

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

**Present:**

**The Hon'ble Justice Ananya Bandyopadhyay**

**C.R.A. 702 of 2004**

**Bikash Bhakta**

**-Vs-**

**The State of West Bengal**

For the Appellant : Ms. Diksha Ghosh

For the State : Mr. Avishek Sinha

Judgment on : 22.06.2026

**Ananya Bandyopadhyay, J.:-**

1. This appeal is preferred against an order of conviction dated 11<sup>th</sup> October, 2004 under Section 307 of the Indian Penal Code passed by the Learned Additional Sessions Judge, Fast Track Court-I, Krishnanagar in Sessions Case No.89(7) of 2004, Sessions Trial No.111 of September, 2004 and was sentenced to suffer rigorous imprisonment for seven (7) years and to pay a fine of Rs.1,000/-, in default, to suffer further rigorous imprisonment for three (3) months for the offence committed under Section 307 of the Indian Penal Code. The period of detention during investigation and trial, if any, be set off.
2. The prosecution case precisely stated that on 25.09.2002 at about 03:00 p.m., Subhas Nag, Gopal Mitra and Suramba Mitra, who had been the relatives of the *de facto* complainant Balai Chandra Nag had an altercation

with their co-villagers Binoy Bhakta concerning drying the jute sticks. Consequently Bikash Bhakta, the appellant herein, assaulted Subhas Nag with a wooden batten on his head. Subhas sustained bleeding injury. Immediately the de facto complainant escorted him to Arobinda Pharmacy at Mahisbathan and the wound was stitched. Thereafter he was taken to Karimur Hospital wherefrom he was referred to Shaktinagar Hospital. The de facto complainant lodged the written complaint before the Officer-in-Charge, Karimpur Police Station after a few days, i.e. 02.10.1992.

3. Based on the aforesaid complaint, Karimpur Police Station Case No.97/02 dated 02.10.2002 under Sections 325/308/34 of the Indian Penal Code was initiated.
4. After completion of investigation, the Investigating Agency submitted a charge-sheet.
5. Charges were framed against the appellants under Sections 307 and 326 read with Section 34 of the Indian Penal Code to which they pleaded not guilty and claimed to be tried.
6. In order to prove its case, the prosecution examined as many as 10 witnesses and examined certain documents.
7. A circumspection of oral and documentary evidence adduced by the prosecution reveals the genesis of the occurrence lay in a village discord concerning the drying of jute sticks in a tank situated near the residence of the parties. The prosecution endeavoured to establish that what commenced as a rustic altercation in the forenoon of 25th September, 2002 culminated

in a physical assault during the afternoon, resulting in a head injury to Subhas Nag.

8. PW-1, Balai Chandra Nag, the de facto complainant and brother of the injured Subhas Nag, narrated that at about 10 a.m. on 25.09.2002, his brother had an altercation with the appellants, Binoy Bhakta and Bikash Bhakta, regarding the drying of jute sticks. The village elders intervened and proposed that the dispute would be resolved by way of a *salish* during the evening. At about 3 p.m., while Suramba and Gopal were proceeding towards their house carrying jute bundles, both appellants attacked and assaulted them. On receiving information, PW-1 and his brother Subhas rushed to the spot. According to him, appellant Bikash Bhakta struck Subhas on the head with a wooden batten causing a bleeding injury, whereupon Subhas fell down. Appellant Binoy assaulted him by fists, blows and slaps. Thereafter the assailants departed from the place.
9. PW-1 deposed that he, along with his cousins, first took the injured to Aurobindo Pharmacy run by Abhijit Bhattacharya at Mahishbathan, where the wound was stitched. Thereafter Subhas was taken to Karimpur Hospital and was referred to Shaktinagar Hospital, where he remained admitted for two or three days. Owing to his preoccupation with the treatment of his only brother, there occurred a delay in lodging the complaint. He identified the written complaint marked Exhibit-1 and also identified the appellants in Court. The Investigating Officer seized the medical papers from his possession and his signature on the seizure list was marked Exhibit-2.

10. During cross-examination, PW-1 stated that about 130 to 140 families resided in the village and the road adjoining the houses of the parties and leading to the tank was brick-soled and uneven. Upon hearing cries, he reached the place and found a scuffle in progress between Subhas and the appellants. He denied the suggestion that Subhas sustained injuries by falling during the scuffle and maintained that the latter sat down pressing his head only after receiving the blow. He stated that blood had fallen on the earth and the blood-stained shirt of Subhas had been seized. He admitted that Subhas had not accompanied him to the police station. About thirty persons had assembled at the spot, most of them being women. PW-1 acknowledged his political allegiance to C.P.I.M. and stated that he could not say whether the appellants belonged to T.M.C.
11. PW-2, a co-villager, deposed that while proceeding towards the market at about 3 p.m. to 4 p.m. on the date of occurrence, he heard from Viswa Bhakta, Thakur Bhakta and others that appellant Bikash Bhakta had struck Subhas Nag on the head with a wooden batten causing bleeding injuries and that PW-1 had removed him to hospital. He proved his signature on the seizure list marked Exhibit-2/1. During cross-examination, he stated that he had informed the Investigating Officer that he had learnt about the occurrence from the aforesaid persons. His evidence remained hearsay in character.
12. PW-3, the son of Suramba Mitra and nephew of PW-1, stated that after returning from school at about 1.30 p.m. he heard of the earlier quarrel regarding jute sticks. At about 2 or 2.30 p.m., while his father was carrying

jute bundles towards their residence and he himself was following on a bicycle, appellant Bikash Bhakta pushed his father causing him to fall and assaulted him. When PW-3 attempted resistance, he too was assaulted. On hearing the commotion, PW-1 and Subhas Nag arrived at the spot and appellant Bikash Bhakta struck Subhas on the head with a wooden batten causing bleeding injuries. Thereafter PW-1 and his father removed Subhas to Aurobindo Pharmacy and later to Karimpur Hospital from where he was referred to Shaktinagar Hospital. In cross-examination he stated that Krishna Nag, Biren Ray and Manimohan Nag had accompanied the injured to the hospital.

13. PW-4, brother-in-law of PW-1, stated that at about noon there had been a quarrel between Subhas Nag and the appellants over drying of jute sticks. At about 3 p.m., while he was returning with wet jute bundles and PW-3 was following him on a bicycle, both appellants assaulted them. Upon receiving information, Subhas Nag came there and appellant Bikash Bhakta struck him on the head with a wooden batten causing bleeding injuries. PW-1 and PW-4 took Subhas to Aurobindo Pharmacy where his wound was stitched and thereafter he was shifted to Karimpur Hospital and then to Shaktinagar Hospital where he remained admitted for two days.
14. In cross-examination, PW-4 stated that the road leading to the tank was brick-soled. About ten to twenty villagers, most of them women, assembled after hearing the shouts. He specifically stated that there had been no scuffle between Bikash Bhakta and Subhas prior to the assault. Subhas fell on the road and lost consciousness and was carried to the pharmacy in a van-

rickshaw. According to him, the incident lasted for about ten minutes. PW-4 and the appellants were supporters of T.M.C., though he could not say whether PW-1 belonged to C.P.I.M.

15. PW-5, Subhas Nag, the injured witness, stated that he had quarrelled with appellant Binoy Bhakta at about 10 to 10.30 a.m. regarding the drying of jute sticks and the villagers proposed an amicable settlement during the evening. At about 3 p.m., while PW-4 was returning with jute bundles and PW-3 was following him, both appellants assaulted them. On receiving information from his maternal aunt, PW-5 rushed to the place and appellant Bikash Bhakta delivered a blow on his head by a wooden batten causing bleeding injuries. He became senseless and was first taken to Aurobindo Pharmacy at Mahishbathan, where the wound was stitched, and thereafter to Karimpur Hospital and Shaktinagar Hospital, where he remained admitted for two to three days.

16. In cross-examination, PW-5 stated that about ten to fifteen villagers had assembled after the assault. He could not name the maternal aunt who had informed him. Blood had fallen on the road and his banyan was stained with blood. He admitted that he had no discussion with PW-1 before the lodging of the F.I.R. and that he had not accompanied PW-1 to the police station. The Investigating Officer seized his blood-stained garments from his residence. He also stated that he had no political affiliation.

17. PW-6, Abhijit Bhattacharya, proprietor of Aurobindo Medical Hall at Mahishbathan, deposed that at about 4 p.m. on 25.09.2002, Subhas Nag was brought to his pharmacy in a bleeding condition. He stitched the wound

on the head and referred him to Karimpur Hospital. He proved the certificate and medical voucher issued by him, marked Exhibits-3 and 4 respectively. In cross-examination, he admitted that neither the nature of injury nor the time of examination had been recorded in the certificate.

18. PW-7, Prakash Chakraborty, was declared hostile.

19. PW-8, the Investigating Officer, stated that on 02.10.2002 he was posted as Officer-in-Charge of Karimpur Police Station and took up investigation of Karimpur P.S. Case No.97 of 2002 under Sections 325/308/34 Indian Penal Code on the basis of a written complaint lodged by Balai Chandra Nag. He visited the place of occurrence situated on a brick-built road in village Ramkrishnapur, prepared the rough sketch map and index marked Exhibit-5, examined witnesses and seized the treatment papers of the injured under a seizure list marked Exhibit-2/2. He also prepared the *Jimmanama* marked Exhibit-6 and recorded the statement of the injured under Section 161 Cr.P.C. After completion of investigation he submitted charge-sheet under Sections 325/308/34 of the Indian Penal Code against both appellants, showing Bikash Bhakta as an absconder.

20. During cross-examination, PW-8 admitted that he had neither seized the alleged wooden batten nor any blood-stained earth or blood-stained wearing apparel. He further admitted that the F.I.R. contained no allegation that appellant Binoy Bhakta had assaulted either the complainant or the injured. PW-3 had not stated before him that Bikash Bhakta had assaulted him, and PW-4 had not stated that PW-3 was following on a bicycle or that both appellants had assaulted PW-3 and PW-4. PW-5 had also not stated before

him that both appellants had assaulted PW-3 and PW-4. These omissions emerged during cross-examination.

21. PW-9, the Surgeon attached to Nadia District Hospital, Krishnanagar, deposed that on 25.09.2002 he examined Subhas Nag, aged about seventeen years, who had been referred from Karimpur Rural Hospital. He found the patient conscious with pulse rate of eighty per minute and noticed a stitched injury on the forehead measuring approximately one and a half inches. X-ray examination of the skull was advised and the report turned out to be normal. The patient was discharged on 27.09.2002. He proved the referral card, discharge certificate and bed-head ticket marked Exhibits-7, 7/1 and 8 respectively and opined that the injury was simple in nature.
22. In cross-examination, PW-9 admitted that the bed-head ticket and treatment sheet contained no reference regarding the identity of the assailant or the age of the injury. He also stated that such an injury might be sustained by falling on an uneven brick-soled road or by being struck with brickbats.
23. PW-10, the formal witness, stated that while serving as Assistant Sub-Inspector at Karimpur Police Station, he received the written complaint from Balai Chandra Nag and registered Karimpur P.S. Case No.97 of 2002 dated 02.10.2002 under Sections 325/308/34 of the Indian Penal Code.
24. Thus, the prosecution evidence consists principally of the testimony of the injured witness, corroborated in material particulars by PW-1, PW-3 and PW-4, supported by the evidence of PW-6 regarding immediate treatment and by PW-9 with regard to the nature of the injury, while certain omissions

in the investigation and discrepancies elicited during cross-examination constitute the principal features emerging from the defence challenge.

25. The Learned Advocate appearing for the appellant, launched a multifaceted challenge to the judgment of conviction and sentence, contending that the edifice of the prosecution rests upon a frail foundation marked by delayed initiation of criminal proceedings, discordant ocular accounts, infirm medical evidence and investigative omissions of considerable significance. According to learned counsel, these features, viewed in their collective setting, render the finding of guilt incapable of judicial sustenance.
26. The Learned Counsel commenced his assault upon the impugned judgment by drawing attention to the delay in lodging the First Information Report. It was submitted that although the alleged occurrence had taken place on 25th September, 2002, the criminal law was set into motion only on 2nd October, 2002. Such interval of nearly seven days, bereft of any cogent explanation, was argued to have furnished ample scope for consultation, embellishment and reflective deliberation. The earliest version of a criminal occurrence possesses intrinsic value by reason of its spontaneity and proximity to the event. The delay in the present case, according to learned counsel, casts a cloud over the genuineness of the accusations and deprives the prosecution story of the assurance ordinarily accompanying prompt disclosure.
27. Referring to the evidence of PW-1, the de facto complainant, learned counsel contended that the witness vacillated on material particulars and departed from the recitals contained in the written complaint. It was argued that the sequence preceding the assault, the circumstances under which PW-1

arrived at the place of occurrence and the role attributed to the accused persons do not present a harmonious picture. Though PW-1 asserted during cross-examination that he had narrated in the complaint the assault inflicted upon him by one of the accused by fists and blows, the complaint itself remained silent on that aspect. Learned counsel submitted that the omission assumes importance since the written complaint constitutes the earliest account of the occurrence. Reference was also made to the political affiliations disclosed during cross-examination, which, according to the appellant, furnish a background suggestive of partisan hostility and lend credence to the possibility of motivated implication.

28. The evidence of PW-2 was described as possessing no independent probative worth. Learned counsel submitted that PW-2 candidly admitted that he had derived his knowledge from Viswa Bhakta, Thakur Bhakta and other villagers and had not witnessed the occurrence. His testimony, being derivative in character, remained hearsay and lacked the evidentiary strength necessary to furnish corroboration. The learned Trial Court, according to the appellant, fell into error in attaching weight to such evidence while recording conviction.

29. Assailing the testimony of PW-3, learned counsel submitted that substantial contradictions permeate his deposition. The time attributed by him to the occurrence stood at variance with the recital contained in the First Information Report. PW-3 claimed that he too had been assaulted, though neither the written complaint nor the evidence of PW-1 contained any reference to such assault. The Investigating Officer also did not support the

assertion. Learned counsel further highlighted that Krishna Nag, Biren Ray and Manimohan Nag, who allegedly accompanied the injured to the hospital, were withheld from the witness-box, though they appeared to be natural witnesses capable of shedding light on the circumstances surrounding the occurrence. Such omission, according to learned counsel, gives rise to an adverse inference against the prosecution.

30. The testimony of PW-4 was subjected to similar criticism. Learned counsel submitted that PW-4 introduced several features which remained absent from the written complaint and the evidence of PW-1. Though he spoke of blood-stained apparel and blood having fallen upon the ground, the investigating agency neither seized such apparel nor collected blood-stained earth from the place of occurrence. The assertion of PW-4 that he had informed the Investigating Officer regarding the assault upon himself and his son found no reflection in the materials on record. Learned counsel further referred to the political affiliations disclosed by the witness and urged that the possibility of partisan colouring could not be brushed aside.

31. The deposition of PW-5, the injured witness, was also assailed on the ground of material discrepancies. Learned counsel pointed out that PW-5 claimed to have learnt about the incident from his maternal aunt, yet failed to disclose her identity during cross-examination. The said lady was never examined by the prosecution. It was further argued that PW-5 admitted that no scuffle had taken place with the accused persons and stated that PW-1 had not consulted him prior to lodging the First Information Report. According to learned counsel, these features create uncertainty regarding the manner in

which the complaint came to be drafted and whether it faithfully reflected the version of the injured. The claim regarding seizure of blood-stained garments, according to the appellant, also stood at variance with the testimony of the Investigating Officer.

32. The Learned Counsel next adverted to the evidence of PW-6, the proprietor of Aurobindo Pharmacy, and submitted that the certificate issued by him is conspicuously silent regarding the nature, gravity and particulars of the injury. Such omission assumes significance in a prosecution founded upon a charge under Section 307 of the Indian Penal Code, where the character and extent of the injury constitute important circumstances for assessing the requisite intention. According to learned counsel, the certificate furnished by PW-6 does not provide reliable medical corroboration to the prosecution version.

33. Turning to the evidence of PW-8, the Investigating Officer, learned counsel argued that the investigation suffered from serious deficiencies. It was submitted that the medical documents seized during investigation were left in the custody of the complainant, thereby giving rise to doubts regarding their preservation and authenticity. Learned counsel pointed to the divergence between the testimony of PW-7 and the account furnished by the Investigating Officer concerning the former's presence at the medical hall and the recording of his statement. It was further submitted that neither the alleged wooden batten nor blood-stained earth nor the blood-stained garments of the injured were seized. Such omissions, according to learned

counsel, deprived the prosecution of vital corroborative material and introduced a serious infirmity into the investigation.

34. Inviting attention to the testimony of PW-9, the Medical Officer, learned counsel submitted that the medical evidence fails to lend support to the prosecution case. The doctor found the injured conscious and no history regarding the identity of the assailants was recorded in the treatment sheet. The age of the injury remained unspecified. More importantly, the Medical Officer opined that the injury was simple in nature and conceded during cross-examination that such injury might be caused by a fall upon an uneven brick-soled road or even by hurling of brickbats. Learned counsel argued that these possibilities dilute the prosecution narrative and create uncertainty regarding the precise manner in which the injury had been sustained.
35. On the cumulative assessment of these circumstances, learned counsel submitted that the prosecution case stands riddled with discrepancies, omissions and investigative lapses which strike at its very foundation. It was urged that the learned Additional Sessions Judge, Fast Track 1st Court, Krishnagar, failed to appreciate these features in their proper perspective and erroneously recorded conviction under Sections 307/326/34 of the Indian Penal Code. Learned counsel, therefore, prayed for setting aside the judgment and order of conviction dated 11th and 12th October, 2004 and for extending to the appellant the benefit flowing from the deficiencies embedded in the prosecution case.

36. The Learned Advocate representing the State, lent support to the judgment and order of conviction and submitted that the evidence adduced by the prosecution furnishes a consistent and dependable account of the occurrence and establishes the participation of the appellant with the degree of certainty demanded in criminal jurisprudence. According to learned counsel, the materials on record reveal a voluntary act attended with the requisite knowledge and intention contemplated under Section 307 of the Indian Penal Code, though the Court, upon appreciation of the nature of injury, may consider alteration of the conviction to a lesser offence.
37. At the very outset, learned counsel submitted that the essence of an offence punishable under Section 307 of the Indian Penal Code lies not merely in the consequence that follows but in the intention and knowledge accompanying the act. Such intention, he contended, may be discerned from the surrounding circumstances, the antecedent conduct of the parties, the weapon employed and the part of the body chosen for infliction of the injury.
38. Inviting attention to the genesis of the occurrence, learned counsel submitted that the evidence of PW-1 clearly reveals that the parties had engaged in a quarrel during the morning hours of 25th September, 2002 over the issue relating to drying of jute sticks. Though the village elders proposed a settlement through a *salish* to be convened in the evening, the hostility persisted and ultimately culminated in the assault. The previous discord, according to the State, supplied the immediate motive behind the occurrence and constituted the backdrop against which the subsequent events ought to be appreciated.

39. The Learned Counsel further submitted that the conduct of the appellant reflected a conscious awareness of the likely consequences of his act. Armed with a wooden batten, the appellant directed the blow upon the head of the victim, a vital part of the human anatomy. Such deliberate assault, resulting in a bleeding injury, manifests, according to the State, the requisite intention and knowledge necessary to attract criminal liability.
40. Placing considerable reliance upon the ocular testimony, learned counsel submitted that the evidence of PW-5, the injured witness, carries a special evidentiary value. PW-5 consistently stated that while attempting to rescue PW-4 from the assault, he himself became the target of aggression and sustained a bleeding injury on his head by reason of a blow delivered by the appellant with a wooden batten. The testimony of the injured witness, according to learned counsel, receives substantial reinforcement from the evidence of PW-1, who reached the place of occurrence and arranged for immediate medical assistance.
41. The account of the occurrence, it was argued, finds further assurance from the testimony of PW-3, who witnessed the assault upon his father and deposed that when PW-5 intervened, the appellant struck him on the head. Similar support emerges from the evidence of PW-4, who narrated that he had initially been assaulted and that PW-5 sustained injury while endeavouring to rescue him. Learned counsel submitted that these witnesses, though related to one another, remained steadfast with regard to the principal features of the prosecution narrative and their testimony cannot be discarded solely on account of relationship.

42. The Learned Counsel next referred to the medical evidence and submitted that the ocular version receives objective corroboration therefrom. PW-6, who first attended the injured at Aurobindo Medical Hall, found him in a bleeding condition, stitched the wound and referred him to Karimpur Hospital. The testimony of PW-9, the Medical Officer, revealed the presence of a stitched injury measuring approximately one and a half inches on the forehead of the victim. The treatment records and discharge documents, according to the State, lend assurance to the evidence of the eye-witnesses and establish the veracity of the injuries sustained by PW-5.
43. Developing his argument further, learned counsel submitted that the occurrence bears the imprint of deliberation rather than spontaneity. The quarrel which had taken place in the morning over the issue of drying jute sticks had remained unresolved and, several hours later, the appellant, armed with a wooden batten, inflicted a blow on the head of the victim. The choice of weapon and the selection of a vulnerable part of the body, according to the State, reveal a degree of preparation and a conscious determination to cause bodily harm.
44. The Learned Counsel accordingly contended that the prosecution evidence, viewed in its entirety, depicts a wilful and voluntary act of violence, the truth of which stands fortified by ocular testimony and medical evidence alike. The learned Trial Court, therefore, committed no error in accepting the prosecution case and recording a finding of guilt.
45. The Learned Counsel, however, with commendable fairness, submitted that the medical evidence of PW-9 describes the injury as simple in nature. In

such circumstances, should this Court form the view that the ingredients constituting an offence under Section 307 of the Indian Penal Code do not stand fully established, the conviction may appropriately be scaled down to one under Section 324 of the Indian Penal Code. According to the State, while the gravity of the offence may admit reconsideration, the evidence on record leaves no scope for exoneration of the appellant and clearly establishes his complicity in the assault upon the victim.

46. The appeal calls in question the judgment of conviction dated 11th October, 2004 and the order of sentence dated 12th October, 2004 rendered by the learned Additional Sessions Judge, Fast Track 1st Court, Krishnagar, in Sessions Trial No. III of September, 2004 arising out of Sessions Case No.89(7) of 2004 whereby the appellant suffered conviction under Sections 307/326/34 of the Indian Penal Code.

47. The prosecution case traces its origin to a village discord concerning the drying of jute sticks. According to the prosecution, an altercation had taken place during the morning hours of 25th September, 2002. Though the elders of the village proposed settlement by way of a salish, a further confrontation occurred in the afternoon resulting in a bleeding injury on the forehead of Subhas Nag.

48. The Learned Advocate appearing for the appellant, assailed the conviction by drawing attention to the delay in lodging the First Information Report, contradictions permeating the testimony of the principal witnesses, lapses in investigation and the medical evidence depicting the injury as simple in character. Learned Advocate representing the State supported the finding of

guilt though, with commendable fairness, submitted that the medical evidence may warrant alteration of the conviction under Section 307 of the Indian Penal Code to a lesser offence.

49. The charge under Section 307 of the Indian Penal Code rests not upon the consequence of the act alone but upon the intention or knowledge accompanying such act. The prosecution is obliged to establish that the accused acted with such intention or knowledge and under circumstances that, had death resulted, the act would have amounted to murder. The nature of the weapon employed, the severity of the assault, the seat of injury, the attendant circumstances and the conduct of the assailant furnish the indicators from which such intention is to be gathered.
50. Equally, Section 326 of the Indian Penal Code postulates voluntary causing of grievous hurt by dangerous weapons or means. Grievous hurt has been defined under Section 320 of the Indian Penal Code. The existence of any of the eight categories enumerated therein forms the foundation for attracting Section 326 of the Indian Penal Code. In the absence of grievous hurt within the meaning of Section 320 of the Indian Penal Code, the conviction under Section 326 cannot survive.
51. The evidence of PW-5, the injured witness, deserves respectful consideration since an injured witness carries with him a guarantee of presence at the scene. Yet, the testimony of an injured witness is not elevated beyond judicial scrutiny. It must withstand the test of consistency and inspire confidence.

52. PW-5 stated that he had received information from his maternal aunt. Curiously, the identity of such person remained undisclosed. The prosecution chose not to examine the said witness. PW-5 also stated that PW-1 had not consulted him before lodging the complaint. These circumstances impart a degree of uncertainty to the genesis of the written complaint.
53. PW-3 claimed assault upon himself. PW-4 spoke of assault upon himself and his son. PW-8, the Investigating Officer, admitted during cross-examination that such statements had not been made before him during investigation. Though every omission does not attain the stature of contradiction, omissions touching the core of the prosecution narrative acquire significance and affect the evidentiary value of subsequent embellishments.
54. PW-2 admittedly had no direct knowledge of the occurrence. His testimony remains hearsay and cannot furnish substantive corroboration.
55. The delay of seven days in lodging the First Information Report also deserves notice. PW-1 explained that he remained occupied with the treatment of his brother. Such explanation cannot be brushed aside. Yet, the delay deprives the prosecution case of the assurance ordinarily accompanying prompt disclosure and enlarges the possibility of reflection and embellishment.
56. The investigation reveals deficiencies which cannot escape judicial notice. PW-8 admitted that he had neither seized the alleged wooden batten nor collected blood-stained earth. The blood-stained garments spoken of by the witnesses also remained beyond the reach of seizure. Investigation is not the foundation of a criminal trial, yet lapses in investigation assume importance

where the prosecution evidence itself is attended with infirmities. Such omissions deprive the Court of valuable corroborative material.

57. The medical evidence furnishes another significant feature. PW-9 found a stitched injury measuring approximately one and a half inches. The X-ray examination yielded normal findings. The injured remained conscious and was discharged on 27th September, 2002. Most importantly, PW-9 opined that the injury was simple in nature. During cross-examination, he stated that such injury might also be caused by a fall on an uneven brick-soled road or by hurling brickbats.
58. The opinion of the Medical Officer assumes importance while examining the applicability of Sections 307 and 326 of the Indian Penal Code. Neither the nature nor the extent of injury reflects the existence of grievous hurt as contemplated under Section 320 of the Indian Penal Code. Consequently, the ingredients of Section 326 of the Indian Penal Code remain absent.
59. Likewise, the evidence does not reveal repeated blows, persistence of attack or injuries of alarming severity. The prosecution attributes only a solitary blow with a wooden batten. The victim survived with a simple injury and was discharged after treatment. The medical evidence does not reveal fracture or intracranial damage. Such circumstances do not furnish satisfactory material to infer the intention or knowledge contemplated under Section 307 of the Indian Penal Code.
60. The distinction between Section 307 of the Indian Penal Code and lesser offences of hurt lies not merely in the seat of injury but in the mental element accompanying the act. Intention to cause death cannot be presumed

merely because the head was chosen as the part of assault. The Court must seek assurance from the totality of circumstances. In the present case, the occurrence sprang from a sudden village dispute relating to drying of jute sticks. The materials do not reveal preparation of such magnitude or brutality of such degree as would irresistibly lead to the conclusion that the appellant intended to extinguish life.

61. The prosecution, therefore, has failed to establish the ingredients of Sections 307 and 326 of the Indian Penal Code beyond reasonable doubt. Criminal jurisprudence rests upon the salutary principle that suspicion, irrespective of its gravity, cannot substitute proof. Where two views are reasonably possible, the one favourable to the accused must prevail. The benefit flowing from doubt constitutes an integral facet of fair administration of criminal justice.

62. Under such facts and circumstances, the judgment and order of conviction dated 11th October, 2004 and 12th October, 2004 passed by the Learned Additional Sessions Judge, Fast Track 1st Court, Krishnagar, in Sessions Trial No.III of September, 2004 arising out of Sessions Case No.89(7) of 2004 stand set aside.

63. The appellant stands acquitted of the charges under Sections 307/326/34 of the Indian Penal Code.

64. Accordingly, the instant criminal appeal being CRA 702 of 2004 is allowed. The criminal appeal being CRA 702 of 2004 stands disposed of.

65. There is no order as to costs.

66. Trial Court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.
67. 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.)**