

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

G.A. 12 of 2002

The State of West Bengal

-Vs-

Brindaban Biswas & Ors.

For the Appellant/State : Mr. Avishek Sinha

For the Respondents : Mr. Arindam Jana
Mr. Sumanta Das
Mr. Yuvraj Chatterjee

Judgment on : 05.05.2026

Ananya Bandyopadhyay, J.:-

1. This appeal is preferred against the judgment and order of acquittal dated 06.04.2002 passed by the Learned Additional Sessions Judge, 4th Court, Krishnanagar, Nadia in connection with Sessions Trial No.IV of September, 2001, arising out of Sessions Case No. 46 of July, 2001 under Sections 148, 326/34, 304/34 of the Indian Penal Code thereby acquitting the respondents.
2. The prosecution case precisely stated on 15.04.1999 at about 10:45 hours one Sanatan Ghosh, Son of Susanta Ghosh of Ghoshpara, Shyamnagar under Krishnaganj P.S. filed a written complaint to the Officer-in-Charge, Krishnaganj P.S. that on the night of 14.04.1999 at about 12:30 a.m., the complainant along with his brother Gostha Ghosh ghosh and his father Susanta Ghosh were irrigating their Jute field situated on the southern side of their village. Suddenly, the respondents,

who were the residents of the village, being armed with sharp cutting weapons, attacked them and chopped at random. However, the de facto complainant managed to flee but his brother and his father sustained grievous injuries. Thereafter, in the night they were taken to Krishnaganj hospital.

3. On the basis of the aforesaid complaint, Krishnaganj P.S. Case No.63/99 dated 15.04.99 under Sections 147/148/149/324/326 of the Indian Penal Code was initiated for investigation and subsequently, the victim Gosto Ghosh died and Section 304 of the Indian Penal Code was added and police submitted charge-sheet under Section 147/148/149/324/326/304 of the Indian Penal Code.
4. Charged was framed against the respondents under Sections 326/34, 304/34 of the Indian Penal Code.
5. In order to prove it's the prosecution examined as many as 15 witnesses and exhibited certain documents.
6. The Learned Advocate representing the appellant/State submitted as follows:-
 - i. *"PW-1, the brother of the deceased was taking rest at a nearby field when he heard the hue and cry of his brother Gostho Ghosh (since deceased) and PW-9 (injured eye witness). On hearing such hue and cry he reached the spot and with the help of a torch light he saw the acquitted respondents fleeing away and found out Gostho Ghosh with chop and stab injuries lying on the ground. So even if PW-1 was not an eye witness to the assault, but his testimony that the respondents were fleeing away from the spot and the deceased has*

suffered grievous injuries pin points to a lone conclusion that the respondents inflicted the said injuries upon the deceased.

In the F.I.R., lodged by PW-1, he had vividly described the manner in which the respondents assaulted his brother and father being the deceased and PW-9.

- ii. PW-2, another brother of the deceased though was not present at the place of occurrence but when he reached the same, deceased Gostho Ghosh clearly named all the six respondents as the assailants and the same can be treated as an oral dying declaration.*

In the similar manner this witness has stated that his father, i.e. PW-9 had also described to him the manner in which both of them were assaulted by the respondents.

- iii. PW-3, the mother of the deceased was admittedly not an eye witness but she later on went to the place of occurrence when deceased Gostho Ghosh had explicitly described the incident of assault upon himself and PW-9.*
- iv. PW-5 and PW-6 being local witnesses had not supported the prosecution case and they have heard that the dacoits have assaulted the deceased.*
- v. The most clinching evidence comes from the deposition of the PW-9, the father of the deceased and injured eye witness. That witness had stated that at about 6 p.m., they went to the field to irrigate their land. Initially there was a low voltage and as such they waited for 5-6 hours when it became normal. He had also deposed that*

there was light just outside the machine room. He specifically made averments that at that time all the respondents surrounded him and his son Gostho Ghosh and at that time Brindaban Biswas chopped Gostho Ghosh and Sanjay Biswas stabbed Gostho Ghosh by "fala". Further, he stated that Bhim Biswas chopped on his head and Sufal Biswas on his shoulder.

- vi. He also stated that the aforesaid incident took place for 5/7 minutes and when he tried to flee away, he was attacked on his head and shoulder by the respondents as stated earlier from behind. This witness has graphically described the incident of assault and specifically mentioned exact overt act committed by each of the respondents.*
- vii. The aforesaid assault resulted in grievous injuries upon both the deceased and PW-9. The ocular evidence of the prosecution witnesses, especially PW-9 had been thoroughly corroborated by two doctors, PW-10, a doctor of Krishanganj Hospital and PW-13, doctor of District Hospital, Nadia.*
- viii. PW-14 was the autopsy surgeon who has conducted the post mortem examination on the body of Gostho Ghosh. In his deposition he had described five grievous wounds which included fracture and opined that the aforesaid injuries were ante-mortem and the cause of death.*
- ix. PW-15 was the investigating Officer who had examined the prosecution witnesses, collected the injury reports, post mortem reports and arrested the respondents during the course of*

investigation. From his cross-examination some minor omissions comes out which did not affect the prosecution case as a whole.

On the backdrop of the aforesaid evidence on record, the Learned Trial Judge in a very lackadaisical had over looked rather discarded the evidence of best witness i.e., PW-9. It was trite law that evidentiary value of an injured eye witness stands at a much higher pedestal as admittedly his presence at the place of occurrence could not be doubted. In the present case PW-9 has vividly described the manner in which the respondents had attacked both of them and also described the overt act committed by each of them. The aforesaid fact was thoroughly corroborated by PW-10 and PW-13, doctors who had examined the victims. Additionally PW-1, who was resting at a nearby field and reached the place of occurrence hearing hue and cry found the deceased in an injured condition and also found the respondents fled away from the spot. Furthermore, PW-2 and PW-3, the brother and mother of the deceased had categorically mentioned about a dying declaration made by Gostho Ghosh when they reached the place of occurrence, wherein he had specifically mentioned the manner in which the respondents assaulted the victims.

In view of such aforesaid discussion, it was submitted that Learned Trial Judge erred in fact as well as law in overlooking the legally admissible evidence available on record and in a very casual manner acquitted the respondents of all the charges which includes a charge of culpable homicide. Accordingly it was prayed that the

impugned judgment be set aside and the order of acquittal be reversed.”

7. The Learned Advocate representing the respondents submitted as follows:-

- i. *“The present appeal has been filed by the State of West Bengal challenging an order of judgment of acquittal dated 6th April, 2002 thereby the Respondents namely Brindaban Biswas, Bhim Biswas, Sankar Biswas, Bachcha @ Santiram Biswas, Sufal Biswas, and Sanjay Biswas, were acquitted by the Learned Additional Sessions Judge, 4th Court, Nadia. The charges were framed against them were under Sections 148, 326/34, and 304/34 of the Indian Penal Code (I.P.C.). After a detailed examination of fifteen witnesses and material evidence, the Learned Trial Court, vide Judgment dated April 6, 2002, concluded that the prosecution failed to prove the charges beyond a reasonable doubt and acquitted all six accused persons.*
- ii. *The prosecution’s case was centered on an incident occurring on the night of April 14-15, 1999, at approximately 12:30 a.m., in a jute field at Shyamnagar. It was alleged that the accused persons, forming an unlawful assembly armed with sharp-cutting weapons, attacked Gostha Ghosh and Susanta Ghosh (Santi) while they were irrigating their land. Gostha Ghosh subsequently succumbed to his injuries, while Susanta Ghosh survived the assault.*
- iii. *It was submitted that there was a grave doubt regarding the authenticity of the F.I.R. (Exbt.-1) lodged at 10:45 hours on April 15,*

1999. Evidence from the *de facto* complainant (PW-1) and the scribe (PW-4) suggests that a prior statement was narrated to the duty officer on the night of April 14, 1999, and recorded. PW-4 admitted to writing a complaint at 01:00 a.m., on the night of the incident at the Krishnaganj P.S. The suppression of the earliest information given to the police is fatal to the prosecution's case as it suggests the current F.I.R. was drafted as an afterthought to falsely implicate the accused.

- iv. It was further submitted that Sanatan Ghosh (PW-1) claimed to be an eyewitness who identified the accused by the "focus of torch". However, his presence at the spot was completely falsified by independent witnesses. Tapas Biswas (PW-7), an independent witness, and Kshudiram Biswas (PW-6), the owner of the shallow machine, both testified that PW-1 did not accompany the victims to the field. *Falsus in uno, falsus in omnibus* (False in one thing, false in everything) - while not strictly applied in India, the gross falsification of a primary witnesses presence renders their entire testimony unreliable.
- v. The appellants further submitted that the surviving victim, Susanta Ghosh (PW-9), provided a version that was internally inconsistent and contradicted by physical reality. PW-9 claimed to identify the specific acts of each accused (e.g., Brindaban chopped Gostha Ghosh, Sanjay stabbed Gostha Ghosh). However, he admitted he was fleeing and was chopped from behind at a distance of 15/20 cubits. Testimony that was physically improbable or contradicts the

witness's own admission of limited visibility (due to fleeing and darkness) cannot form the basis of a conviction.

- vi. Furthermore, immediately following the incident, the victims stated they could not recognize their attackers. PW-7 (Tapas) and PW-5 (Subodh) testified that the victims told villagers they did not recognize anybody because it was "full of darkness". Furthermore, Dr. Saibal Mahapatra (PW-10) confirmed that the parties did not name the assailants when brought to the hospital. An "improvement" in a witness's statement from "unrecognized" to "named accused" during the trial was a material discrepancy that entitles the accused to the benefit of the doubt.
- vii. It was categorically stated by the appellants that the prosecution's case was motivated by political vengeance rather than truth. Witness PW-5 admitted that the Upa-Pradhan (belonging to the one political party) had previously threatened the respondent Sankar Biswas with dire consequences. Where there was a background of deep-seated political rivalry, the court must scrutinize the evidence with extreme caution, as the possibility of false implication was significantly higher.
- viii. Lastly, the investigation was conducted in a partisan and negligent manner. The Investigating Officer (I.O.) failed to examine the surviving victim for nearly a month (recorded statement on May 12, 1999) without any explanation. Additionally, the I.O. found no bloodstains or "pool of blood" at the alleged place of occurrence. A delayed examination of material witnesses under Section 161

Cr.P.C., without reasonable explanation, combined with a lack of corroborative forensic evidence at the scene, creates a gap in the prosecution's chain of events.

ix. The Learned Trial Court correctly observed that the prosecution failed to prove the involvement of the accused persons beyond any shadow of doubt. The evidence was not cogent, and the testimonies were riddled with vital contradictions.

Therefore, it was prayed that the order of acquittal passed by the Learned Trial Court be upheld, and the present appeal be dismissed.”

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

i. PW-1, the son of the injured Susanta Ghosh and brother of deceased Gostha Ghosh, deposed that on the relevant night his father and brother had gone to irrigate their jute field at Shyamnagar Dakshin Math. Hearing cries emanating from the field, he rushed towards the place of occurrence with a torchlight and, in the illumination thereof, noticed Brindaban Biswas, Sanjay Biswas, Bhim Biswas, Sufal Biswas, Sankar Biswas and Bucha Biswas fleeing away from the land where irrigation was being carried on. He found his brother Gostha Ghosh lying on the ground with chopping injuries on the head and stab injuries on different parts of the body. He also noticed his father Susanta Ghosh proceeding towards the camp with severe cut injuries. PW-1 further stated that when he attempted to approach his father,

the accused persons tried to assault him as well, compelling him to flee.

- ii. Thereafter he returned to the village, raised alarm and, upon hearing his cries, several villagers assembled at the spot. His injured father and brother were first taken to the village camp and thereafter shifted to Krishnaganj Hospital and subsequently to Shaktinagar Hospital. Gostha Ghosh ultimately succumbed to his injuries at Calcutta hospital, though his father survived after treatment. PW-1 stated that he informed the police regarding the occurrence and that the written complaint was scribed by Lakshikanta Ghosh on his dictation, over which he put his L.T.I. He identified all the accused persons in Court.
- iii. During cross-examination PW-1 stated that the field of occurrence was known as Shyamnagar Dakshin Math and that a brick-built road ran east to west through the village. He admitted that the irrigation machine belonged to one Kshudiram Biswas and that irrigation work had commenced from about 6 p.m. Tapas, the son of Kshudiram, was present at the field along with PW-1, his father and Gostha Ghosh at the time the machine was started. According to him, he had thereafter returned home and again proceeded to the field at about 7 p.m.
- iv. PW-1 further stated that the shallow machine room of Kshudiram was situated at a distance of about 200/250 cubits from the village road. He admitted that when the villagers arrived at the place of occurrence, his father and brother were found lying injured. The injured persons were first shifted to the camp situated in the primary school of Shyamnagar village and thereafter to Krishnaganj Hospital. About 15

to 20 villagers accompanied them to the hospital. He also stated that he did not narrate the incident to the police at the camp itself, but later went to the police station from the hospital and narrated the incident to the duty officer, who reduced the statement into writing. Thereafter he went to Shaktinagar Hospital and learnt that police personnel had visited the village. He also stated that he narrated the incident to Lakshikanta Ghosh at Krishnaganj Hospital and that the written complaint faithfully recorded his version. He further admitted that he had also narrated the incident to Upa-Pradhan Satyen Biswas.

- v. PW-2, another brother of deceased Gostha Ghosh and son of injured Susanta Ghosh, deposed that he learnt about the incident from his elder brother Sanatan Ghosh, who returned home raising alarm and informed him that there had been disturbance in the field relating to irrigation and that Brindaban Biswas, Bhim Biswas, Sanjay Biswas, Sufal Biswas, Bucha Biswas and Sankar Biswas had assaulted Susanta Ghosh and Gostha Ghosh. PW-2 immediately rushed to the field along with villagers. Upon reaching there, he found Gostha Ghosh lying with severe cut injuries on the head and back. He further stated that Gostha Ghosh disclosed to him that the aforesaid accused persons had chopped him. He found his father at the village camp and later, while under treatment at Shaktinagar Hospital, his father also disclosed to him that Brindaban Biswas first assaulted him on the shoulder and thereafter Bhim Biswas, Sufal Biswas, Sanjay Biswas, Bucha Biswas and Sankar Biswas joined in assaulting him. PW-2 stated that Gostha Ghosh later died at Chittaranjan Hospital,

Calcutta, where he had been referred for treatment. He identified all the accused persons before the Court.

- vi. In cross-examination PW-2 admitted that Sanatan Ghosh was his elder brother and that police had not interrogated him. He further admitted that he had not stated before the police that Sanatan Ghosh had returned home raising alarm and naming the assailants. He also admitted omissions regarding his having seen his father lying injured near the school camp and his having found Gostha Ghosh lying unconscious in the field. He candidly stated that there had been longstanding ill-feeling between their family and the accused persons. According to him, about 20 to 25 villagers had accompanied him to the field. He further admitted that there was no lighting arrangement in the field except near the machine room and that at about 8 p.m. there was low voltage in the locality. He also stated that the machine room of Kshudiram was situated approximately 14 kilometres from the village road. PW-2 additionally disclosed that the house of accused Sanjay Biswas stood adjacent to the village school.
- vii. PW-3, the wife of injured Susanta Ghosh and mother of deceased Gostha Ghosh, deposed that her husband Susanta Ghosh along with her sons Gostha Ghosh and Sanatan Ghosh had gone to irrigate their land in the late afternoon. She did not witness the actual assault. She learnt from villagers that her son had been killed and thereafter saw Gostha Ghosh lying with bleeding injuries. According to her, Gostha Ghosh disclosed that Brindaban Biswas and Bhim Biswas had assaulted her husband and that Bucha Biswas had stabbed him on

the back while the remaining accused persons namely Fala, Sufal and Sankar Biswas also assaulted him. She stated that her husband fled towards the school camp after sustaining injuries.

- viii. During cross-examination PW-3 admitted that she was inside her house at about 1 a.m. and that she had not informed police that one Joygopal had come and informed her about the incident. She also admitted that she had not stated before the police that her husband and son had been brought to the hospital by villagers and relatives. PW-3 stated that she was informed by police that Gostha Ghosh and her husband were not in a condition to speak when taken to hospital. She further stated that she had heard from her son that Sankar Biswas was one of the assailants and reiterated that Sankar Biswas had assaulted her husband.
- ix. PW-4, Sanatan Ghosh, deposed that he resided at Shyamnagar. The written complaint was prepared by him in accordance with the statement of Sanatan Ghosh and after the contents thereof were read over and explained, the complainant put his L.T.I. thereon. The complaint was marked as Exhibit-1.
- x. During cross-examination PW-4 stated that he knew both Gostha Ghosh and Susanta Ghosh. He had seen Gostha Ghosh in injured condition at Krishnaganj Hospital at about midnight. According to him, Sanatan Ghosh was present there and accompanied him to Krishnaganj Police Station at about 1 a.m. where he wrote the complaint as per the narration of Sanatan Ghosh, which was thereafter handed over to the officer-in-charge.

- xi. PW-5 was declared hostile by the prosecution.
- xii. PW-6 deposed that he knew Susanta Ghosh and stated that on the relevant night at about 11 p.m., his son Tapas Ghosh along with Gostha Ghosh and Susanta @ Santi took the key of the shallow machine and went for irrigation. About 15 to 30 minutes later Tapas and Susanta returned, but subsequently Tapas alone returned and informed him that assault had started from all sides and that he could not recognise anybody. PW-6 further stated that he later went towards the field and found persons pouring water on the head of Susanta @ Santi. According to him, Tapas never disclosed the identity of the assailants.
- xiii. In cross-examination PW-6 stated that because of low voltage he was unwilling to hand over the machine key at about 10/11 p.m., though he ultimately sent Tapas with the key. He admitted that at about midnight Tapas returned and informed him that some persons had arrived from nearby places and started assaulting them. Tapas had also stated that due to darkness they failed to recognise anybody. PW-6 further stated that he heard from local villagers that dacoits had assaulted Susanta @ Santi and Gostha Ghosh.
- xiv. PW-7 deposed that he knew Susanta Ghosh @ Santi, Sanatan Ghosh and deceased Gostha Ghosh. According to him, because of low voltage the irrigation machine could not be operated and while returning, assault suddenly commenced from all sides. Out of fear he sat down with closed eyes. He stated that both Susanta Ghosh and Gostha Ghosh sustained injuries in the assault and that thereafter the

assailants fled away. He returned home with Susanta Ghosh but Gostha Ghosh remained lying in the field. He specifically stated that Susanta Ghosh did not disclose to him the identity of the assailants.

- xv. During cross-examination PW-7 admitted that there was no light inside the small machine room and that the place of occurrence was situated about 400/500 cubits away from the machine room. He further stated that while entering the village with Susanta Ghosh they met several villagers and Susanta informed them that “dacoits” had assaulted them and that they could not recognise any of the assailants.xiv. PW-8 deposed that though he was temporarily residing at Gobindapur in the house of his maternal uncle, his permanent residence was at Shyamnagar. Susanta Ghosh, also known as Santi Ghosh and Santiram Ghosh, was his father. He stated that at about 3:00 a.m. on the night of occurrence, one Swapan, Uttam and Ashok informed him that his father and brother Gostha Ghosh had been assaulted in the field. Thereupon he returned to Shyamnagar with one or two companions. On reaching home he learnt from his brother Sanatan Ghosh and his mother that Brindaban Biswas, Bucha Biswas, Sufal Biswas, Bhim Biswas, Sanjay Biswas, Sankar Biswas and Dulal Biswas had assaulted his father and brother. The villagers had already shifted the injured persons to Krishnaganj Hospital where he met them. According to PW-8, Gostha Ghosh was then unable to speak. His father, however, disclosed that Brindaban Biswas, Bucha Biswas, Sufal Biswas, Bhim Biswas, Sanjay Biswas, Dulal Biswas and Sankar Biswas had assaulted both him and Gostha Ghosh in the field.

He further stated that from Krishnaganj Hospital both the injured persons were referred to Shaktinagar Hospital and thereafter Gostha Ghosh was shifted to Calcutta for advanced treatment where ultimately he succumbed to the injuries.

- xvi. During cross-examination PW-8 stated that Gobindapur village was situated at a distance of about seven kilometres from Shyamnagar. He reached his house at Shyamnagar at about 3:20 a.m. by motorcycle. At that time his mother alone was present in the house and was in a distressed condition, while his brothers were absent. He admitted that he had been examined by police.
- xvii. PW-9, the injured witness Susanta Ghosh @ Santi, deposed that on the relevant night he along with Sonatan Ghosh and Gostha Ghosh had gone to irrigate their land by using the machine of Khudiram at about 6:00 p.m. One light was burning outside the machine room and another bulb was fixed on a nearby pole situated beside the land. Owing to low voltage they had to wait near the machine room for about five to six hours till electricity supply became normal. According to him, at that stage Brindaban Biswas, Bhim Biswas, Sufal Biswas, Bucha Biswas, Sanjay Biswas and Sankar Biswas surrounded them and launched an attack. He initially resisted with a spade. Thereafter the assailants turned upon Gostha Ghosh. PW-9 requested them not to assault his son, but they abused him in filthy language.
- xviii. He categorically stated that Brindaban Biswas dealt chopping blows on Gostha Ghosh while Sanjay Biswas stabbed him with a "Fala". Thereafter the assailants attacked PW-9 himself. Bhim Biswas struck

him on the head and Sufal Biswas assaulted him on the shoulder. According to him, Sankar Biswas and Bucha Biswas stood surrounding him and obstructed his escape. Gostha Ghosh eventually fell to the ground, whereafter PW-9 somehow proceeded towards the nearby school and raised hue and cry. Villagers gathered there. His wife and son Subhash Ghosh arrived near the school and removed him to Krishnaganj Hospital. Radhaballav Ghosh and Bijoy Ghosh also visited him in the hospital and he narrated the incident to them.

- xix. PW-9 further stated that because of the injuries he could barely speak in the hospital. Both he and Gostha Ghosh were subsequently shifted to Shaktinagar Hospital. Thereafter Gostha Ghosh was taken to Calcutta for treatment and died after about thirteen days. PW-9 stated that while at Shaktinagar Hospital several relatives including Radhaballav Ghosh, Bijoy Ghosh, Subhas Ghosh and his wife Padmabala Ghosh visited him and he disclosed before them the names of the assailants. He also stated that due to the chopping injuries on his head he experienced difficulty in speaking loudly.
- xx. During cross-examination PW-9 stated that at about 10:00 p.m. he and Gostha Ghosh had gone to the field with the key of the machine obtained from Khudiram for irrigation. At that time there was low voltage and the machine could not be operated. Subsequently they went to the house of Khudiram to bring him to the field, but Khudiram did not come and instead sent his son Tapas with them at about midnight. PW-9 admitted that even at that hour there was low voltage and they had waited for about five to six hours before deciding to

return from the field. While returning, they were suddenly attacked. He had with him only one small spade used for clearing the water channel. According to him, Sonatan Ghosh was not accompanying them at the time when they began returning.

xxi. PW-9 further stated that at the commencement of the assault he remained standing whereas Gostha Ghosh fell beside him. He tried to save Gostha Ghosh and after the assault upon Gostha Ghosh was over, he himself was assaulted. Tapas fled away when the assault on Gostha Ghosh commenced. Thereafter, out of fear, PW-9 also attempted to flee but was assaulted from behind at a distance of about 15/20 cubits. He sustained chopping injuries on his shoulder and head from behind. After the assailants fled, he slowly made his way towards the school while raising alarm. On the way he met his son Sonatan Ghosh and noticed Gostha Ghosh lying at a distance of about 50 cubits from the spot. Blood had continued to drip on the land as he proceeded towards the village.

xxii. He further stated that he did not meet any person on the way to the school from the field and that after reaching the school he fell unconscious. He regained consciousness only at Shaktinagar Hospital. He stated before police that Brindaban Biswas had chopped Gostha Ghosh and that Bhim Biswas had assaulted him on the head while Sufal Biswas had chopped him on the hand. He admitted that police had not interrogated him in the hospital immediately after the occurrence and he was unable to say after how many days police came to interrogate him. He denied having any quarrel with Tapas or

Khudiram. He further stated that Sankar Biswas had surrounded him to prevent his escape, though he had not stated before police that Sankar, son of Nitya, had specifically restrained him.

xxiii. PW-10, the medical officer attached to Krishnaganj Hospital on 15.04.1999, deposed that on that date he examined injured Gostha Ghosh, son of Susanta Ghosh of Shyamnagar, who had a history of assault at about 12:30 a.m. Upon examination he found the following injuries:-

- a) One sharp-cut injury over the scalp measuring approximately six inches in length;
- b) Deep incised wounds on four places over the back, namely over the right and left suprascapular regions and on both sides of the lower back.

xxiv. According to the witness, the injuries were grievous and recent in nature. The patient was immediately referred to Shaktinagar Hospital. He opined that injury no.2 might have been caused by a "Fala". The injury report prepared and signed by him was marked Exhibit-2.

xxv. PW-10 further deposed that he also examined injured Susanta Ghosh, son of late Kartik Ghosh of Shyamnagar, and found:-

- a) A six-inch incised wound over the left shoulder;
- b) Two incised wounds measuring approximately five to six inches over the scalp.

xxvi. He opined that the injuries were grievous and recent and recorded the history of assault at about 12:30 a.m. on 15.04.1999. Susanta Ghosh was also referred to Shaktinagar Hospital. The injury report prepared by him was marked Exhibit-3.

- xxvii. In cross-examination PW-10 stated that the injury report did not mention the name of the person who had produced Gostha Ghosh before him. He further admitted that the report did not specify the exact time when the patients were examined or referred to Shaktinagar Hospital. According to him, the patients did not disclose the names of the assailants before him and such particulars were ordinarily entered in the hospital register.
- xxviii. PW-11 deposed that he resided at Gobindapur and that Susanta Ghosh was his brother-in-law. He knew Sonatan Ghosh, Gostha Ghosh and Bijoy Ghosh as well. According to him, some boys including the son of Narayan Ghosh came and informed him that his brother-in-law and his son had been assaulted. Thereafter he, along with his brother and some women members of the family, proceeded to Shyamnagar. They did not find the injured persons there. On the following day he visited Shaktinagar Hospital where he saw both Gostha Ghosh and Susanta Ghosh and conversed with Susanta Ghosh.
- xxix. According to PW-11, Susanta Ghosh disclosed to him that Brindaban Biswas, Bhim Biswas, Sankar Biswas and three others had assaulted them, though PW-11 could not recollect the names of the remaining persons despite Susanta Ghosh having mentioned them. He further stated that Gostha Ghosh was subsequently referred to Calcutta for treatment where he ultimately died.
- xxx. During cross-examination PW-11 admitted that he had been examined by police. He also admitted that he had not stated before police that

Susanta Ghosh had specifically named Brindaban Biswas, Bhim Biswas, Sankar Biswas and three others as the assailants. He further admitted that he had not stated before police that Sankar Biswas had assaulted Susanta Ghosh and Gostha Ghosh.

- xxxi. PW-12, an Assistant Sub-Inspector attached to Krishnaganj Police Station on 15.04.1999, deposed that on that date at about 10:45 a.m. he received a written complaint and started Krishnaganj P.S. Case No.63/99 dated 15.04.1999. He filled up the formal First Information Report and made endorsement upon the complaint. The formal FIR and endorsement were marked as Exhibits 4 and 1/1 respectively.
- xxxii. During cross-examination PW-12 stated that Krishnaganj Hospital was situated adjacent to the police station. He admitted that before institution of the present case he had not enquired whether any other case had already been started in connection with the same incident.
- xxxiii. PW-13, a medical officer posted at Nadia District Hospital on 15.04.1999, deposed that on that date injured Gostha Ghosh of Shyamnagar was admitted under his treatment with a history of assault. Upon examination he found multiple linear skin incisions over the back and several wounds of varying dimensions on the back of the trunk, including injuries measuring 2" × 1", 1½" × ½" muscle deep, 1" × ⅓" skin deep and another injury measuring 5" × 1" over the vault of the scalp. The injury report along with treatment sheet was collectively marked as Exhibit-5.
- xxxiv. He further deposed that another injured person, Sonatan Ghosh of Shyamnagar, was also examined by him on the same date. Sonatan

Ghosh had likewise given a history of assault. Upon examination he found injuries including:-

- a. A wound measuring 5" × 1" over the vault of the scalp;
- b. Another wound measuring 1½" × ½" over the scalp;
- c. An injury measuring 4" × ½" involving the capsule of the left shoulder joint with fracture of the scapula.
- d. The injury report and treatment sheet relating thereto were collectively marked as Exhibit-6.

xxxv. PW-14 deposed that on 27.04.1999, while posted as Associate Professor in the Department of Forensic and State Medicine, N.R.S. Medical College, Calcutta, he conducted post-mortem examination over the dead body of Gostha Ghosh, a Hindu male aged about 22 years, in connection with Beniapukur P.S. Inquest No.170 dated 26.04.1999 arising out of Krishnaganj P.S. Case No.63/99 dated 15.04.1999 under Sections 147/148/149/324/326 of the Indian Penal Code. Upon post-mortem examination he found multiple ante-mortem injuries on the person of the deceased. xxxv. PW-14, the autopsy surgeon attached to N.R.S. Medical College, Calcutta, continued his deposition by detailing the ante-mortem injuries found upon the dead body of deceased Gostha Ghosh. He noticed several almost healed stitched-up lacerated wounds over the back and chest region, namely:-

- a) A stitched lacerated wound measuring about 3" × 1" situated to the right side of the sixth thoracic spine; another wound measuring about 6" × 2" situated to the right of the fourth

thoracic vertebra; and an oblique wound measuring about 2" × 2" over the right posterior chest approximately two inches to the right of the second thoracic vertebra;

- b) One recent scar measuring six inches over the left scapular blade;
- c) One stitched-up lacerated wound measuring five inches in length with evidence of healing over the left parietal and temporal region of the scalp, situated approximately four inches above the nasal junction and two inches above the left ear. Beneath the same there was extra-vasation measuring about 5" × 4" accompanied by fissure fracture extending about four inches over the left parietal and temporal bones;
- d) One lacerated wound measuring approximately 1" × ½" × ¼" over the base of the right frontal lobe;
- e) Subdural extra-vasation spread throughout the brain substance including the undersurface thereof.

xxxvi. According to PW-14, death was caused due to the cumulative effect of the injuries sustained by the deceased, all of which were ante-mortem in nature. The post-mortem report prepared and signed by him, and countersigned by Professor R. Basu, then Head of the Department of Forensic State Medicine, N.R.S. Medical College, was marked as Exhibit-7.

xxxvii. PW-15, the Investigating Officer, deposed that on 15.04.1999 he was attached to Krishnaganj Police Station as a Sub-Inspector of Police. On that date Krishnaganj P.S. Case No.63/99 dated 15.04.1999 was

endorsed to him for investigation by the Officer-in-Charge. After perusing the FIR he proceeded to the place of occurrence and prepared a sketch map on 15.04.1999, which was marked Exhibit-8.

xxxviii. He examined witnesses including Padmabala Ghosh, Subhas Ghosh, Joygopal Biswas, Subodh Ghosh, Lakshikanta Ghosh, Tapas Ghosh, Kshudiram Biswas, Bejoy Ghosh and Radhaballav Ghosh and recorded their statements under Section 161 Cr.P.C. He collected the injury report relating to deceased Gostha Ghosh issued by National Medical College, Calcutta, which was marked Exhibit-10. He also collected the death certificate and inquest report relating to Gostha Ghosh, marked Exhibits-9 and 11 respectively.

xxxix. PW-15 further stated that he arrested accused Brindaban Biswas and Bhim Biswas on 05.05.1999 and forwarded them to Court. On the same date he made a prayer for addition of Section 304 of the Indian Penal Code against the accused persons. Thereafter he arrested Sankar Biswas on 07.11.1999 and forwarded him to Court. Accused Sanjoy Biswas surrendered before the Court on 26.11.1999. Upon completion of investigation he submitted charge-sheet on 26.02.2000 under Sections 147/148/149/324/326/304 of the Indian Penal Code against Brindaban Biswas, Bhim Biswas, Sankar Biswas, Bucha Biswas, Sufal Biswas and Sanjoy Biswas.

xl. The Investigating Officer also stated that witness Subodh Ghosh informed him that he had seen injured Susanta Ghosh sitting near the roadside close to the school with bleeding injuries on his person. Upon being questioned, Susanta Ghosh disclosed to Subodh Ghosh

that Gostha Ghosh was lying assaulted in the field and that Bhim Biswas, Bucha Biswas, Brindaban Biswas and their cousin brother Sankar Biswas, accompanied by Sufal Biswas and his son Sanjay Biswas, had assaulted them.

- xli. During cross-examination PW-15 stated that he took up investigation on 15.04.1999 at about 10:50 hours after perusing the FIR. It was mentioned in the FIR that both Gostha Ghosh and his father Susanta Ghosh were then lying in an alarming condition at Shaktinagar Hospital. He candidly admitted that immediately after assuming charge of investigation he did not make any endeavour to visit the injured persons at Shaktinagar Hospital and instead first proceeded to village Shyamnagar.
- xlii. According to PW-15, he learnt from the statements of witnesses that the incident had occurred in the agricultural field at Shyamnagar and that Subhas Ghosh had identified the place of occurrence to him. He admitted that he made no attempt to ascertain whether the de facto complainant possessed agricultural land in the said field or whether Kshudiram Biswas had any shallow machine installed there. He further admitted that neither blood marks nor any pool of blood nor bloodstained earth was found or seized from the place of occurrence. He also had no knowledge whether at the relevant point of time there existed a police camp in village Shyamnagar.
- xliii. PW-15 further stated that on 15.04.1999 he returned to the police station at about 16:55 hours from Shyamnagar village. On 16.04.1999 he collected the injury reports from Krishnaganj Primary Health

Centre and on 21.06.1999 he visited Shaktinagar Hospital for collection of injury reports. He admitted that during the entire period of treatment of injured Susanta Ghosh and Gostha Ghosh at Shaktinagar Hospital he never visited the hospital to examine them. According to him, he came to know on 26.04.1999 that Gostha Ghosh had expired at a hospital in Calcutta.

xliv. PW-15 stated that he examined Susanta Ghosh only on 12.05.1999 after his release from hospital at his residence in Shyamnagar and recorded his statement under Section 161 Cr.P.C. He admitted that his case diary did not contain any explanation for such delay in examining Susanta Ghosh. He also admitted that no torchlight was seized either from Susanta Ghosh or from any other witness during investigation.

xlv. The Investigating Officer further admitted that PW-9 Susanta Ghosh had not stated before him that Brindaban Biswas chopped Gostha Ghosh, nor had PW-9 stated that Bhim Biswas chopped him on the head and Sufal Biswas chopped him on the hand. He stated that accused no.6, namely Sankar Biswas, son of late Nitya Biswas of Shyamnagar, had been named by Susanta Ghosh as one of the assailants. However, the name of Sankar Biswas was not disclosed by the attendant of the patient, as would appear from the injury report itself. The prosecution case, when tested upon the settled parameters governing an appeal against acquittal, does not attain the degree of certainty which the criminal law insists upon before the liberty of a citizen can be curtailed. The evidence on record, though indicative of a

grievous occurrence resulting in the tragic death of Gostha Ghosh and injuries to Susanta Ghosh, remains afflicted by substantial infirmities touching the genesis of the occurrence, the identity of the assailants, the surrounding circumstances of visibility and the intrinsic reliability of the prosecution version. The view adopted by the learned Trial Court, therefore, cannot be characterised either as unreasonable or contrary to the weight of evidence so as to warrant appellate interference.

9. At the outset, it is required to be borne in mind that the charges under Sections 148, 326/34 and 304/34 of the Indian Penal Code carry with them specific legal ingredients which the prosecution must establish beyond reasonable doubt. The existence of an unlawful assembly armed with deadly weapons, the sharing of a common intention, participation in the assault and the attribution of injuries leading to culpable homicide must emerge from cogent, consistent and trustworthy evidence. Suspicion, however grave, cannot substitute legal proof.

10. The prosecution principally rested upon the evidence of PW-1 and PW-9. PW-1 claimed that upon hearing cries from the field he rushed to the place of occurrence and, by the light of a torch, saw the accused persons fleeing away. Significantly, he did not claim to have witnessed the actual assault. His evidence is essentially confined to seeing certain persons allegedly leaving the field and thereafter finding his father and brother injured. Such evidence, by its very nature, is inferential and not direct evidence of assault.

11. The surrounding circumstances render the identification itself uncertain.

The occurrence admittedly took place deep in the night in an agricultural field where, according to several witnesses including PW-2, PW-6 and PW-7, there was low voltage and no proper lighting arrangement except near the machine room. PW-7 categorically stated that there was no light in the machine room and the assault took place at a distance of 400/500 cubits therefrom. PW-6 stated that because of darkness the assailants could not be recognised. PW-7 similarly stated that the assailants came from all sides and neither he nor Susanta Ghosh could recognise anybody. Such evidence directly undermines the prosecution assertion regarding reliable visual identification.

12. The testimony of PW-9, the injured witness, undoubtedly carries evidentiary value. Yet, even the testimony of an injured witness must inspire confidence and remain consistent with the contemporaneous materials. In the present case, substantial contradictions emerge between the deposition of PW-9 in Court and the statements attributed to him during investigation. The Investigating Officer, PW-15, specifically admitted that PW-9 had not stated before him that Brindaban Biswas chopped Gostha Ghosh or that Bhim Biswas assaulted him on the head and Sufal Biswas assaulted him on the hand. These omissions are not minor embellishments arising from lapse of memory. They strike at the core of the prosecution case concerning attribution of overt acts and the identity of the assailants.

13. Equally significant is the conduct of the prosecution witnesses immediately after the occurrence. PW-6 stated that Tapas informed him

that assault had commenced from all sides and nobody could be recognised. PW-7 stated that Susanta Ghosh told villagers that “dacoits” had assaulted them and they could not identify anyone. These earliest versions, emerging spontaneously and prior to deliberation, possess considerable probative value. The subsequent detailed naming of the accused persons appears to have surfaced gradually and through successive improvements.

14. The evidence further discloses long-standing ill-feeling between the parties. PW-2 admitted prior enmity with the accused persons. In cases founded substantially upon partisan testimony, the Court is required to exercise heightened caution and seek dependable corroboration from surrounding circumstances. Such corroboration is conspicuously absent in the present matter.
15. The prosecution also failed to establish the place and manner of occurrence with the certainty expected in a criminal trial. PW-15 admitted that no bloodstained earth, no pool of blood and no blood marks were found or seized from the alleged place of occurrence. No attempt was made to ascertain whether the de facto complainant had agricultural land at the relevant place or whether Kshudiram Biswas actually possessed the shallow machine said to have been used for irrigation. Even the alleged torchlight, upon which the prosecution sought to rely for identification in darkness, was never seized during investigation.
16. The lapses in investigation assume greater significance in view of the nature of the charges. The Investigating Officer admittedly did not visit Shaktinagar Hospital immediately after taking charge of investigation,

despite being aware that both injured persons were in a critical condition there. He examined injured Susanta Ghosh only on 12.05.1999, nearly a month after the occurrence, and the case diary contains no explanation for such delay. The failure to promptly record the statement of the principal injured witness substantially erodes the evidentiary foundation of the prosecution.

17. The medical evidence, though proving homicidal injuries upon Gostha Ghosh and grievous injuries upon Susanta Ghosh, does not by itself connect the accused persons with the crime. On the contrary, PW-10 specifically admitted that the patients did not disclose the names of the assailants before him. The injury reports similarly do not record the names of any assailant. Thus, the medical evidence establishes the factum of assault but not the identity of the perpetrators.
18. The prosecution further sought to invoke Sections 148 and 34 of the Indian Penal Code. However, the evidence does not satisfactorily establish the formation of an unlawful assembly with a common object or a prior meeting of minds necessary to attract vicarious liability. The witnesses attributed varying roles to different accused persons at different stages. Several witnesses reached the place after the occurrence. Others spoke on the basis of what they allegedly heard from injured persons. The prosecution evidence, taken as a whole, does not reveal a coherent or consistent account demonstrating concerted action pursuant to a shared intention.
19. The ingredients of Section 304/34 of the Indian Penal Code also remain unestablished. The prosecution was required to prove not merely

participation in an assault, but participation accompanied by the requisite mental element attributable jointly to all accused. In the absence of reliable evidence regarding the precise manner of assault, the weapons used, the sequence of events and the role of each accused, the invocation of constructive criminal liability becomes legally unsustainable.

20. The Learned Trial Court, upon an appreciation of the entire evidence, found the prosecution version insufficient to establish guilt beyond reasonable doubt. Such conclusion cannot be said to be perverse. An appellate court dealing with an appeal against acquittal does not proceed upon a clean slate. Unless the conclusions reached by the Trial Court are wholly unreasonable or manifestly contrary to the evidence on record, interference is unwarranted. If two views are reasonably possible on the evidence adduced, the view favouring the accused must prevail.

21. In the present case, the deficiencies in identification, the admitted darkness at the place of occurrence, the material omissions in prior statements, the delayed examination of the injured witness, the absence of forensic corroboration from the place of occurrence and the existence of prior enmity together create a reasonable doubt which the prosecution has failed to dispel.

22. The criminal law does not permit conviction upon conjecture or emotional surmise arising from the gravity of the incident. The Court is concerned not merely with the occurrence of a crime, but with the lawful proof of the identity and culpability of those arraigned before it. The distance between suspicion and proof, however narrow it may appear, cannot be bridged by assumption.

23. Accordingly, this Court finds no infirmity in the judgment of acquittal rendered by the learned Trial Court. The prosecution having failed to establish the foundational ingredients of the offences punishable under Sections 148, 326/34 and 304/34 of the Indian Penal Code beyond reasonable doubt, the order of acquittal warrants no interference.
24. The appeal, therefore, stands dismissed. The judgment and order of acquittal are affirmed.
25. Accordingly, the instant appeal being GA 12 of 2002 stands dismissed.
26. There is no order as to costs.
27. Trial Court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.
28. 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.)