
(2010) CriLJ 986 : (2010) 1 GLT 459

Gauhati High Court (Agartala Bench)

Case No: None

Narayan Sarkar and
Others

APPELLANT

Vs

State of Tripura

RESPONDENT

Date of Decision: Nov. 7, 2009

Acts Referred:

Penal Code, 1860 (IPC) – Section 148, 307, 326

Citation: (2010) CriLJ 986 : (2010) 1 GLT 459

Hon'ble Judges: H.N. Sharma, J

Bench: Single Bench

Judgement

H.N. Sarma, J.

Being aggrieved by conviction and sentence inflicted upon the appellants by the learned Asst. Sessions Judge, Udaipur,

convicting the appellants under Sections 148/326/307, I.P.C. in Case No. S.T. No. 65(ST)(U)/2000, the present appeal is filed by the convict

appellants. The learned trial Judge convicted the appellants u/s 148, I.P.C. and sentenced them to suffer R.I. for one year, under. Sections

326/149, I.P.C. and sentenced each of them to suffer further R.I. for four years and under Sections 307/141, I.P.C. sentencing each of them to

suffer further R.I. for three years, directing the sentences to run consecutively.

2. Heard Mr. A.C. Bhowmik, assisted by Mr. Arijit Bhowmik, learned Counsels appearing for the appellants and Mr. D. Sarkar, learned Public

Prosecutor for the State.

3. On the basis of an FIR dated 28-3-98 lodged by one Sanjib Das, PW 1 the prosecution case was set in motion wherein it is alleged inter alia,

that on that date in between 9.00 to 9.30 a.m. in the morning the cousin of the informant Sri Sanjeev Das (PW 2) was attacked by five accused

persons named in the FIR with dao, kirish, bomb and chased the victim upto sweet meat shop of Tapan Debnath where he fell down on the

ground in a bleeding condition. In the FIR the names of the appellant Nos. 1 to 5 had been mentioned as assailants. It is further stated in the FIR

that the said accused persons first injured the victim in front of Debnath Electric shop at Salgara Bazar and he was then chased upto the sweet stall

where he fell down and the informant and the eye-witness were present at that time at the sweetmeat shop. The said Information was lodged with

the R.K. Pur Police Station on the basis of which police registered R.K. Pur Police Station Case No. 65/95 under Sections 148/149/326/307,

I.P.C. Upon registration of the FIR necessary process relating to investigation was set into operation.

4. During the course of investigation the I/O examined and recorded the statements of witnesses, seized articles and after procuring the injury

report of the victim and having found a prima facie case submitted charge-sheet against the appellants. Although in the FIR the names of the

appellant Nos. 1 to 5 were mentioned, charge-sheet was submitted against all the appellants including appellant Nos. 6, 7 and 8 as according to

the I/O, sufficient materials were collected against them also during the course of investigation. The learned Magistrate having found the case to be

triable by the Court of Sessions committed the proceeding to the court of the learned Sessions Judge, South Tripura, wherein it was registered as

ST Case No. 65(ST)(U)/2000. After appearance of the accused, the case was transferred to the Court of the learned Asst. Sessions Judge for

necessary disposal. On the basis of the documents and materials submitted with the charge-sheet u/s 173, Cr.P.C. and upon hearing both sides,

the learned trial Judge framed charges against the appellants under Sections 148/149/307/326, I.P.C. and on being explained over to them they

pleaded not guilty and claimed to be tried.

5. In order to substantiate the charges prosecution examined as many as ten prosecution witnesses including the doctor and I/O. The defence also

examined one defence witness, as DW 1.

At the end of trial, learned trial Judge held all the charges as proved and convicted and sentenced the appellants in the manner as indicated above

which is the subject-matter of the present appeal.

6. Mr. Bhowmik, learned Counsel for the appellants made elaborate arguments questioning the legality and justifiability of the conviction and

sentences imposed upon the appellants, pointing out specifically that the learned trial court totally failed to appreciate the evidence of the

prosecution witnesses in its proper perspective and mis-applied the provisions of the penal sections with which the appellants are charged and

prayed for their acquittal. Mr. D. Sarkar, the learned P.P., however, supporting the impugned judgment, submitted that the prosecution, in the

instant case, has been able to prove all the necessary ingredients of the offences by clear, cogent and reliable evidence and accordingly no

interference is required in this appeal.

7. Submissions of the learned Counsels received due attention of the Court. Both the learned Counsels led me extensively to the evidence of

prosecution witnesses and materials available on record in support of their respective contentions.

8. Now let us consider the statements of witness adduced in the case by the parties for effective appraisal of the contentions made by the learned

Counsels.

The informant Swapan Das was examined as PW 1. He deposed that he lodged the FIR which is proved as Ext-1. The FIR was not written by

him and he does not remember through whom he got it written. The injured was his cousin and the time of occurrence was at about 9 to 9.30 a.m.

He was in the market and at that time the injured ran to the sweet stall of Tapan Debnath with bleeding injuries and the accused were running after

him. He stated that the accused Narayan Sarkar had a kirish in his hand. The accused Tahir Miah had dao and accused Chandun Miah had a

bujali in his hand, others had dao and lathi in their hands but he could not remember specifically as to what weapon was in whose hand. He further

stated that some of them were inflicting blows with dao and some were inflicting lathi blows from the backside of the injured. He himself, Babul

Naha, Narayan Sarkar, Niranjana Dhar and others opposed the miscreants. They took the injured to hospital in a senseless condition and himself,

Babul Naha, Bhachu Miah and Badal Sheel took the injured to the hospital in an autorickshaw. He heard from Kanu Debnath that the accused

persons attacked the injured in front of his shop. He further stated that the sweetmeat shop is about 150 cubits away from the shop of Kanu

Debnath and that the injured sustained injury on his left hand, right hand, left hand side of the back and on the face. In cross-examination, he stated

that he is an ordinary supporter of CPI (M) party. He denied the suggestion as because he is the worker of the CPI (M) party, he deposed against

the members of the rival political party.

The injured Sanjib Das was examined as PW 2. In his deposition he stated that at the time of occurrence he went to the electric shop of Kanu

Debnath and he paid electric charges to him. All of a sudden the accused Narayan Sarkar attempted one blow on him with kirish, and he resisted

and got cut injury on his right hand. Just at that time accused Tahir Miah inflicted dao blow on his left side, he resisted and sustained cut injury on

his left wrist cutting the bone. Then Chandan Bhowmik inflicted a blow on him with Bhujali and he fell down on the ground. He came out of the

shop with bleeding injuries and all the accused persons started to inflict him with lathi and dao at random in front of the shop of Kanu Debnath. He

rushed inside the bazaar and entered into the sweet stall of Debnath and while he was turning all the accused persons attacked him with lathi, dao,

knives on his head and backside of his body at random, as a result of which he sustained bleeding injuries over his body, i.e. on the backside, head

and face. Seeing the bleeding he became senseless and he regained his sense in hospital only. He was treated in the Udaipur Hospital for 29 days.

He took admission in GB hospital, Agartala, where he was treated for 7 to 8 days and the screws in his hand were removed there. In cross, he

stated that he read up to class XII and was falsely implicated in the GR case No. 156/96 in which he was acquitted. He stated that to the north of

the Electric Shop there is a grocery shop of Narayan Karmakar in the south there is a rice mill at a little distance. The rice mill belongs to Bijon

Bhowmik. He denied the suggestion that he played gambling in the fair taking electric connections from the shops of others. He stated that the

accused persons opened shop of gambling in the fair and as per the decision of the mela committee as a volunteer, prevented the accused. He

denied the suggestion that he created trouble in the fair and for that he was assaulted by the people of the bazaar.

9. PW 3 is one Bachu Miah who deposed inter alia that on the date of occurrence he and Nikhil Debnath (PW 4) was in the Panchayat Hall at the

relevant time. At that time. Narayan Sarkar, Taher Miah and Chandan Bhowmik started inflicting blows upon PW 2 (the injured) in the shop of

Kanu Debnath. Hearing shout of the injured they witnessed the occurrence through the backside window of the Panchayat Hall which is 20 to 25

cubits away to the north of the shop. Then the injured started shouting for help and rushed towards the market and the accused Pijush Das,

Muslem Miah. Jagadish Das and Tapan Debnath were chasing the injured and were inflicting blows on him with lathi and dao. He identified the

accused in the dark. They chased the injured to the sweet stall of Tapan Debnath. While the accused left the market they went to the stall of Tapan

Debnath and found the injured in a senseless condition and they took him to hospital in an autorickshaw. He stated that there was a bujali in the

hand of Chandan Bhowmik, Kirish in the hand of Narayan Sarkar and dao in the hand of Taher Miah and the other accused persons carried dao

and lathi and he could not state specifically as to what weapon were in whose hand. He further stated that on the previous night of the incident, the

fair which was celebrated there, ended. In cross he stated that he himself and Nikhil Debnath were the only persons in the Panchayat Hall at that

time. He denied the suggestion that he was not present in the Panchayat Hall or did not see the accused persons assaulting the injured.

PW 4 is Nikhil Debnath. He corroborated the statement made by PW 3 and both of them saw the occurrence from the panchayat office through

the window. Some suggestions were also given to PW 4 to which he denied. He further denied that due to political enmity he deposed against the

accused.

PW 5 is one Badal Shil whose evidence go to show that on the date and time of occurrence he was going from his house to the bazaar. On

reaching to the electric shop he saw 8 persons assaulting PW 2 inside the electric shop and those persons were eight in numbers and they were

running after the injured and were inflicting blows with dao and lathi etc. He saw bujali in the hand of Chandan Bhowmik, Kirish in the hand of

Narayan Sarkar and dao in the hand of Taher Miah and the other accused persons carried dao and lathi but he could not specifically say as to who

carried what weapons. He denied the suggestion that he was an active member of the CPI(M) party and he has deposed falsely as required by

police.

PW 6 is Tapan Das whose evidence is of no help to the prosecution.

PW 7 is Rafiqul Islam who stated inter alia that on the date and time of occurrence he went to Bazaar to sell vegetables and while he was taking

tea in a shop in the bazaar he heard hue and cry and coming out he saw the injured with bleeding injuries and the accused persons were chasing

and inflicting blows on the victim. He saw bhujali in the hand of Narayan Sarkar and dao in the hand of Taher Miah and dao and lathi in the hand

of others. The people of the market opposed, the accused was taken to Udaipur hospital in an autorickshaw. He further stated that he learnt from

Nikhil Debnath that the accused persons first attacked the injured in Debnath electric shop. In cross he admitted that he was convicted in a criminal

case and sentenced to pay a fine of Rs. 200/- but the appeal against the same is pending. He further stated that he failed in the madhyamik

examination three years ago and thereafter never appeared again. He admitted in his statement to the effect that he learnt from Bachu Miah and

Narayan Sarkar about the attack of Sanjib Das inside the Debnath Electric Shop has not been recorded by police u/s 161, Cr.P.C.

PW 8 Babul Naha deposed inter alia that on the date and time of occurrence he was taking tea in the sweetmeat shop of Tapan Debnath along

with Niranjan Dhar and hearing hue and cry saw that the injured was coming with bleeding injuries and entered into the shop of Tapan Debnath

and the accused persons were chasing him armed with dao and lathi etc. He saw Niranjan Sarkar with Kirish in his hand and dao in the hand of

Taher Miah and Bhujali in the hand of Chandan Bhowmik and lathi in the hand of Tapan Das. He opposed Niranjan Sarkar and other accused

persons were also opposed by him in front of the sweetmeat shop and then the accused persons went away. The injured was taken to hospital

with the help of PWs Bachu Miah, Swapan Das, Badal Shil and others. In cross he stated that he does not know that after Ratiranjan Das or his

two sons namely Pijush Das and Jagadish Das were now supporters of Trinamul Congress. He also pleaded his ignorance as regards the other

accused persons being the supporters of Trinamool Congress.

PW 9 is the Doctor who examined the injured Sanjib Das (PW 2). In his deposition he stated that at the relevant time he was serving in the Tripura

Sunderi District Hospital wherein the, injured was attacked in the said hospital on 28-9-09 at 11 p.m. and was discharged on 29-9-09. On

examination of the victim he found the following injuries on his person.

1) Sharp cut wound over the lateral aspect of left fore-arm just above the wrist 3" x 1½" sharply cutting the lower 1/3rd of ulna and flexor muscles

and tenders of left forearm.

2) sharp cut wound over the palmar aspect right wrist and forearm 2" x 1½" x 1½".

3) stitched wound over chin

Injury No. 1 is grievous in nature, caused by sharp cutting weapon, time of injury--was fresh.

Aforesaid sharp cutting weapon may be anything with sharpened/edge. My report is identified and marked as Exbt. P-2 and my signature in it is

identified and marked as Extb. P-2/1.

PW 10 is the I/O who investigated the case and submitted the charge-sheet against the accused persons. He stated that upon receipt of the FIR,

Ext-1 R.K. Pur P.S. Case No. 66/95 was registered and he was entrusted with the job of investigation. He investigated the case, seized articles,

visited the place of occurrence, prepared sketch map of the site as per Ext-P3 and recorded the statements of witnesses u/s 161, Cr.P.C. and

after completion of the investigation and collecting the injury report of the accuseds submitted charge-sheet against them. In his cross, he stated that

he recorded the statement of Kanailal Debnath who was an eyewitness to the occurrence. He also recorded the statement of Dipen Debnath who

was an eye-witness. He admitted that there are some more shops which have not been recorded in the sketch map. He further stated that the

statement of 13 witnesses who were examined by him were not recorded nor he examined anybody from the bazaar committee.

The circumstances that appeared against the accused persons from the statement of the PWs were put before them in their examination u/s 313,

Cr.P.C. but they denied the same. The accused appellants Pijush Das, Tapan Das,, Muslem Miah, Niranjana Sarkar and Jagadish Das have taken

the specific plea that the PWs and the injured are supporters of CPI (M) party whereas the accused persons are supporters of Congress party and

due to political rivalry they have been falsely implicated in this case.

10. DW 1, Sri Nikhil Chandra Bhowmik examined by the accused in their defence that the prosecution witnesses are active workers of CPI (M)

party except the doctor and the I/O. Most of the witnesses are involved in different criminal case in the locality and to that effect he produced

documents relating to the cases faced by them as Ext-B series. In cross, he stated that these witnesses are seen in the locality in attending meetings

and delivering lectures.

11. The learned trial Judge on the basis of the aforesaid evidence and materials convicted the appellants u/s 148, I.P.C., 326/149, I.P.C. and 307.

I.P.C. Accordingly it is to be considered whether the ingredients of the aforesaid sections of the Penal Code could be proved by prosecution

against the appellants beyond all reasonable doubt to attract the conviction and sentence inflicted upon them.

12. Let me first consider how far prosecution has been able to prove charge u/s 148, I.P.C. In order to prove an offence punishable u/s 148 the

following ingredients are required to be satisfied--

- i) The accused must be a member of an unlawful assembly;
- ii) he must have used force of violence in prosecution of the common object of the assembly;
- iii) he must be armed with deadly weapon or with anything, which when used, as a weapon of offence is likely to cause death;

In order to prove the offence prosecution is required to prove the ingredients of rioting as contained in Section 146, I.P.C. which are as follows:

- i) assemblance of five or more persons have committed an offence;
- ii) that such assembly was unlawful when it was found or subsequently became unlawful and having one of the five objects specified in Section 145;
- iii) that such object was the common object of those accused composing such assembly;

- iv) that the accused or any member of such unlawful assembly used force or violence;
- v) that such force or violence was used in prosecution of common object.

Apart from the aforesaid ingredients of Section 146, I.P.C., in order to attract the offence u/s 148, I.P.C. prosecution is further required to prove

that the accused was armed with deadly weapon or with something which is likely to cause death when used as weapon of offence.

13. While framing charge against the accused persons the learned trial Judge was required to set particulars as to time, place and person against

whom or in respect of which it was committed which were reasonable sufficient to give the accused a notice of the matter with which he is charged,

in terms of Section 212 of the Cr.P.C. But the charge framed for alleged commission of offence u/s 148, I.P.C. Such vital particulars are not to be

found.

From the perusal of the prosecution witnesses, I find that the aforesaid ingredients as required to be proved for conviction u/s 148, I.P.C. could

not be proved by them. None of the prosecution witnesses deposed that the accused formed an unlawful assembly of five or more persons and in

prosecution of the common object of the assembly the injured was assaulted. In the absence of proof of these ingredients by prosecution, the

charge u/s 148, I.P.C. cannot be held to be proved under presumption. Accordingly, the charge u/s 148 is false.

14. Turning to the conviction u/s 307, I.P.C. which was found to have been committed by all the accused persons, let us see the ingredients of

Section 307, I.P.C.

In order to prove an offence u/s 307 prosecution must prove--i) that the accused attempted to cause death of the attacked person; ii) the accused

committed such overt act in making his attempt to cause such death; iii) that such act was done with intention of causing such bodily injury by the

accused knowing that it is likely to cause death or sufficient to cause death. Thus the accused in order to attract the provision of Section 307,

I.P.C., the accused is shown to have attempted to cause death by doing such act which is known to him or seem to be dangerous or must cause

death or such bodily injury as likely to cause death.

In order to attract Section 307, I.P.C. it is necessary to establish that if the victim would have met his death, the offence would have been u/s 302,

I.P.C. Thus from the ingredients of Sections that the actus reus (the act) and the mens rea (the intention) of the accused is required to be proved.

The Apex Court in the case of Sarju Prasad Vs. State of Bihar, has categorically held that to attract the provision of Section 307 it is necessary for

the prosecution to establish that the intention of the accused was one of the three kinds as mentioned in Section 300, I.P.C.

Thus the intention to cause death of the attacked victim is the basic ingredient in order to attract the provision of Section 307, I.P.C. and this

burden of proof squarely lies upon the prosecution.

A close scrutiny of the evidence of prosecution witnesses as highlighted above do not disclose that prosecution even made any attempt to prove

such intention of the accused persons, far less to prove. Mr. Sarkar, the learned P.P. though made a feeble attempt to show from the evidence of

PW 9, the Doctor as regards proof of those ingredients, referring to the nature of injury but upon proper appreciation of the evidence of PW 9, we

find that no such intention to cause death could be proved by prosecution. PW 9 only proved the injuries sustained by the victim and nothing more

than that. The impact of such injuries has already been spelt out by the Doctor. u/s 307, I.P.C. apart from the injuries something more would be

necessary to prove the intention of the accused. However in appropriate cases even without inflicting the injury such intention can be proved.

15. Above being the factual position, I do not find that the prosecution could establish by clear, cogent and impeachable evidence the necessary

ingredients of Section 307, I.P.C. against the accused appellants.

The learned trial Judge also found the accused persons to have committed the offence u/s 326/149, I.P.C. and inflicted sentence upon them on that

count.

Now let us consider how far prosecution could prove the charges under the aforesaid two penal sections against the accused appellants. In order

to rope the accused u/s 149, I.P.C. prosecution must establish that the accused were members of unlawful assembly, as defined u/s 141, I.P.C.

objecting to the submission of Mr. Bhowmik, learned Counsel for the appellants in this regard, the learned P.P. submits that the evidence of

prosecution witnesses clearly disclose that the accused persons being eight in numbers were more than five and their common objects were to

commit mischief or offence u/s 326/307 attracting ""Clause 3rd"" as defined u/s 141, I.P.C. and as such they would be liable u/s 149, I.P.C. It is

further submitted that the statements of the doctor, PW 9, and the injured (PW 2) are sufficient enough, to come to a conclusion that prosecution

was successful in proving the offences u/s 149/326, I.P.C., apart from the statements of PWs 1, 3 and 4. The aforesaid contention has been stiffly

resisted by Mr. Bhowmik.

16. The I/O started the investigation upon receipt of the FIR on the same date. The FIR, Ext-1 was lodged on the same day within about two

hours of the occurrence. The FIR was lodged by PW 1 who described himself as an eye-witness. Close scrutiny of the FIR disclose that although

the same was lodged by one of the eye-witnesses, that is the PW 1, it does not contain the names of all the accused persons. It contains the names

of the accused Nos. 1 to 5 only. There is no explanation as regards the omission of the names of the other three accused, although the same was

lodged by one of the eye-witnesses immediately after the occurrence. In the FIR the name of the accused appellant No. 4 Jagadish Das was

initially written as Jahar Das but later on the name of Jagadish Das was inserted as accused appellant No. 4 by cutting the name Jahar. Similarly the

name of Pijush Das is inserted by different ink in a different coloumn breaking the seriatum of the names in the FIR. The most striking feature

noticed in the FIR is that after the seal and signature of the O/C in the FIR with his endorsement dated 28-3-99 another statement is found below

the endorsement of the O/C which disclose that prior to the commission of the offence disclosed in the first part of the FIR, the accused named in

the FIR attacked the injured in front of the Debnath Electric Shop. In the FIR four persons have been cited as eye-witnesses, namely Nirranjan

Das, Babul Naha, Madan Debnath. Narayan Chandra Karmakar. But it is found that out of those named eye-witnesses only Babul Naha was

examined and there is no explanation from the prosecution as to why the statements of the other three eye-witnesses were not produced as

witnesses in the Court. It is again an important feature in the FIR that both the accused Jagadish Das and Pijush Das are sons of one Ratirranjan

Das and it comes out in evidence that Ritaranjan Das though was initially a supporter of CPI (M) has now become a member of Trinamul

Congress and has a political rivalry with the prosecution witness and to harass him, the names of both of his sons were recorded at a later point of

time in the aforesaid manner. The effect of the above infirmities in the FIR referred to by Mr. Bhowmik is discussed at a later stage of this

judgment.

17. From the evidence of prosecution witnesses we find that while the victim PW 2 went to the Debnath Electric Shop to make some payment and

he was sitting inside the shop house, the accused persons attacked him with dao, kirish and lathi; although in the FIR there is also a reference of

"bomb" used by the accused persons none of the PWs has mentioned about use or carrying any such bomb by the accused in their statement.

From the statement of the prosecution witnesses including the injured himself it is seen that all of them have given an identical statement that the

accused Narayan Sarkar had kirish in his hand whereas, Taher Miah had dao and Chandan Bhowmik had bujali in their hands. There is a general

statement as regards the other accused to the effect that they carried dao and lathi but none of the witnesses could state as to what weapon was

carried by each of them. PWs. 1, 3, 4, 5, 7 and 8 claim to be the eye-witnesses to the occurrence, out of them PWs 7 and 8 claim that they saw

only the subsequent part of the incident to the effect that the accused persons chased and assaulted the injured running through the market to the

sweetmeat shop and they are not witness to the first part of the incident that alleged to have occurred in the Debnath Electric Shop. It is found from

records that as regards the first part of the occurrence that the incident took place inside the Debnath Electric Shop. Both PWs. 4 and 5 claimed to

have seen the occurrence from the panchayat office which is stated to be 25/30 cubits away. PW 5 specifically states that the occurrence took

place inside the electric shop.

The sketch map, prepared by the I/O discloses a vital clue to unearth the truth in this case. From the examination of a sketch map which was

exhibited as Ext-P 3, it is found that the point (A) is the Electric Shop whereas Point (E) is the Panchayat office. It is seen from the Sketch map

that in front of the Panchayat office Point (A 23) is the main road to the market whereas Point (Y) is the market road through which the accused

ran to the sweetmeat shop at Point (T). Considering the distance from the Panchayat office with the intervening market road and existence of

different shops however, apparently obstructing the view from the Panchayat office, and the part of the occurrence having been taken place inside

the shop at Point (A) there arises a grave doubt as to the veracity of the statements of the PWs. 4 and 5 and their claim to witness the occurrence.

PWs 4 and 5 also claimed to have seen the subsequent part of the occurrence namely chasing of the victim by the accused persons through the

market road-Point (Y) in the Sketch Map which is again not possible in view of the intervening shop house at Point (A), (B), (C) and (D) and in

view of these inherent infirmities and improbabilities. I find it extremely difficult to rely on the statement of the PWs. 4 and 5.

18. Let us now compare the statements of the other PWs with the injuries sustained by the victim. From the evidence of the doctor, PW. 9, it is

found that the victim received three injuries out of which injury No. 1 is grievous one. Evidence of the PWs are that the accused Taher Miah had a

dao in his hand and injury No. 1 is stated to have been inflicted by Taher Miah which corresponds to the medical evidence. Similarly, the injury

No. 2 corresponds to the weapon carried by the accused Narayan Sarkar, the injury No. 3 which is a stitched wound over the chin of the accused

does not corresponds to the injury stated to have been inflicted by the accused Chandan Bhowmick.

Although there is a general statement about the inflicting injury by the other accused person including the accused Nos. 4 and 5, no such injuries

are found in the evidence of the doctor. Had there been other injuries on the body of the accused, the same would have been reflected in the

medical report, the accused being subjected to medical treatment immediately after the occurrence.

19. In the instant cases, it is found that although the major part of the incident took place inside the electric shop of Kanulal Debnath who saw the

incident from a very close proximity, prosecution did not examine him. Similarly, prosecution had chosen not to examine the eye-witnesses

mentioned in the FIR namely Niranjan Dhar, Madan Debnath and Narayan Chandra Karmakar. Even the witnesses named in the charge-sheet

were also not examined. The doctor, PW. 9, deposed that neither the bed-head ticket on the basis of which the injury report was prepared by him

nor other medical documents was produced by prosecution. However, the accused has not denied the occurrence or injuries sustained by the

victim.

20. From the discussions made hereinabove, it is found that the FIR though was filed immediately within two hours of the occurrence, it is full of

exaggeration and interpolation at various places. The name of the accused Nos. 4 and 5 have been inserted only due to political rivalry with their

father Ritaranjan Das. Mr. Sarkar, the learned P.P., in his usual fairness, also has not ruled out the possibility of political rivalry in this case which is

elicited by defence. From the examination of the I/O or PW1, it is not found as to how certain statements could be written in the FIR after making

the endorsement by the O/C in the FIR putting his signature. Prosecution is silent about this aspect altogether. That apart it is also a mystery as to

why the informant, the eye witness failed to divulge the names of the other accused in the FIR. In this connection reference of the case made by Mr.

Bhowmik reported in K. Ashokan and Others Vs. State of Kerala, has got much relevance. Mr. Bhowmik has also referred to the decision of the

Apex Court reported in State of Haryana Vs. Shibu @ Shiv Narain and Others, wherein the Apex Court endorsed the view of the High Court as

regards the improbability of the prosecution case, in view of the interpolation in the FIR as well as the non-mentioning of the names of the accused

persons in the FIR lodged by the eye-witnesses to the occurrence has also much relevance with the present case. The learned P.P. submits that the

FIR not being a substantiate evidence, if the prosecution can prove the case by clear, cogent and impeachable evidence the conviction can be

sustained dehorse the statement made in the FIR. Regarding non-examination of material witnesses Mr. Bhowmik refers to the decision of the

Apex Court rendered in Sohan and Another Vs. State of Haryana and Another,

21. Upon careful and close scrutiny of the prosecution witnesses it is found that the witnesses unfold two parts of the occurrence that took place

on 28-3-99, as a result of which PW 2 was injured. As regards the first part of the occurrence the incident that have taken place inside the electric

shop except the evidence exhibited by PWs. 1 and 2 there is no clear, cogent and impeachable evidence on record. As regards the second part of

the incident, i.e., the chasing of the victim by all the accused persons it is found that there is no evidence in that regard. There is no indication as to

when the other three accused persons joined with the earlier party. Insertion of the name of accused Nos. 4 and 5 in the FIR appears to be at a

later point of time. The medical evidence is absolutely silent as regards the severe blows and attack given by the accused persons in the subsequent

stage while they assaulted the victim by chasing. Accordingly, the second appeal of the occurrence is highly improbable and prosecution could not

prove the same by any evidence worth the name.

22. As regards the first part of the occurrences, I find that the evidences of the injured PW. 2 read together with the evidence of the doctor, PW-

9, it is found from the sharp cut wound over the lateral aspect of left forearm just above the wrist-3''' x 1½''' sharply cutting the lower 1/3rd of ulna

and flexor muscles and tendons of left forearm was inflicted by the accused Taher Miah. The injury No. 2 is a sharp cut wound over the palmar

aspect right wrist and forearm of the victim inflicted by Niranjana Sarkar with knife which is stated to be simple in nature. I also find from the

evidence of these witnesses that the overt act alleged to have committed by the accused Chandan Bhowmik do not tally with the medical evidence

and if the statement of the PWs with regard to accused Chandan Bhowmik is accepted to be correct that belies the medical evidence. The injury

No. 3 is found to be simple one.

23. In view of the above discussions, I hold that the prosecution has hopelessly failed to prove the charges levelled against the accused appellants

namely Jagadish Das, Chandan Bhowmik, Pijush Das, Tapan Das, Moslem Miah and Santosh Sarkar and accordingly they are acquitted of the

charges.

The accused Taher Miah found to inflict grievous injury upon the victim, he is convicted u/s 326, IPC and sentenced to undergo R.I. for 2 years

and pay fine of Rs. 1,000/- in default further R.I. for one month. The accused Niranjana Sarkar is convicted u/s 323, IPC and sentenced to pay fine

of Rs. 2,000/- in default to undergo R.I. for one month. Both the accused are directed to surrender before the trial Court to serve out the sentence

so imposed. The conviction and sentence imposed upon them by the learned trial Judge stands altered and modified accordingly. The period

undergone by set off.

24. In the result the appeal is allowed in part to the extent indicated above.

25. Send back the LCRs forthwith.