the date of the incident. Not only that but we find from medical evidence that all these prosecution witnesses who were travelling in the jeep and had suffered from bomb injuries were medically examined shortly after the incident and it was clearly established from the medical evidence that each of them had suffered number of injuries from bomb blast. Evidence of Dr A. Anjanelu is eloquent on the point. He

²(1996)7 SCC 232

examined the complainant K. Ramalinga Reddy, since deceased, and found the following injuries on his person:

- (1) A lacerated injury of the size 2 cms × 2 cms × 1 cm present on the pinna of the left ear, edges are black.*
- (2) A lacerated injury of the size ½" × 1/12" × ¼" present on the left shoulder, edges are black.*
- (3) An abrasion of the size ½" × ¼¼" present on the left side of the back, edges are black.*
- (4) Multiple abrasions present on the left side of the back, edges are black. Abrasions are surrounded by blackened areas.*
- (5) An abrasion of the size ½" × ½" present on the left side of the chest. Edges are black.*

All the above injuries were simple in nature and aged more than six hours prior to the examination. Ex. P-10 is the wound certificate issued by the witness to Shri K. Ramalinga Reddy. We may leave aside the injuries suffered by PWs 2 and 3 who had turned hostile to the prosecution though the doctor found that even they had suffered multiple injuries by bomb blast in the same incident. The doctor found the following injuries on PW 7 K. Lakshmi Reddy:

- 1. A lacerated injury of the size ¼" × ¼" × ¼" present on the occipital region — edges are black.*
- 2. A lacerated injury of the size ¼" × ¼" × ¼" present on the right side of the back above the shoulder blade. Edges are black.*
- 3. Multiple abrasions present on the left side of the back and right side of the back. Edges are black.*
- 4. Multiple abrasions present on the outer aspect of the left upper arm. Edges are black.*
- 5. Lacerated injury of the size ¼" × ¼" × ¼" present on the left forearm — edges are black.*

The doctor also found the following injuries on PW 1 K. Srikantha Reddy:

1. Multiple abrasions present on the right side of the back — edges are black, surrounded by blackened areas. Stone piece was recovered from the wound and preserved for expert's opinion.
2. A lacerated injury of the size $\frac{1}{4}$ " $\times$ $\frac{1}{4}$ " $\times$ $\frac{1}{4}$ " present on the right side of the back, edges are black.
3. Multiple abrasions present on the left side of the back. Edges are black and surrounded by blackened areas.
4. Abrasion of the size $\frac{1}{2}$ " $\times$ $\frac{1}{2}$ " present on the left parietal region — edges are black.

Injuries found on PW 6 Narayana Reddy were as under:

1. A lacerated injury of the size $\frac{1}{4}$ " $\times$ $\frac{1}{4}$ " $\times$ $\frac{1}{4}$ " present on the left cheek, edges are black.
2. An abrasion of the size $1\frac{1}{2}$ " $\times$ 1" present on the back of the right elbow joint surrounded by blackened areas.

*So far as PW 4 Rajeshwar Reddy is concerned, he stated in his deposition that he received injuries on both of his legs when some of the pellets (splinters) of exploded bombs hit him. All the people who had travelled by jeep received injuries having received splinters of the exploded bombs. The Circle Inspector examined him and sent him and 8 other injured persons to the Government Hospital of Nandyal. While he was in the hospital the Circle Inspector of Police seized his bloodstained full panche [**Ed.:** Means dhoti] and bloodstained shirt. He identified the bloodstained terricotton shirt and the bloodstained banian MOs 6 and 7. This version of his could not at all be shaken in the cross-examination. Same was the position with PW 5 KappuramSubba Reddy who had stated that he received bleeding injuries when some of the discharged splinters hit him on forehead. He and other injured were sent to Government Hospital, Nandyal by the Circle Inspector of Police. While he was in the hospital the CI of Police seized his bloodstained full shirt MOs, his*

bloodstained banian MO 9 and his bloodstained Glaxo full panche MO 10.”

.....

“47. So far as this point is concerned, we have already discussed in detail while considering Point No. 1 how the eyewitness account of injured eyewitnesses PWs 1 and 4 to 7 remains well sustained on record in the light of medical evidence. For the reasons recorded by us on that point, therefore, it must be held that the eyewitness account of these witnesses who were members of the marriage party and who got injured on account of the bomb attack mounted on the jeep car on that fateful morning by Accused 1 and his party, has to be accepted. Their version as we have noted earlier is quite consistent and parallel. In fact as Shri Lalit, learned Senior Counsel for the accused, submitted it is too accurate to be true. In our view merely because the version of all these injured eyewitnesses is accurate and comprises parallel versions deposed to by each of them, it cannot be said that it is a parrot-like version which should not be accepted especially when the medical evidence has fully supported their version that they received bomb injuries in the attack. In fact Shri Lalit, learned Senior Counsel for the accused, fairly stated that on this evidence it is not possible for him to submit an extreme contention that these witnesses had not suffered bomb injuries in that attack but according to him their evidence could not be relied upon to show that these accused had caused these injuries. So far as this aspect is concerned, it is obvious that there was deep-seated enmity between the complainant's party and the party of Accused 1 and his supporters. It is also to be noted that Accused 2 to 9 were all close relatives of Accused 1 who was the leader of the team being an aged man of 70 years or more. Other accused were his own sons and nephews apart from Accused 10. Therefore, they had a deep-seated common grievance against

complainant Ramalinga Reddy and his relatives who were accompanying him and were members of his party. There was an earlier attack by bombs by accused party on the complainant's party. It was also alleged that in past bombs were hurled by complainant's partymen at the house of Sirigiri Rama Subba Reddy who belonged to the faction of Accused 1. The evidence has also revealed that the road from Nandyal to Mahanandi passed through a forest and at the spot where the incident occurred there was history of earlier attack by bomb by accused party on Ramalinga Reddy and his party. Under these circumstances when the jeep was being driven on the spot if the accused mounted the attack from the front it is easy to visualise that the occupants of the jeep would clearly locate them especially when they were all known to them since long and were in fact apprehending such an attack from them. The 'panchnama' of the jeep car Ex. P-19 clearly supports the eyewitness account of these witnesses apart from the medical evidence to which we have made a reference while discussing Point No. 1. It is true that the jeep car was not seized or photographed but still the 'panchnama' about the condition of the jeep car after the incident is eloquent enough to fully support the version of these injured eyewitnesses. Ex. P-19 recites that behind the seat of the driver where the bomb had fallen, the portion had turned yellow and was smelling of sulphur. The side bar at the tarpaulin by the side of the driver was slightly bent. The tarpaulin on the side of the driver due to bomb hit was torn here and there. There were yellow marks of sulphur on the tarpaulin. The tarpaulin on the left side was of rexine. The tarpaulin on the top was torn. Due to bomb hit, marks like that of smallpox were formed on the side angle and they were yellow in colour. The danger light which was on the back right side of the jeep was broken. This 'panchnama' clearly shows that the jeep on the date of the incident had suffered multiple bomb attacks.

Shri Lalit submitted that if nine bombs were used in the attack as per these alleged eyewitnesses, damage to the jeep would have been much more extensive. It is difficult to appreciate this contention. The 'panchnama' of the scene of offence has shown that one bomb was lying unexploded on the spot. There was thick bush growth on both sides of the road near the scene of offence, therefore, some bombs might not have hit the target. It is also to be kept in view that deceased 1 and 2 also suffered from at least three bomb injuries and there were extensive and multiple injuries suffered by seven occupants of the jeep who deposed before the trial court being PWs 1 to 7 and the complainant since deceased also had suffered from bomb injuries in the incident. Not only that even the hostile PWs 2 and 3 had also suffered from bomb injuries as found from medical evidence and their own evidence. These diverse injuries on number of persons travelling in the jeep clearly indicated that the eyewitness account that all the accused were armed with bombs and had hurled the bombs at the occupants of the jeep being the members of marriage party headed by complainant Ramalinga Reddy cannot be said to be in any way an exaggerated or a false version. On the contrary, the said version appears to be quite justified and well supported by evidence on record. Shri Lalit, in this connection, submitted that the evidence shows that the jeep was having tarpaulin covers on both sides and when the case of the prosecution is that the attack was mounted by the accused from the front side it is not possible to believe that all the witnesses would have seen the actual hurling of bombs. Even this submission cannot be accepted for the simple reason that the prosecution version which is supported by eyewitness account is to the effect that the accused came from two directions. In fact the entire incident on the spot can be divided into three parts that took place in quick succession. In the first part Accused 1 to 4 came from the right side and hurled three

bombs on the occupants of the jeep. That caused injuries to the occupants on the right side of the jeep including the driver PW 1 and damaged the jeep on the right side. Thereafter in the second part of incident Accused 5 to 9 came from the western side, that is, the left side and mounted bomb attack on the jeep which resulted in damage to the top of the jeep which was set aflame and also caused injuries to complainant Ramalinga Reddy and other occupants on the left side in the jeep. When such an attack is mounted from the front side from two directions, it is easy to visualise that the occupants would naturally get scared and would look on the front side from where the attack was being mounted and can witness the culprits. In this connection also, it may be noted that so far as deceased-complainant Ramalinga Reddy is concerned he was sitting on the extreme left in the front seat and he had received injuries from bomb blast on the left side of his body. Nature of the injuries suffered by him fully corroborates the eyewitness account deposed to by PWs 1 and 4 to 7. It cannot, therefore, be said, as submitted by Shri Lalit for the accused, that these occupants of the jeep who suffered from injuries on account of bomb attack could not have seen as to who were the culprits or authors of the attack. It was broad daylight in the morning of 1-6-1987 and all the accused were very well-known to these witnesses and when they attacked, coming in front of the jeep from both left and right sides, they would be fully visible to the occupants of the jeep. It is, therefore, not possible to agree with the contention of Shri Lalit that the occupants of the jeep could not have identified these accused. The third part of the incident refers to what happened to deceased 1 and 2 who jumped from the jeep car and met their death by suffering from bomb injuries at the hands of the accused in the course of the very same transaction. For all these reasons, therefore, it is not possible to agree with the submission of Shri Lalit that the eyewitness account

of these witnesses should not be believed. We find that the High Court has given cogent reasons at pp. 13 and 14 of the judgment under appeal as well as at p. 21 why the eyewitness account of these witnesses should be believed. We entirely concur with the same. The High Court has also noted one submission canvassed on behalf of the accused that when Accused 1 to 9 were allegedly throwing bombs at the jeep from either side it would have been more prudent for deceased to remain in the jeep itself. Said submission was rightly turned down by the High Court as it is not possible to predicate with any degree of certainty as to how a person would behave when he is being attacked by bombs from both the sides by belligerent attackers. If getting scared, deceased 1 and 2 jumped out of the jeep along with PWs 8 and 9 it cannot be said that they had acted in an unnatural manner or that they should have continued to remain in the jeep to suffer from bomb blasts. Instinct of self-preservation prompted the deceased to get out of harm's way by jumping out of the attacked jeep but unfortunately they could not save themselves. Consequently, it cannot be said that the eyewitness account of Accused 1 and 4 to 7 in any way is unbelievable or unacceptable. On the contrary, their account is quite natural and remains well sustained on the record of the case. In this connection, we may also note one additional submission of Shri Lalit. He submitted that the first information report Ex. P-17 mentioned that four persons remained in the jeep after the bomb attack and 8 persons jumped out of the jeep whereas the eyewitnesses' account showed that 8 persons remained in the jeep and 4 persons jumped out. We fail to appreciate how this would make any difference. Whether 4 persons jumped out or 8 persons jumped out would not affect the culpability of the accused who had mounted the attack on the jeep, which remained well established on record in the light of the eyewitness account. Even otherwise as we

have discussed earlier, while considering Point No. 1 the eyewitnesses' account of these witnesses cannot be contradicted with what is stated in the first information report by the complainant who could not be examined in the case. The version of the eyewitnesses could be contradicted with their earlier police statements if at all. Their version cannot be contradicted with what was stated in the first information report by a third party and which by itself was not a substantive piece of evidence and which even could not be tested on the anvil of cross-examination as the complainant was dead prior to the trial. Shri Lalit next contended that the prosecution has not fully established its case that this party was going to attend the marriage at Village Mahanandi. It is difficult to appreciate this contention. The eyewitness account which has remained unshaken in cross-examination shows that there was a marriage in the family of complainant Ramalinga Reddy at Village Mahanandi and they were all going to attend the said marriage. The occupants in the jeep car along with the complainant Ramalinga Reddy were PW 1 his son, his younger son Lakshmi Reddy, his brother Damodara Reddy and his son-in-law Rajsekhara Reddy deceased 2, and other relatives and acquaintances, in all 10 and who were also accompanied by two menial servants PWs 8 and 9. But even assuming that the occasion of marriage at Village Mahanandi was not established, even then if the complainant's party was going on the fateful morning in a jeep car for attending any other social function at Mahanandi and if that party was attacked by bombs by the accused in the manner deposed to by the prosecution witnesses the culpability of the accused would not be lessened in any manner. For all these reasons, therefore, there is no substance in this additional submission of the learned Senior Counsel for the accused for disbelieving the eyewitness account of

injured eyewitnesses PWs 1 and 4 to 7. This point is, therefore, answered in the affirmative.”

.....

“58. As a result of the aforesaid discussion it must be held that the High Court was quite justified in interfering with the order of acquittal as passed by the trial court and in convicting the accused of the offences with which they were charged. Eyewitness account of injured eyewitnesses being occupants in the jeep car PW 1 and PWs 4 to 7 as well as eyewitness account of PWs 8 and 9 has remained well sustained on the record and is fully corroborated by medical evidence as well as by the evidence of damage to the jeep car as found in ‘panchnama’ Ex. P-19. Consequently no case is made out for our interference in this appeal.”

11. The Hon’ble Supreme Court in the case of **Pruthiviraj Jayantibhai Vano**

Vs. Dinesh Dayabhai Vala And Others³ held the following: -

“17. Ocular evidence is considered the best evidence unless there are reasons to doubt it. The evidence of PW 2 and PW 10 is unimpeachable. It is only in a case where there is a gross contradiction between medical evidence and oral evidence, and the medical evidence makes the ocular testimony improbable and rules out all possibility of ocular evidence being true, the ocular evidence may be disbelieved. In the present case, we find no inconsistency between the ocular and medical evidence. The High Court grossly erred in appreciation of evidence by holding that Muddamal No. 5 was a simple iron rod without noticing the evidence that it had a sharp turn edge.

18. The aforesaid discussion leads us to the conclusion that the acquittal by the High Court is based on misappreciation of the evidence and the overlooking of relevant evidence thereby arriving at

³(2022)18 SCC 683

a wrong conclusion. It is not a case where two views are possible or the credibility of the witnesses is in doubt. Neither is it a case of a solitary uncorroborated witness. The conclusion of the High Court is therefore held to be perverse and irrational. The acquittal is therefore held to be unsustainable and is set aside. In the nature of the assault, Section 304 Part II IPC has no application. The conviction of Respondents 1 to 4 by the trial court is restored.”

12. The Hon’ble Supreme Court in the case of **Sardul Singh And Others Vs. State Of Punjab**⁴ held the following: -

“4. The High Court has examined the evidence of PWs 2, 3 and 4 in great detail. It must be noted that there cannot be any dispute that the occurrence took place near the house in which PWs 2, 3 and 4 were staying. Further PW 3 was injured. The FIR was given promptly in which all the details were mentioned. The presence of PW 3 is further fortified by the fact that she also received injuries as stated by her and the medical evidence supports her version. A feeble attempt was made to show that these injuries could have been self-inflicted. We see absolutely no basis for the same having regard to the nature of the injuries on PW 3.”

13. The Hon’ble Supreme Court in the case of **Ram Vilas Vs. State Of Madhya Pradesh**⁵ held the following: -

“6. In the incident, Narmada Prasad (PW 3) and Uma Bai (PW 5), sister of the deceased sustained injuries and Ext. P-9 and Ext. P-10 are the MLC Reports of Narmada Prasad (PW 3) and Uma Bai (PW 5), respectively issued by Dr S.K. Dhoble (PW 10). Narmada Prasad (PW 3) and Uma Bai (PW 5) being injured witnesses, their presence at the time and place of occurrence cannot be doubted. Evidence of

⁴1993 Supp(3) SCC 678

⁵(2016)16 SCC 316

the injured witnesses is entitled to a great weight and very cogent and convincing grounds are required to discard the evidence of the injured witnesses. We do not find any ground to disbelieve the evidence of injured witnesses Narmada Prasad (PW 3) and Uma Bai (PW 5).

7. The learned counsel for the appellant Mr Ajay Veer Singh contended that the presence of appellant Ramvilas at the scene of occurrence was doubtful as no “katta” was seized from him nor was any gunshot injury found on the person of deceased Bansilal. As observed by the High Court, all the eyewitnesses have spoken in one voice so far as carrying of “katta” by appellant Ramvilas and therefore his presence at the scene of occurrence cannot be doubted merely because no “katta” was recovered from him. It has come out in the evidence that the appellant Ramvilas had exhorted the other accused in attacking the deceased and also actually participated in the attack. As pointed out by the courts below that the appellant Ramvilas nowhere pleaded in his examination under Section 313 CrPC that he was neither present at the scene of occurrence nor involved in the incident.

8. The conviction of the appellant Ramvilas is based on the evidence of injured witnesses which is amply corroborated by the evidence of eyewitnesses and medical evidence. Conviction of the appellant is based on proper appreciation of evidence and the courts below have recorded concurrent findings and the same is not liable to be interfered with in exercise of power under Article 136 of the Constitution of India.”

14. The Hon’ble Supreme Court in the case of **State Of Uttar Pradesh Vs.**

Naresh And Others⁶ held the following: -

⁶(2011)4 SCC 324

“27. *The evidence of an injured witness must be given due weightage being a stamped witness, thus, his presence cannot be doubted. His statement is generally considered to be very reliable and it is unlikely that he has spared the actual assailant in order to falsely implicate someone else. The testimony of an injured witness has its own relevancy and efficacy as he has sustained injuries at the time and place of occurrence and this lends support to his testimony that he was present during the occurrence. Thus, the testimony of an injured witness is accorded a special status in law. The witness would not like or want to let his actual assailant go unpunished merely to implicate a third person falsely for the commission of the offence. Thus, the evidence of the injured witness should be relied upon unless there are grounds for the rejection of his evidence on the basis of major contradictions and discrepancies therein. (Vide Jarnail Singh v. State of Punjab [(2009) 9 SCC 719 : (2010) 1 SCC (Cri) 107] , Balraje v. State of Maharashtra [(2010) 6 SCC 673 : (2010) 3 SCC (Cri) 211] and Abdul Sayeed v. State of M.P. [(2010) 10 SCC 259 : (2010) 3 SCC (Cri) 1262])”*

....

“30. *In all criminal cases, normal discrepancies are bound to occur in the depositions of witnesses due to normal errors of observation, namely, errors of memory due to lapse of time or due to mental disposition such as shock and horror at the time of occurrence. Where the omissions amount to a contradiction, creating a serious doubt about the truthfulness of the witness and other witnesses also make material improvement while deposing in the court, such evidence cannot be safe to rely upon. However, minor contradictions, inconsistencies, embellishments or improvements on trivial matters which do not affect the core of the prosecution case, should not be made a ground on which the evidence can be rejected in its entirety. The court has to form its opinion about the credibility of the witness*

and record a finding as to whether his deposition inspires confidence.

“9. Exaggerations per se do not render the evidence brittle. But it can be one of the factors to test credibility of the prosecution version, when the entire evidence is put in a crucible for being tested on the touchstone of credibility.” [Ed. : As observed in Bihari Nath Goswami v. Shiv Kumar Singh, (2004) 9 SCC 186, p. 192, para 9.]

Therefore, mere marginal variations in the statements of a witness cannot be dubbed as improvements as the same may be elaborations of the statement made by the witness earlier. The omissions which amount to contradictions in material particulars i.e. go to the root of the case/materially affect the trial or core of the prosecution's case, render the testimony of the witness liable to be discredited. [Vide State v. Saravanan [(2008) 17 SCC 587 : (2010) 4 SCC (Cri) 580 : AIR 2009 SC 152] , Arumugam v. State [(2008) 15 SCC 590 : (2009) 3 SCC (Cri) 1130 : AIR 2009 SC 331] , Mahendra Pratap Singh v. State of U.P. [(2009) 11 SCC 334 : (2009) 3 SCC (Cri) 1352] and Sunil Kumar Sambhudayal Gupta (Dr.) v. State of Maharashtra [(2010) 13 SCC 657 : JT (2010) 12 SC 287] .]”

15. When the testimonies of the prosecution witnesses are examined in conjunction with the medical evidence, the essential ingredients of the offences for which the appellants were charged become evident. The evidence consistently shows that the appellants arrived altogether at the place of occurrence armed with weapons such as “Dao” “Kaste” and “Shabol”. Their collective arrival with such weapons establishes the existence of an unlawful assembly. The manner in which they entered the field and began severing crops despite protest demonstrated the assembly had a common object of asserting dominance over the disputed land and

suppressing resistance through force. The assault on the complainant's side when resistance was offered clearly constituted the case within the ambit of Sections 147 and 148 of the Indian Penal Code relating to riot and riot armed with deadly weapons.

16. The participation of multiple persons in the assault, acting in concert and using weapons capable of causing serious injury also attracted the principle embodied in section 149 of the Indian Penal Code. The evidence reflected the acts committed by individual members of the assembly done in furtherance of the common object shared by all.
17. The injuries sustained by the victims, as described by the eyewitnesses and confirmed by the medical officer established the commission of offences under section 323 and 324 of the Indian Penal Code relating to voluntarily causing hurt by dangerous weapons. The deep incised wounds on the head, inflicted with sharp weapons such as "Dao" and "Kaste", demonstrate that the appliances used instruments capable of causing grievous injury. More importantly the nature of assault and the location of the injuries justify the application of Section 307 of the Indian Penal Code. The appellants directed blows at the heads of the victims being a vital part of the human body. The use of sharp-edged weapons and the force with which the blows were delivered resulted in severe injuries requiring immediate medical attention. Even though death did not occur, the intention or knowledge required to constitute an offence under Section 307 of the Indian Penal Code can be inferred from the weapon used, the body part targeted and the severity of the attack. The evidence on record therefore supports the Trial Court's

conclusion that the appellants attempted to cause injuries which were likely to endanger life. The testimony of PW-2 and other witnesses further revealed during the course of assault a female member of the complainant's family was also subjected to violence and indignity thereby attracting the ingredients of Section 354 of the Indian Penal Code. The defence had attempted to discredit the prosecution witnesses by pointing out that they were related to each other and that there existed a land dispute between the parties. However the mere existence of a dispute did not render their testimony unreliable. On the contrary the dispute provided a plausible motive for the occurrence itself. The injured witnesses have withstood cross examination and their testimonies are supported by medical evidence. Minor discrepancies or omissions in their statements do not affect the core of the prosecution case.

18. The argument that the witnesses were interested or inimical could not by itself render their testimony unreliable. In rural disputes relating to agricultural land, it is common that those present at the scene belong to the same family or locality. Such proximity may furnish a motive for hostility, but it equally explains the witnesses' presence at the place of occurrence. The Court must therefore scrutinize their testimony exhaustively rather than discard it outright. In the present case, despite detailed cross-examination, the defence has not been able to demonstrate any material contradiction affecting the core of the prosecution narrative.
19. The argument regarding non-seizure of weapons and delay in lodging the first information report also does not materially weaken the prosecution

case. The victims were taken to hospital immediately after the incident and their injuries were recorded by the medical officer within a short span of time. The delay in lodging the FIR is adequately explained by the medical condition of the injured person.

20. The gravamen of appellants' challenge relates to the applicability of Section 307 of the Indian Penal Code and it is therefore necessary for this Court to examine the evidentiary framework particularly. The offence under Section 307 of the Indian Penal Code does not hinge upon the fortuity of death ensuing from the act; rather, the statutory inquiry is directed towards the intention or knowledge with which the act is committed. The legislative emphasis lies upon the *mens rea* accompanying the assault and the circumstances in which the act has been carried out, including the weapon employed, the part of the body targeted and the degree of force with which the blow was delivered.
21. In the present case the testimonies of PW-1, PW-2 and PW 3 all of whom were injured witnesses revealed the appellants arrived together at the disputed agricultural land armed with "Dao" "Kaste" and "Shabol". Their arrival was not accidental or spontaneous. It was preceded by an evident design to assert control over the standing crops in the field. The dispute regarding possession of the land forms the underlying motive for the occurrence. Motive though not an indispensable element in every criminal prosecution, assumes evidentiary significance where the occurrence arises out of a pre existing hostility. In such situations it provides the contextual background amongst which the conduct of the accused must be evaluated.

The existence of a land dispute between the parties in the present case does not weaken the prosecution version rather it lends a plausible explanation to the genesis of the assault.

22. The injured witnesses have consistently deposed when resistance was offered against the reaping of crops, the appellants launched a violent attack using sharp-edged weapons. PW-1 described how he received a blow on the head with a sharp instrument, resulting in immediate bleeding and loss of consciousness. PW-2 corroborated that her husband was struck with such force that he sustained severe head injuries and other bodily harm. PW-3 similarly testified the appellants assaulted the complainant's side with "Shabol" and bamboo sticks during the confrontation. These witnesses were not mere spectators but victims of the attack themselves. Their presence at the scene is therefore beyond dispute.
23. The jurisprudence surrounding the testimony of injured witnesses is well settled. Courts have consistently held that the evidence of a witness who has himself suffered injuries during the occurrence carries a built in guarantee of truth. The reason is both logical and experiential; a person who has been injured in the course of an incident is unlikely to shield the real assailant and falsely implicate another for the memory of the attack is by the very pain and trauma suffered. Consequently unless compelling circumstances exist to discard such testimony, the evidence of an injured witness commands a high degree of credibility. In the present case the defence had not been able to elicit any material contradiction that would discredit the core of their testimony.

24. What lends further strength to the testimony of the injured witnesses is the medical evidence. PW-4 the medical officer who examined the victims shortly after the incident, recorded deep incised wounds on the skull and vertex region of the injured persons. One victim was found with a 5 inch incised wound requiring multiple stitches while another had a 3 inch wound on the head. The medical officer categorically opined that the injuries were grievous in nature and consistent with blows inflicted by sharp cutting weapons. The timing of the medical examination within a short span of occurrence excludes the possibility of fabrication or embellishment. The medical evidence thus forms a vital corroborative link connecting the ocular testimony with the physical consequences of the assault.
25. The convergence between ocular and medical evidence assumes particular significance in determining the applicability of Section 307 of the Indian Penal Code. The blows described by the witnesses were directed at the head which was indisputably a vital and vulnerable part of the human body. The weapons employed “Dao” “Kaste” and “Shabol” were sharp-edged weapons capable of causing fatal injuries. When such weapons had been used with considerable force against the head of a victim, the inference that the assailant intended to cause death or such bodily injury as was likely to cause death became irresistible. The law does not require the prosecution to prove that the accused explicitly intended to cause death it is sufficient if the act has been done with knowledge that the injury so inflicted has been so imminently dangerous that it can in all probability cause death.

26. The appellants have attempted to dilute the evidentiary force of the prosecution case by pointing to certain lapses in the investigation. It has been argued that the investigating officer failed to seize the weapons allegedly used in the assault and that certain details narrated by the witnesses during trial were not recorded in their statements under Section 161 of the Code Of Criminal Procedure. While these criticisms cannot be dismissed lightly, it must be remembered that the law draws a clear distinction between defective investigation and absence of credible evidence. Investigative lapses may invite administrative scrutiny but they do not necessarily demolish the prosecution case if the substantive evidence on record remains reliable and convincing. A criminal trial should not be allowed to collapse merely because of imperfections in the investigation. To hold otherwise would place the fate of criminal justice entirely at the mercy of investigative efficiency and would allow the guilty to escape punishment on account of errors committed by the investigating agency. The duty of the Court is to re-evaluate whether notwithstanding such lapses, the evidence of the witnesses inspire confidence and establishes the guilt of the accused beyond reasonable doubt.
27. In the present matter the prosecution evidence is not dependent solely on the investigation. The testimonies of the injured witnesses are clear, consistent and mutually corroborative. Their accounts are further supported by independent witnesses who reached the scene and observed the immediate aftermath of the assault. Most importantly the medical evidence provided objective confirmation of the injuries described by the witnesses.

When such credible evidence exists on record the failure of the investigating officer to recover the weapons cannot be regarded as fatal to the prosecution.

28. The cumulative effect of the evidence therefore leaves no room for doubt. The appellants motivated by a dispute over agricultural land assembled together armed with sharp weapons and attacked the complainant's side with considerable force. The blows inflicted on the head of the victims resulted in grievous injuries that could in the ordinary course of nature have proved fatal. The intention or knowledge necessary to attract the elements of Section 307 of the Indian Penal Code thus has been clearly established.
29. In the line of the forgoing discussion, this Court finds no reason to interfere with the findings of guilt recorded by the Learner Trial Court. The conviction of the appellants under Sections 147, 148, 149, 323, 324, 307 and 354 of the Indian Penal Code is therefore affirmed.
30. However, the question of sentence requires separate consideration. The incident in question occurred in the year 2010 more than 15 years prior to the present adjudication. The parties belong to the same rural locality and appear to have been engaged in a dispute relating to agricultural land. The injuries sustained by the victims though grievous, did not result in permanent disability or loss of life. The record does not indicate that the appellants have been involved in subsequent criminal activities after the occurrence. These circumstances persuade this Court to consider a limited modification of the sentence while maintaining the conviction.

31. Accordingly, while affirming the conviction recorded by the Trial Court, the sentence imposed upon the appellants under Section 307 of the Indian Penal Code is modified and reduce to a rigorous imprisonment for a period of four years. The sentence is imposed for the other offences under Sections 323, 324, 147, 148, 149 and 354 of the Indian Penal Code shall run concurrently and stand proportionately reduced subject to the set off permissible under Section 428 of the Code of Criminal Procedure for the period already undergone in custody.
32. In view of the above discussions, the instant criminal appeal being CRA 411 of 2014 is dismissed.
33. There is no order as to costs.
34. Lower court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.
35. 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.)