

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.R. 1435 of 2012

Sainur Khan & Ors.

-Vs-

The State of West Bengal

For the Petitioner : Mr. Avishek Sinha

For the State : Ms. Faria Hossain
Mr. Anand Keshari

Judgment on : 05.05.2026

Ananya Bandyopadhyay, J.:-

1. The instant revisional application has been filed by the petitioner against the judgment and order dated 28.03.2012 passed by the Learned Additional Sessions Judge, 3rd Court at Bankura in Criminal Appeal No. 21 of 2010 thereby affirming the judgment and order of conviction and sentence dated 31.03.2010 passed by the Learned Assistant Sessions Judge at Bankura in Sessions Case No. 13(3) of 2007 in connection with Sessions Trial No. 06(7) of 2007, arising out of Onda Police Station Case No. 30 of 2006 dated 11.05.2006 thereby affirming the judgment and convicting the petitioners no. 1 to 5 herein under Sections 148/323 of the Indian Penal Code and sentencing them to pay a fine of Rs.1,000/- each in default to suffer simple imprisonment for three months each for the offence punishable under

Section 148 of the Indian Penal Code and to pay a fine of Rs.1,000/- each in default to suffer simple imprisonment for three months each for the offence punishable under Section 323 of the Indian Penal Code and convicting the petitioners no. 6 to 8 under Sections 148/325 of the Indian Penal Code and sentencing them to pay a fine of Rs.1,000/- each in default to suffer simple imprisonment for three months each for the offence punishable under Section 148 of the Indian Penal Code and further sentencing them to suffer simple imprisonment for one year each and to pay a fine of Rs.1,000/- each in default to suffer simple imprisonment for three months each for the offence punishable under Section 325 of the Indian Penal Code.

2. The petitioner underwent trial in Sessions Case No.13(3) of 2007 in connection with Sessions Trial No. 06(7) of 2007, which was initiated on the basis of a written complaint lodged to the Officer-in-Charge of Onda Police Station by one Ali Hossain Mondal, inter alia, alleging as follows:-

"that on 11.05.06 at about 8:00 Hrs the petitioners above named being armed with Lathi, Tangi etc attacked the brothers of the defacto complainant as a result of which they suffered several serious bodily injuries; that the petitioners took away stationery goods from the shop of the defacto complainant and one Akbar Ali Mondal."

3. The petitioner stated the aforesaid complaint resulted in registration of Onda Police Station Case No. 30 of 2006 dated 11.05.06 under Sections 147/148/149/323/326/307/379/506 of the Indian Penal Code.

4. After completion of investigation, the investigating agency submitted charge sheet in the instant case against the petitioners under Sections 147/148/149/ 323/326/ 307/ 379/506 of the Indian Penal Code.
5. Charge was framed against the petitioners under Sections 148/149/326/307 of the Indian Penal Code to which the petitioners pleaded not guilty and claimed to be tried.
6. The prosecution in order to establish its case examined as many as 17 witnesses and exhibited certain documents.
7. The Learned Advocate representing the petitioners submitted as follows:-

- i. *"It is trite law that the conviction given under Sections 323/325/148 of the Indian Penal Code must satisfy the essentials wherein the petitioners gathered forming an unlawful assembly to commit a voluntary act coupled with the intent to cause bodily harm to the victims leading to specific severe injuries. Thereby to prove that the Learned Trial Court and Appellate Court has repeatedly failed to appreciate the material omissions and contradictions at the very inception causing grave injustice, so the evidence of the prosecution witnesses and medical evidence is reiterated herein.*
- ii. *Exaggeration in the FIR: The FIR was lodged by the defacto complainant after a delay of 10 hours from the incident, though no plausible explanation was given by him for the same.*
- iii. *The Appellate Court has rightly pointed out the fact that there was serious deliberate exaggeration of the defacto complainant while stating the manner of assault. He stated that the present petitioners allegedly*

used sword and other deadly weapons to assault the victims. However, the evidence as adduced by the different prosecution witnesses clarified the usage of lathi and other blunt weapons. This found corroboration with the medical evidence. Though no offending weapon was seized. This establishes the very point that the FIR was a clear piece of fabrication designed in order to incriminate the petitioners falsely.

iv. Contradictory Time of Occurrence: The FIR recorded the time of occurrence as 8 a.m. Whereas, PW-4, being an eye witness to the alleged incident mentioned 11 a.m. as the time of occurrence. PW-10, being an injured witness showcased a dilemma of time of occurrence being 8/9 a.m. PW-13, being a chance witness mentioned the time of occurrence as 7 a.m. The injury report of the victim Md. Hossain marked as Exbt-1 mentioned the time of assault as 6 a.m. on the concerned date of Occurrence. The contradictory times mentioned herein created an air of confusion regarding the actual time of occurrence shaking the very foundation of the case.

v. Counter Case: PW-10, the injured eye witness himself acknowledged in his cross examination that the present petitioners filed a case against the witnesses over the self same incident wherein they were cited as accused as pending before the Learned Judicial Magistrate, 5th Court, Bankura. This suggests that it was free fight arising from the dispute among the family members. He reiterated that the dispute was between the brother-in-laws and other members belonging to the same family. This again found corroboration in the cross examination of PW 16, the

defacto complainant. The Investigating Officer, PW-17 admitted about factum of the counter case in his cross examination.

- vi. Interested witnesses: A total of 17 prosecution witnesses were examined, out of which a number of witnesses including PWs 1, 4, 9 and others are interested witnesses and have deposed on the same line in a parrot like manner. The Trial Court observed that most of the witnesses who corroborated the prosecution case were related to the victims. Even the Appellate Court reiterated the fact that the case was based on the oral testimony of the interested witnesses who were inherently related to the defacto complainant. This indicates that all the witnesses including the injured eye witnesses and petitioners were relatives and disputes between one another led to the filing of the present case.*
- vii. Contradictory Versions of the Injured eye witnesses: In the present case PWs 5,6 and 10 remain as the injured eye witnesses. The Trial Court took a note that PW-5 mentioned that an altercation took place between petitioner Mojibur and one Mojibur Bhangi, subsequent to which the present petitioners came armed with lathi and assaulted PW-10 on his left hand and PW 6 on his head. No specific evidence or overt act was adduced by the witness in respect of who allegedly gave the deadly blows on him and the other injured eye witnesses. It has been observed by the Trial Court that PW-10 being a victim himself failed to state the names of the petitioners who assaulted them and caused bleeding injuries. He failed to develop a constructive allegation and merely*

acknowledged that all the petitioners surrounded and assaulted him. Here again no specific overt act was attributed by the witness in respect of who allegedly gave the deadly blows on him and the other injured eye witnesses. These evidences reveal serious material contradiction and absence of specific allegation of overt acts on the part of the specific petitioner.

viii. Non Examination of the Vital Witness: The star witnesses of the prosecution case including the injured eye witnesses namely PWs 5, 9, 10 named one Mojibur Bhangi as the main person who started the altercation with the petitioner Mojibur Khan, though in spite of being the main person behind the inception of the assault, he was not examined. Even PW 10 mentioned that the said person was his brother-in-law. This pinpoints a lacunae in the investigation of the prosecuting agency and the same remained unaddressed even in the appellate judgment.

ix. Medical Evidence: PWs 7 and 14 are the doctors who examined the injured victims. PW-7 examined PW-6 and stated that he suffered minor injuries. He even mentioned that if 8 persons would have allegedly assaulted him with a sharp cutting weapons the injuries would have grievous. He acknowledged that PW-6 stated as the history of assault has been by a few persons by lathi. Though he did not disclose any name of the assailants and just stated that his brother-in-law assaulted him on the date of occurrence at 6 a.m. in the Injury Report marked as Exbt-1. He was admitted in the hospital for a single day which clarifies that the injuries were simple. PW-14 who examined PWs 5 and 10,

acknowledged that neither of the injured witnesses mentioned the name of the assailants to him, (Injury Report marked as Exbt-2). It was further stated that in case if a person falls on a hard surface, injuries of that type might have been caused. This establishes the very fact that the injured eye witnesses did not apprise the names of the assailants at the earliest opportunity before the doctor, but later on developed a falsified story investing enough afterthought. So the injury reports remain as a hollow piece of evidence lacking credibility.

- x. No seizure of offending weapon, wearing apparel: The Trial Court took a note wherein PW-17, the Investigating Officer mentioned that no blood stained wearing apparel was handed over to him during the time of investigation. He further added that no lathi, tangi or rod was seized by him. Non seizure of the offending weapon gives rise to an air of confusion questioning if any weapon was at all used. On usual circumstances if the victims were actually allegedly assaulted by 8 assailants, they would have sustained grievous bleeding injuries, though the doctor did not support the contention and the absence of the wearing apparel indicated a lacunae in the course of investigation on the part of the prosecution.*
- xi. In the backdrop of the aforesaid facts and evidence, the present case was started owing to a family dispute between one of the petitioners and one Mojibur Bhangi, who was not examined. The dispute allegedly turned into a skirmish when it was eventually joined by the other alleged petitioners. The FIR was registered after an inordinate delay of*

10 hours with a malicious motive of incriminating the petitioners falsely. Material contradictions of the medical evidence and failure of the injured eye witnesses in divulging specific overt acts on the petitioners failed to create a strong foundation to the case.

The non seizure of the alleged offending weapons and the lackadaisical attitude of the investigating agency resulted in a wrongful conviction of the present petitioners. The Trial Court and the Appellate Court has respectively relied on the said facts overlooking the legal deformities which had cropped up. At this stage acquittal would be inherently necessary. Thus, the conviction given u/s 323/325/148 IPC should be set aside to meet the ends of law and to avoid gross miscarriage of justice.”

8. The Learned Advocate representing the State submitted as follows:-

- i. *“The present case arises out of Onda Police Station Case No.30 of 2006 dated 11.05.2006 under Sections 147/148/149/323/326/307/379/506 of the Indian Penal Code, 1973. On 11.05.2006 at about 8:00 hours the petitioners Sainur Khan along with seven others allegedly assaulted the victim, with Lathi, Tangi, Rod and attacked the brothers of the defacto complainant, as a result of which they suffered several serious bodily injuries. Consequently, eight accused persons were sent up for trial and were prosecuted under Section 148/149/326/307 of the Indian Penal Code, 1973 and during Session Case No. 13(3) of 2007 and Sessions Trial No. 6(7) of 2007, seventeen prosecution witnesses*

were examined, including the injured persons, the medical officer and the Investigating Officer.

- ii. Subsequently, after considering the evidence on record, the Learned Trial Court was convicted to the accused persons Sainur Khan, Lolo Khan, Parakash alias Prakash Mondal, Tejbul Mondal and Masaarul alias Kamarul Mondal under Section 148/323 of the Indian Penal Code and sentenced them to pay a fine of Rs. 1,000/- each in default to suffer simple imprisonment for three months each for the offence punishable under Section 148 of the Indian Penal Code and to pay a fine of Rs. 1,000/- each in default to suffer simple imprisonment for three months each for the offence punishable under Section 323 of the Indian Penal Code and convicted the Petitioners Majibur Khan, Maijuddin Monadl and Masiaddin was convicted under Sections 148/325 of the Indian Penal Code and sentenced them to pay a fine of Rs. 1,000/- each in default to suffer simple imprisonment for three months each for the offence punishable under Section 148 of the Indian Penal Code and further sentenced them to suffer simple imprisonment for one year each and to pay a fine of Rs. 1,000/- each in default to suffer simple imprisonment for three months each for the offence punishable under Section 325 of the Indian Penal Code.
- iii. It is submitted that the conviction of the petitioner under Sections 148, 323 and 325 of the Indian Penal Code, 1973 stands fully justified as PW- 4, 5, 6, 9, 10, 12, 13 and 16 clearly deposed that the appellant assaulted him with a Lathi, Tangi and Iron Rods resulting in grievous

hurt and such testimony of the injured persons has a strong evidentiary value.

- iv. *It is incorrect that there was no one present at the time of occurrence. PW-2, PW-4 and PW-16 were the eye witness who saw the whole incident. They saw the accused assaulted the Victims with a Lathi, Tangi and Iron Rods. The fact that he also had disputes with the appellant does not make him an "interested witness". It is held by the Supreme Court that "strained relations do not discredit the testimony and that is otherwise natural consistent and trustworthy".*
- v. *The question of personal grudge and enmity is a double edged sword which cut both ways. The incident as proved by the prosecution narrates that said enmity between the parties.*
- vi. *The medical evidence substantially corroborates the assault. PW-7, the first treating doctor who treated the victim PW-6 proved the referral papers and confirmed the presence of grievous hurt and Injury. PW-14 was the second treating doctor who treated the victim PW-5 and Akbar Ali. The nature and severity of the injuries of PW-5 leaves no scope for doubt.*
- vii. *The contention was that the medical documents were improperly exhibited is completely devoid of merit. When the doctors who examined the victim no PW-6, PW-5 and others has deposed and supported the injury, the absence of a formal exhibit cannot override substantive evidence. It is therefore, a settled principle that procedural or technical lapses cannot be permitted, particularly when the oral evidence of the*

medical officer and the injured witness stands clear and consistent. In various judgments it has been held that "insistence on right technicalities cannot override credible, direct evidence which establishes the offense beyond reasonable doubt."

- viii. *PW- 4, 8, 9 and 10 has narrated the names of the accused persons and also identified the accused on dock by the witnesses are 8 in number.*
- ix. *The absence of Seizure weapon (Lathi, Rod, Tangi etc) is immaterial. For conviction under Section 148/ 323/ 325 of Indian Penal Code, 1973 the recovery of the weapon is not mandatory or required as the nature of the injury itself proves the offence committed by the accused. Aslo the Hon'ble Supreme Court has held in one of the judgments that "non-recovery of the weapon is not fatal when there is a direct eyewitness testimony supported by medical evidence".*
- x. *In the circumstances as mentioned above the prosecution has been able to prove its case beyond all reasonable doubts and hence, the criminal revision should be dismissed."*

9. PW-1 deposed he was a resident of village Punisole and was present inside the shoproom of Akbar Ali at the time of the occurrence. According to him, Mojiuddin Mondal along with five to six others, armed with lathis, entered the place and assaulted Akbar Ali. He further stated that the brother of Akbar Ali was also assaulted by the accused persons. The witness claimed that he intervened and separated the parties. He identified the accused persons in Court and stated that the injured persons were subsequently shifted to B.S.M.C. Hospital, Bankura for treatment.

10. During cross-examination, PW-1 admitted that Mojibur Khan and Mojibur Hanif were sons-in-law of Amruddin Mondal and that the second occurrence took place at about 8 a.m. He stated that the incident of “maramari” was completed within a fraction of a second. He candidly admitted that he could not say who assaulted whom or with the aid of which weapon. He further admitted that five to seven persons had gathered at the place of occurrence and he could not disclose the names of the persons assembled there. Though a police outpost was situated near the place of occurrence and the matter had been reported there, he admitted that he did not narrate the incident to the doctor at the hospital. He also admitted that he did not state before police that he had separated the parties or that he had accompanied the injured persons to Govindanagar Hospital. Such statements, according to him, were being made for the first time before Court. He denied the defence suggestion that he was not an eyewitness and that he was falsely deposing due to his relationship with the de facto complainant.
11. PW-2 stated about one year prior to his deposition an occurrence took place at the shop of Abdul Sumon where he had gone for repairing a radio. He claimed that Majbur and ten to eleven others assaulted Abdul Sumon, Akbar Ali and his brothers. The injured persons were thereafter taken to hospital for treatment. He identified the accused persons in Court.
12. In cross-examination, PW-2 admitted he could not recollect the date of occurrence. He stated there were several shops and a rice mill surrounding the place of occurrence. He further stated though people usually moved through the main road, they did not use the road where the occurrence

allegedly took place. He admitted that after the occurrence para people gathered there, though he could not specify their number. He also stated that he reached the place sometime after the occurrence and thereafter returned home. He denied the defence suggestion that he had falsely implicated the accused persons at the instance of the complainant, with whom he was related.

13. PW-3, who was recalled for further examination on 13.06.2008, stated that he was the scribe of the written complaint. According to him, he wrote the complaint as per the instruction of complainant Ali Hossain Mondal and after writing the same, its contents were read over and explained to the complainant who thereafter signed it.

14. During cross-examination, PW-3 admitted the written complaint itself did not mention that the contents were read over and explained to the complainant before signature. He denied the defence suggestion that subsequent facts had been inserted in the complaint in collusion with police officials or that he was falsely deposing against the accused persons.

15. PW-4 deposed one incident of "*marpit*" had taken place in the village about one year earlier at about 8/8.30 a.m. He claimed that while coming out of his house he saw Mojbur Khan, Mojjuddin, Nasimuddin and Kamrul armed with lathis assaulting Akbar Ali Mondal who was sitting in his shop. He identified the accused persons in Court.

16. In cross-examination, PW-4 admitted that he could not recollect the exact date and month of occurrence. He stated that the occurrence took place at a tri-junction and the alleged assault continued for nearly fifteen minutes

during which twenty to twenty-five persons gathered there. He admitted that he could not disclose the names of those assembled. He further stated that Akbar Ali was alone inside the shop at the time of assault and he could not say which particular accused assaulted which part of the victim's body. Significantly, he admitted that he was examined by police after ten to fifteen days from the occurrence. He also referred to a prior free-fight between Mojbur and Monjur and admitted the existence of relationship between the complainant side and Amruddin Mondal, father-in-law of accused Mojbur Khan. He denied the defence suggestion that he was not present at the place of occurrence or that he was falsely deposing owing to his relationship with the complainant.

17. PW-5 stated that on 11.05.2006 at about 8 a.m. an altercation initially took place between Mojbur Bhangi and Mojbur Khan. According to him, Mojbur Khan abused Md. Hossain in filthy language and thereafter the accused persons formed an unlawful assembly and entered the shop where Md. Hossain and Akbar Ali Mondal were present. He alleged that the accused persons assaulted them with lathis causing fracture injury to Akbar Ali on his left hand and injury on the head of Md. Hossain. PW-5 further claimed that when he rushed to the place of occurrence to rescue his brothers, Mojjuddin Mondal assaulted him with a lathi causing fracture injury on his hand and Nasimuddin assaulted him on the backside of his head resulting in another fracture injury. He further stated that the accused persons assaulted his father who was sitting on a taktaposh and that all the injured

persons were treated at Bankura Medical College and Hospital. He identified all the accused persons in Court.

18. During cross-examination, PW-5 admitted that accused Mojbur Khan was his “Bhagnipati” and that both Mojbur Khan and Mojbur Bhangi were married to his sisters. He stated that the occurrence took place at a tri-junction having four shops and a rice mill nearby. He admitted that though several residential houses surrounded the place of occurrence, those houses were situated at some distance from the place of occurrence. He further admitted that though the alleged assault continued for nearly fifteen minutes, only three persons gathered there on hearing hue and cry. Though he claimed that the incident had been reported to the Gram Panchayat, he admitted that he had not narrated the details of assault to the doctor. He further admitted that neither police nor the injured persons seized or produced any bloodstained apparel. He also admitted that he did not state before police that Mojbur Khan had abused Md. Hossain in filthy language. He stated that he had informed police that surrounding people came to rescue them but left out of fear after being threatened by the accused persons. He denied the defence suggestion that the complainant party had gone to the house of Mojbur Khan to assault them and in course of such counter-assault they had fallen down and sustained injuries.

19. PW-6 deposed he was a resident of village Punisole and belonged to a family of eight brothers, namely Abdul Sohan, Akbar Ali Mondal and Anisuddin Mondal amongst others, who carried on business at Punisole. According to him, on 11.05.2006 at about 8 a.m. an altercation first took place between

Mojbur Khan and Md. Hossain Mondal which was initially pacified by local people. Thereafter, Mojbur Khan allegedly returned with seven others armed with lathi, rod and tangi and assaulted Akbar Ali Mondal as well as the witness and others. He stated that Akbar Ali Mondal, Abdul Sohan Mondal and his father Amiruddin Mondal sustained injuries and all of them were treated at Bankura Medical College and Hospital. He identified the accused persons in Court.

20. In cross-examination, PW-6 admitted that Mojbur Khan was the husband of his sister and that their houses stood adjacent to one another. He further admitted that before the occurrence Mojbur Khan and his sister occasionally resided in their house. According to him, the occurrence continued from 8 a.m. till about 8.15 a.m. and upon hearing hue and cry about five to six persons gathered at the spot. Though he stated that several houses existed nearby, he could neither estimate the number of houses nor disclose the identity of the persons gathered there. He further claimed that he had informed the Gram Panchayat regarding the incident and could produce documents in support thereof. He stated that he disclosed before the doctor the names of the assailants and the weapons used. He admitted that the occurrence took place near a tri-junction having four shops nearby and that villagers of Benapara and G.P. office para regularly used the said passage. He further admitted that Mojbur Bhangi was also married to his sister. He stated that bloodstained wearing apparels were handed over to police personnel. The witness denied the defence suggestion that the complainant side had assaulted Mojbur Khan owing to family discord over monetary

issues and that in order to shield themselves from the counter-case they had falsely implicated the accused persons. He admitted, however, that a case arising out of the same incident was pending before the learned 7th Judicial Magistrate, Bankura.

21. PW-7, an Assistant Professor attached to the Surgery Department of Bankura Medical College and Hospital, stated that on 11.05.2006 he examined Md. Hossain who had been admitted to the hospital at about 9.15 a.m. On examination he found tenderness over the left shoulder, right forearm and both thighs. He also noticed an injury mark over the right parietal area and bruise over the left shoulder. According to him, the injury report had been prepared by his junior doctor under his instruction and the same was marked as Exhibit-1.

22. During cross-examination, PW-7 opined that if a person were continuously assaulted for fifteen minutes with tangi and rod, the injuries would ordinarily be grievous in nature. He further stated that if eight persons assaulted another continuously with rods, fracture injuries might result. At the same time, he stated that the injuries noted were unlikely to be caused merely by repeated fall on a hard surface. He admitted that the patient disclosed a history of physical assault by his brother-in-law at about 6 a.m. on the previous day but did not disclose the names of the assailants. He also admitted that the injury report did not specify the weapons used and certain columns relating to final diagnosis remained blank.

23. PW-8 deposed that on 11.05.2006 at about 8 a.m., while searching for his son, he noticed Saimur Khan, Mojbur Khan, Moijuddin, Nasibuddin, Kamrul

and others proceeding with rods and lathis towards the shop of the son of Amruddin. Upon reaching there he found Abdul Sobhan and Md. Hossain lying with bleeding injuries on their heads while Akbar Ali and Amruddin had cloth tied around their hands. He further stated that persons gathered there informed him that the sons of Saimur Khan and their associates had assaulted Abdul Sobhan, Md. Hossain and others. The injured persons were thereafter shifted to Bankura Medical College Hospital for treatment. He identified the accused persons in Court.

24. In cross-examination, PW-8 stated that his son was a student of Class III and he had gone out in search of him as he had not attended school that day. He admitted that several residential houses existed in the locality where he allegedly saw the accused persons armed with rods and lathis. He further admitted that he did not enquire from any person where the accused persons were proceeding with such weapons. Though twenty to fifty persons had allegedly gathered at the place of occurrence, he could not disclose the names of any of them. He admitted that the distance between Bonpara, where he first saw the accused persons, and the place of occurrence was about half a kilometre and that there was a police outpost at village Punisole. He further admitted that he was interrogated by police after two to four days of the occurrence and that Mojbur Khan and Mojbur Bhangi were sons-in-law of the alleged victims. He candidly stated that he could not say who was carrying a lathi and who was carrying a rod. He denied the defence suggestion that he had falsely implicated the accused persons at the instruction of Mojbur Bhangi and Amruddin Mondal.

25. PW-9 deposed that about one and a half years prior to his deposition, at about 8/8.30 a.m., he was present at the tea stall of Ansuddin when an altercation took place between Mojbur Bhangi and Mojbur Khan. Abdul Sobhan, Md. Hossain, Akbar Ali and Amruddin Mondal allegedly intervened and separated them. According to the witness, after about ten minutes Moijuddin, Nasibuddin, Kamrul, Mojbur, Saimur and Ajmal returned armed with lathis and assaulted the victims. He specifically alleged that Nasibuddin assaulted Akbar Ali, Moijuddin assaulted Abdul Sobhan, Mojbur assaulted Amrul Mondal and Kamrul assaulted Md. Hassan. He further stated that Abdul Sobhan sustained fracture injury on his right hand, Akbar Ali sustained fracture injury on his left hand, Md. Hassan received bleeding injury on his head and Kamruddin received injury on his right hand. The injured persons were subsequently taken to hospital for treatment. He identified the accused persons in Court.

26. In cross-examination, PW-9 admitted that he was the brother-in-law of Abdul Sobhan, son of Amruddin. He further admitted that the occurrence took place at a tri-junction near a rice mill and several shops and that the roads were regularly used by villagers for ingress and egress. According to him, both the initial altercation and the subsequent assault continued for nearly fifteen minutes each. He claimed that about thirty to thirty-five persons gathered there on hearing hue and cry and that Ansuddin, Sadek and others were present. He admitted that bloodstained apparels were worn by the injured persons. Significantly, he admitted that he was never interrogated by police and that many of the facts narrated before Court were

being stated for the first time. He nevertheless denied the defence suggestion that the accused persons had never returned armed with lathis or that he was deposing falsely.

27. PW-10, a businessman running a pan stall at Punisole, deposed on 11.05.2006 at about 8/9 a.m. an altercation first arose between Mojbur Bhangi and Mojbur Khan. According to him, Md. Hossain and his father intervened and separated them. After some time, Moijuddin, Mosiruddin, Kamrul, Porka, Mojbur Khan and Saimur Khan allegedly returned armed with rods and lathis and assaulted the victims including Md. Hossain, Abdul Sobhan and Amruddin Mondal. He stated that Akbar Ali sustained fracture injury on his left leg, Md. Hossain suffered injury on his head and Abdul Sobhan sustained fracture injury on his right hand together with head injury. According to the witness, after the assault the accused persons left the place and the injured were shifted to hospital where they remained admitted for about ten days. He identified the accused persons in Court.

28. In cross-examination, PW-10 stated his shop was situated near the Punisole outpost. According to him, the first occurrence lasted for about ten minutes and he did not lodge any report regarding the first altercation before the outpost authorities. He stated that during the second phase of occurrence nearly fifty to sixty persons assembled at the place. He admitted that he did not inform the Panchayat after the occurrence and could not disclose the names of persons from the locality who had gathered there. He specified that accused Moijuddin was armed with a rod while Mosiuddin, Mojbur Khan, Kamrul and Porka carried lathis. He stated that they reached hospital at

about 10/11 a.m. but the matter was not reported before the doctor at the Primary Health Centre. He further admitted that he was the brother of Abdul Sobhan and son of Amruddin and that a counter-case instituted by the accused persons was pending before the learned 5th Judicial Magistrate, Bankura, in which he had also been arrayed as an accused. He admitted the suggestion that in the counter-case allegations had been made that Mojbur Khan used to provide financial assistance to his mother and for such reason the complainant side assaulted the accused persons. He further admitted that Morjina Bibi, wife of Mojbur Khan, was his sister and that Mojbur Bhangi was also his brother-in-law. According to him, the occurrence took place near a tri-junction having several shops and a rice mill nearby, through which villagers regularly passed.

29. PW-10 further stated in cross-examination that he bore no enmity with the villagers. He admitted that he could not say whether the bloodstained wearing apparels of Md. Hossain were handed over to police personnel. He stated that police interrogated him one day after the occurrence. According to him, after the first altercation was separated, Moijuddin, Nosibuddin, Kamrul, Mojbur Khan, Saibur and Ajmal returned after ten minutes armed with lathis and rods. He alleged that Moijuddin assaulted him with a rod and thereafter all the accused persons surrounded and assaulted them with lathis and rods. However, he candidly stated that he could not specify how many blows were inflicted upon him. He denied the defence suggestion that no such altercation had occurred or that the complainant party had falsely implicated the accused persons due to the counter-case.

30. PW-11 deposed that on 11.05.2006 at about 8 a.m., while taking tea at a tea stall, he noticed an altercation between Mojbur Khan and Mojbur Bhangi. Abdul Sobhan, Hasan and Amiruddin allegedly intervened and separated them. After about fifteen minutes, Moijuddin, Kamruddin and Ajmat returned armed with lathis and assaulted Abdul Sobhan and Akbar. The witness stated that he saw no further part of the incident. He identified the accused persons present in Court.

31. In cross-examination, PW-11 stated he could not say when the second occurrence started or how long it continued. According to him, about fifteen to twenty persons gathered at the place during the second phase of occurrence. He denied the suggestion that he was related to Amiruddin though the defence suggested that Amiruddin was his brother-in-law. He admitted that he did not state before police that Chhipi alias Abdul Kuddus and two sisters had entered into a free fight amongst themselves and were thereafter separated by family members. He further admitted that he did not witness who assaulted whom or with which weapon. He stated that an outpost was situated at village Punisole and that though no rice mill stood nearby, several shops were located at the place and villagers of three villages used the said road for passage. He denied the defence suggestion that no altercation had taken place between Mojbur Bhangi and Mojbur Khan or that the accused persons had not subsequently returned armed with lathis. He also denied that he was falsely deposing due to relationship with Amiruddin.

32. PW-12 reiterated the prosecution case in verbatim as an eye witness.

33. PW-13 deposed about one and a half years prior to his evidence, at about 7 a.m., while present at the shop of Sadek, he found Moijuddin Mondal, Nosibuddin Mondal, Mojibur Khan, Saimur Khan, Lolo Khan, Kamrul Mondal, Prakash Mondal and Ajmal Mondal arriving armed with tangi and rods and assaulting Akbar and his brothers. According to him, all three brothers of Akbar were assaulted and sustained injuries on their heads while Akbar also suffered fracture injury on his hand. The injured persons were thereafter taken to Bankura Medical College Hospital for treatment. He identified six accused persons present in Court and stated that he could have identified the remaining accused persons had they been present.
34. During cross-examination, PW-13 stated the distance between the place of occurrence and village Dhanda was about one and a half miles and that he used to sell materials by hawking on a bicycle. According to him, the occurrence started at about 7 a.m. and continued till 7.15 a.m. About thirty persons gathered at the place and several shops were situated nearby. He stated before police that after the occurrence the injured persons were taken to hospital and that the accused persons had assaulted them with rods and tangi. He further stated that police interrogated him on the very date of occurrence. He admitted that Akbar and his brothers sustained head injuries and their wearing apparels bore bloodstains. He denied the defence suggestion that the accused persons had not come armed with iron rods and tangi or that the complainant party had themselves assaulted the accused persons over disputes relating to Mojbur Khan giving money to his mother.

35. PW-14, a retired Medical Officer, deposed on 11.05.2006 he was posted at Bankura Medical College Hospital. According to him, Akbar Ali of village Punisole was admitted under his supervision on the said date. On examination he found fracture injury over the left ulna. He stated that the injury report had been prepared by Dr. Prasanta Mondal under his supervision and that he was acquainted with the handwriting of the said doctor. The attested xerox copy of the injury report of Akbar Ali was marked Ext. 2 collectively.
36. The witness further stated that Abdul Sobhan of village Punisole was also admitted at Bankura Medical College Hospital under his supervision on the same date. On examination he found fracture injury over the right ulna. He proved the injury report prepared by Dr. Prasanta Mondal and the attested xerox copy thereof was marked Ext. 3 series.
37. In cross-examination, PW-14 stated that such fracture injuries might be caused if a person fell upon a hard substance. He admitted that in the injury reports neither the name of the assailant had been mentioned nor any history specifically disclosing the identity of the assailants had been recorded. He further stated that swelling and fracture injuries of such nature could also occur by falling on a hard surface.
38. PW-15 was the Officer-in-Charge of the Onda Police Station who received the written complaint, filled the Formal FIR marked as Exhibit-5 with his signature marked as Exhibit-4(a) and initiated the case being Onda P.S. Case No.30/06 dated 11.06.2006.

39. PW-16 deposed on 11.05.2006 there was an oral altercation between Mojbur Bhangi and Mojbur Khan, following which Mojbur Khan went to the house of his maternal uncle at Bompara. According to the witness, thereafter Moijuddin Mondal, Mosaduddin Mondal, Kamrul Mondal, Prakash Mondal, Ajmal Mondal and others returned armed with lathi, tangi and iron rods. He stated that the accused persons assaulted his brother Akbar Ali, Abdul Sobhan and Amiruddin. According to him, Moijuddin struck Akbar Ali on his left hand with an iron rod, while Sobhan was assaulted with lathi causing bleeding injury on his head. He further stated that his father was also assaulted with a lathi on his hand and that all the injured persons sustained injuries before the accused persons fled away. The witness asserted that he had witnessed the occurrence with his own eyes.

40. PW-16 further stated that he took the injured persons to Bompara Phari wherefrom police referred them to hospital. According to him, the injured persons were admitted at Govindanagar Hospital and after their return from hospital at about 4/5 p.m., a written complaint was lodged before Punisole Phari. He stated that the complaint was written by Asgar Ali Dalal according to his instructions, read over and explained to him, and thereafter signed by him. The written complaint was marked Ext. 4. He identified the accused persons present in Court and stated that the injured persons remained admitted in hospital for about seven days.

41. In cross-examination, PW-16 admitted that he was the brother-in-law of accused Mojbur Khan and that the accused persons had also instituted a counter-case against the injured persons. He stated that the occurrence took

place at a tri-junction at Punisole. According to him, the altercation commenced at about 7.30 a.m. and the assault followed at around 8 a.m. The altercation continued for about ten minutes while the assault lasted for twenty to twenty-five minutes. He stated that hue and cry had been raised and about four to five persons assembled at the place. He admitted that there were several shops surrounding the place of occurrence. According to him, he informed the Panchayat verbally though he could neither disclose the names of the Panchayat members nor state whether they would depose in Court. He admitted that he had not informed police that the Panchayat failed to take action. He further stated that police interrogated him regarding the incident and that the complaint had been lodged at the police station at about 6 p.m.

42. PW-16 further stated that the injured persons had been admitted at the hospital at about 9 a.m. but he had not informed the attending doctors about the history of assault. He denied the defence suggestion that the contents of the written complaint had not been read over and explained to him or that he had signed the same without understanding its contents. He further denied the suggestion that additional facts had subsequently been inserted into the written complaint. According to him, there were about 10,000 to 15,000 inhabitants in village Punisole, most of whom belonged to the Muslim community. He denied the defence suggestion that the accused persons had been falsely implicated or that the injuries were sustained after the complainant party themselves assaulted the accused persons and fell down while fleeing.

43. The witness further stated that bloodstained clothes had been handed over to police during investigation. He denied the defence suggestion that the case had been falsely instituted out of personal animosity arising from Mojbur Khan giving money to his mother.
44. PW-17, the Investigating Officer, deposed that on 11.05.2006 he was posted as Sub-Inspector of Police at Punisole Outpost under Onda Police Station. Upon being endorsed with Onda P.S. Case No. 36/06, he took up investigation, visited the place of occurrence and prepared a rough sketch map with index under his own signature, which was marked Ext. 6 collectively. He examined witnesses and recorded their statements under Section 161 of the Code of Criminal Procedure. According to him, after collecting injury reports and upon completion of investigation, he submitted Charge-sheet No. 55/06 under Sections 147/148/149/323/326/307/506 of the Indian Penal Code. The charge-sheet was marked Ext. 7.
45. In cross-examination, PW-17 admitted that there was a counter-case instituted by the accused persons relating to the same incident. He further admitted that no bloodstained wearing apparels were handed over to him during investigation and that he had not seized any such apparels. He also admitted that no lathi, tangi or rod had been seized in connection with the case. According to him, Punisole Outpost was situated at the centre of the village and the place of occurrence was at a junction connecting three roads regularly used by villagers. He stated that husking mills and several shops were situated near the place of occurrence.

46. The Investigating Officer further admitted that he had not recorded the statement of any doctor under Section 161 of the Code of Criminal Procedure and had not received any complaint or materials from the local Panchayat. He also admitted that no statement of any Panchayat member had been recorded during investigation. He stated that one witness, Nuhuruddin alias Khiti Mondal, had informed him that an altercation had first taken place between Mojibur Bhangi and Mojibur Khan and that thereafter the sons of Amiruddin Mondal intervened and separated them. He denied the defence suggestion that the investigation had not been conducted properly or that charge-sheet had been submitted upon mere table-work. The evidence on record, when appreciated in its entirety and in the backdrop of the settled principles governing criminal jurisprudence, does not persuade this Court to interfere with the order of conviction recorded by the Learned Trial Court under Sections 148, 323 and 325 of the Indian Penal Code. The prosecution evidence, though not free from ordinary discrepancies arising from passage of time and rustic narration, succeeds in establishing the substratum of the prosecution case and the participation of the appellants in the assault beyond reasonable doubt.

47. At the outset, it is required to be borne in mind that the occurrence arose out of a village altercation between parties admittedly known to each other. The incident occurred in broad daylight at a public tri-junction of village Punisole. The evidence of the injured witnesses consistently discloses that after an initial quarrel between Mojibur Bhangi and Mojibur Khan, the accused persons returned armed with lathi, rod and tangi and assaulted the

victims including Akbar Ali, Abdul Sobhan and Amiruddin. The ocular account regarding the assault, the nature of injuries and the identity of the assailants runs with sufficient consistency throughout the prosecution evidence.

48. The defence has attempted to rely upon the existence of a counter-case and the admitted relationship between certain witnesses and injured persons. Mere existence of a counter-case, however, does not by itself efface the prosecution version. In village factional disputes, cross-cases are not uncommon. The Court is required to scrutinize the evidence with care, but once the evidence of injured witnesses inspires confidence and receives corroboration from surrounding circumstances, the prosecution case cannot be discarded solely because the accused side also instituted proceedings arising out of the same transaction.

49. The evidence of PW-16 assumes significance in this regard. He gave a detailed account of the sequence of events beginning from the verbal altercation and culminating in the armed assault. His testimony remained consistent regarding the participation of the accused persons and the assault upon the injured victims. Though he admitted relationship with one of the accused persons and acknowledged the existence of the counter-case, nothing substantial could be elicited in cross-examination to demolish the core of his testimony. His evidence also receives corroboration from the injured witnesses examined earlier, who uniformly stated that the accused persons returned armed and jointly assaulted them.

50. The defence sought to emphasize that several independent persons had gathered at the place of occurrence and yet no truly independent witness was examined. Such omission, in the facts of the present case, does not render the prosecution case infirm. It is well settled that evidence is weighed and not counted. In rural settings, particularly where factional hostility exists, independent witnesses often remain reluctant to involve themselves in criminal litigation. More importantly, where injured witnesses themselves have entered the witness box and their presence at the place of occurrence is beyond dispute, their testimony carries a special evidentiary value.
51. The law consistently accords a higher degree of reliability to the testimony of an injured witness since such witness comes to Court with the imprint of the occurrence upon his person. Unless compelling reasons emerge to reject such evidence, the same ordinarily forms a safe foundation for conviction. In the present case, the injured witnesses sustained proved injuries contemporaneously with the occurrence and their presence at the place of incident cannot be doubted.
52. The medical evidence substantially fortifies the ocular account. PW-13, the retired Medical Officer, proved the injury reports and categorically stated that Akbar Ali sustained fracture of the left ulna while Abdul Sobhan sustained fracture injury over the right ulna. These injuries were contemporaneous with the occurrence dated 11.05.2006. Fracture injury squarely falls within the ambit of grievous hurt as contemplated under Section 320 Indian Penal Code and consequently attracts the penal consequences under Section 325 Indian Penal Code.

53. The defence attempted to derive advantage from the medical witness stating that such injuries could also occur by falling on a hard substance. Such suggestion, in the considered view of this Court, does not dilute the prosecution case. A medical opinion regarding a hypothetical possibility cannot override direct ocular evidence unless the medical evidence renders the ocular version wholly impossible or inherently improbable. No such inconsistency is discernible in the present matter. The medical evidence does not contradict the prosecution version; rather, it supports the nature and situs of injuries spoken to by the eyewitnesses.
54. Equally unpersuasive is the argument that the names of assailants were not mentioned in the injury reports or that no history of assault was furnished before the doctor. Medical documents are primarily prepared for treatment and not for the purpose of criminal adjudication. Omission to mention the names of assailants in injury reports does not corrode otherwise trustworthy ocular testimony, particularly where the occurrence was promptly reported and the injured persons were medically examined without undue delay.
55. The criticism directed against the investigation also does not create any dent in the prosecution case sufficient to unsettle the conviction. It is true that the Investigating Officer admitted that no bloodstained apparels were seized, no weapons were recovered and no Panchayat member was examined. The investigation also appears to have been less than ideal in certain respects. Yet, defective investigation by itself cannot become a ground to discard credible evidence available on record. Criminal trials ultimately rest upon the

quality of evidence adduced before Court and not upon perfection in investigation.

56. The ingredients of Section 148 of the Indian Penal Code also stand satisfied from the evidence on record. The witnesses consistently stated that the accused persons formed an assembly, returned armed with lathi, rod and tangi and jointly assaulted the victims. The assembly was not casual or accidental. The conduct of the accused persons in arriving together with weapons after the initial altercation unmistakably discloses the existence of a common object to commit assault. The weapons carried by them were capable of causing grievous injuries and were in fact used in the course of the assault. The offence therefore clearly transcends the ambit of a simple quarrel and satisfies the statutory requirements of rioting armed with deadly weapons.

57. So far as Section 323 of the Indian Penal Code is concerned, the evidence of hurt suffered by several victims including bleeding injuries and simple injuries remains unshaken. The prosecution witnesses consistently described assaults by lathi and rod. Their testimony finds assurance from the medical evidence and surrounding circumstances. The offence under Section 323 of the Indian Penal Code therefore stands fully established.

58. The conviction under Section 325 of the Indian Penal Code equally does not warrant interference. The prosecution succeeded in proving fracture injuries suffered by Akbar Ali and Abdul Sobhan through unimpeached medical evidence. The eyewitnesses attributed the assault to the accused persons

armed with rod and lathi. The chain of evidence thus satisfactorily establishes voluntary causing of grievous hurt.

59. The discrepancies highlighted by the defence regarding duration of occurrence, number of persons assembled, or precise sequence of assault are natural variations arising from human perception and memory. Such variations, far from rendering the evidence artificial, lend assurance to its natural character. Courts are not to expect photographic precision from witnesses recounting a traumatic village occurrence after lapse of time.

60. Upon an overall assessment of the evidence, this Court finds that the Learned Trial Court approached the evidence with due caution and arrived at conclusions supported by the materials on record. The findings do not suffer from perversity, misapplication of law or improper appreciation of evidence warranting interference in appellate jurisdiction.

61. The prosecution has succeeded in proving beyond reasonable doubt that the appellants, being members of an unlawful assembly armed with deadly weapons, voluntarily caused hurt and grievous hurt to the victims in prosecution of their common object. The ingredients of Sections 148, 323 and 325 of the Indian Penal Code thus stand satisfactorily established.

62. The appeal, accordingly, fails and stands dismissed. The judgment of conviction and order of sentence passed by the Learned Trial Court are affirmed.

63. It transpires from the case record that the petitioner no.1/Sainur Khan expired on 17.02.2015. Thus, the instant criminal revisional application stands infructuous against the petitioner no.1 Sainur Khan. However, the

sentence is modified to the extent of incarceration undergone by other petitioners. The fine is increased to Rs.20,000/- each.

64. Accordingly, the instant criminal revisional application being CRR 1435 of 2012 is dismissed.

65. Case Diary, if any, to be returned forthwith.

66. There is no order as to costs.

67. Let the copy of this judgment be sent to the Learned Trial Court as well as the police station concerned for necessary information and compliance.

68. All parties shall act on the server copy of this judgment duly downloaded from the official website of this Court.

(Ananya Bandyopadhyay, J.)