IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble **Justice Prasenjit Biswas**

C.R.A. 144 of 1988

Bishnupada Choudhury & Ors.

-Versus-

The State of West Bengal

For the Appellants : **Mr. Kallol Kumar Basu,**
Mr. Anindya Sunder Das,
Md. Jannat UL Firduas,
Mr. Rajsekhar Hota,
Mr. Suman Haldar.

For the State : **Mr. Abishek Sinha,**
Mr. Tirupati Mukherjee.

Hearing concluded on : **18.12.2025**

Judgment On : **13.02.2026**

Prasenjit Biswas, J:-

1. This appeal is directed against the impugned judgment and order of conviction dated March 30, 1988 passed by the learned Additional Sessions Judge, Midnapore in connection with Sessions Trial Case No. 13th April, 1987.

2. By passing the impugned judgment, these appellants were found guilty for commission of offence punishable under Sections 147, 304 Part-I/149 of the Indian Penal code and they were sentenced

to suffer rigorous imprisonment for five years along with payment of fine of Rs. 1000/- and in default of payment of fine to undergo further rigorous imprisonment for one year.

3. Being aggrieved by and dissatisfied with the said impugned judgment and order of conviction, these present appellants have preferred this instant appeal.

4. The prosecution's case, in a nutshell, is as follows:

> *"The present case originated on the basis of a complaint lodged by the de facto complainant, who is the wife of the alleged victim. In her complaint dated 11.06.1985, she stated, interalia, that her husband, the victim, had been summoned to a meeting held at the Sripur Gangcha Club Ghar. Another individual, one Ganesh Santra, was also called to the said meeting through the accused persons, namely Khandu Bagdi and Madhu Choudhury. According to the written complaint, during the course of the meeting, the victim, Madhusudan Garai, along with Ganesh Santra, was allegedly found guilty of involvement in an illicit affair concerning a woman. The complaint further states that upon hearing the alarm raised by the victim, the de-facto complainant immediately rushed to the scene and discovered that her husband was being mercilessly beaten by villagers. As a*

consequence of the assault, the victim became nearly unconscious. The complainant alleged that the assault was perpetrated by the accused persons named in the First Information Report (FIR). Subsequently, the injured victim was taken to the hospital with the assistance of local residents. The written complaint, prepared by one Sudhangshu Bera on behalf of the de-facto complainant, was lodged with the police on the morning following the incident. Pursuant to the complaint, the concerned police station registered a case against the appellants under Sections 147, 149, 341, and 325 of the Indian Penal Code, thereby initiating criminal proceedings. After the completion of investigation, the prosecuting agency submitted a charge-sheet against the accused persons. In the charge-sheet, the accused were formally charged under Sections 147, 149, 323, and 304-PartI of the Indian Penal Code, setting the criminal law in motion and framing the foundation for the trial."

5. In the present case, the prosecution, in order to substantiate its case, examined as many as thirteen (13) witnesses and also tendered several documents which were duly marked as exhibits on its behalf. Through these oral and documentary evidences, the

prosecution sought to establish the charges levelled against the accused persons.

6. On the other hand, it is evident from the record that the defence did not adduce any evidence, either oral or documentary, in support of its case. No witness was examined on behalf of the defence, nor was any document produced to rebut or discredit the prosecution's evidence. Thus, the defence case rests solely on cross-examination of the prosecution witnesses and the suggestions put forth during trial.

7. Mr. Kallol Kumar Basu, learned Advocate appearing on behalf of the appellants, has strenuously contended that the impugned judgment of conviction is vitiated by serious infirmities, inasmuch as it rests upon evidence suffering from material contradictions, omissions, and improvements, thereby rendering the prosecution case unreliable and legally unsustainable.

8. At the outset, learned counsel submits that the prosecution case substantially hinges upon the testimonies of PW1 (wife of the victim), PW3 (brother of the victim), and PW4 (sister-in-law of the deceased). All these witnesses have claimed themselves to be eyewitnesses to the alleged incident of assault said to have occurred at about 12 midnight. They have deposed that the victim, Madhu Garai, sustained considerable bleeding injuries as a result of the assault. However, it is submitted that their conduct, as reflected in their own depositions, is wholly inconsistent with

normal human behavior. Despite allegedly witnessing a brutal assault and noticing profuse bleeding from the victim, none of these witnesses took any immediate steps to secure medical assistance, shift the victim to a hospital, or call for a doctor. Instead, they left the victim at the place of occurrence and waited until the next morning. Such inaction, in the face of a life-threatening situation, is highly unnatural and improbable, thereby creating a serious dent in the credibility of these witnesses and the prosecution story as a whole.

9. Learned counsel further points out glaring inconsistencies in the version of PW1 regarding the lodging of the First Information Report. During cross-examination, PW1 initially stated that she approached PW12, described as an active member of a political party, and that, acting on his advice, she lodged a complaint at the police station. She further stated that PW12 obtained her left thumb impression (L.T.I.) on the FIR. However, she subsequently altered her version by stating that she first narrated the incident to PW1 and then went to the Public Health Centre where she remained until her husband's death. In yet another version during cross-examination, she stated that she left the police station at about 10 A.M., thereafter PW12 arrived, drafted another FIR, and again obtained her L.T.I. These shifting stands, according to learned counsel, create a cloud of doubt over the very genesis and authenticity of the FIR and raise legitimate suspicion as to whether

the complaint was lodged in the manner alleged by the prosecution.

10. It is further highlighted that PW1, in her deposition, stated that upon reaching the police station she found her husband lying in a club room and that PW12, the Officer-in-Charge, arranged to send him to the hospital. This version stands in direct contradiction to the written complaint wherein PW1 stated that local people had taken her husband to the hospital. Such contradictions on a vital aspect of the prosecution case, namely the immediate aftermath of the incident and the steps taken to save the victim, materially affect the credibility of the witness.

11. Learned counsel also underscores contradictions between the testimonies of PW1 and PW2. While PW1 asserted that her husband was mercilessly assaulted by the accused persons named in the FIR, PW2 stated that PW1 did not disclose the names of the assailants. This discrepancy strikes at the root of the prosecution case concerning the identification and naming of the accused. Additionally, PW3, the brother of the victim, deposed that he saw only Bistu Choudhury (appellant no.1) assaulting the victim and that upon reaching the spot he found merely two to four persons present. This version is at variance with the account given by PW1 before the Trial Court regarding the number of assailants and the manner of assault, thereby further eroding the consistency of the prosecution narrative.

12. It is also contended that PW4 stated that many villagers were present at the place of occurrence and had witnessed the incident. Despite this assertion, the prosecution failed to examine any independent local witness to corroborate the alleged involvement and active role of the appellants. The non-examination of such natural and independent witnesses, who were readily available, gives rise to an adverse inference against the prosecution.

13. Moreover, while PW1 stated in the FIR that local people took her husband to the hospital, she later deposed that PW13 arranged for sending the victim to the hospital. This aspect was not clarified or supported by PW8, the attending medical officer. The absence of medical corroboration on these material particulars further weakens the prosecution case.

14. Learned counsel thus submits that the prosecution case is founded primarily on the testimonies of PW1, PW3, and PW4, all of whom are closely related to the victim and are therefore interested witnesses. While the evidence of related witnesses is not to be discarded solely on the ground of relationship, it is well settled that such evidence must inspire confidence and ordinarily requires careful scrutiny and, where possible, independent corroboration. In the present case, not only is there a lack of independent corroboration, but the testimonies themselves is riddled with inconsistencies, omissions, and improvements. No specific and

consistent role has been attributed to each of the appellants, and the evidence regarding their participation is vague and discrepant.

15. It is further argued that the conduct of PW1, PW3, and PW4 appears highly improbable and unnatural. PW1, being the defacto complainant, has made material improvements over the version set out in the FIR, which amounts to embellishment of the prosecution story. Such improvements on vital aspects cannot be lightly brushed aside and significantly impair the reliability of the witness.

16. In view of the cumulative effect of these contradictions, omissions, and improbabilities, learned counsel submits that the prosecution has failed to prove its case beyond reasonable doubt. Consequently, the conviction recorded by the learned Trial Court, based on such shaky and unreliable evidence, cannot be sustained in law. It is, therefore, prayed that the impugned judgment and order of conviction be set aside and the appeal be allowed.

17. Mr. Abishek Sinha, learned Advocate appearing on behalf of the State, has submitted that there is nothing on record which would warrant interference with the impugned judgment and the order of conviction passed by the learned Trial Court. It has been argued that P.W.1, P.W.3, and P.W.4 were eyewitnesses to the incident in question, and all these witnesses consistently supported the prosecution’s version regarding the involvement of the appellants in the alleged offence.

18. According to the learned Advocate, the evidence adduced by these witnesses clearly indicates that on the relevant date and at the relevant time, the appellants allegedly assaulted the victim, Madhusudan Garai, which ultimately resulted in his unnatural death. In addition, P.W.11 and P.W.13, being the medical officer and the autopsy surgeon respectively, provided expert testimony concerning the injuries sustained by the victim, thereby corroborating the occurrence of the assault and implicating the appellants in the commission of the crime.

19. It has been contended on behalf of the State that there is nothing on record to render the evidence of these witnesses untrustworthy. The learned Advocate emphasized that all the appellants are alleged to have assembled at the 'club ghar' of Sripur with the common intention of committing the offence. The assault perpetrated by them caused grievous injuries to the victim, which ultimately led to his death. The appellants were fully aware that their actions were likely to cause death, demonstrating a reckless disregard for human life.

20. Furthermore, the learned Advocate submitted that there are no contradictions between the contents of the written complaint lodged by the de-facto complainant and the statements made by the witnesses examined by the prosecution. On appreciation of the evidence as a whole, the learned Trial Court rightly concluded that

the appellants were actively involved in the commission of the offence.

21. It was further argued that the appellants have failed to bring any material evidence on record that could cast doubt on the findings of the Trial Court or justify interference with the impugned judgment and order of conviction. In light of the above, it is the submission of the State that the appeal preferred by the appellants is devoid of merit and ought to be dismissed, thereby upholding the conviction and sentence imposed by the learned Trial Court.

22. Having given anxious consideration to the rival submissions advanced by the learned Counsel appearing for the respective parties, I have thoroughly perused and examined all the material available on record.

23. PW1, Smt. Rina Rani Gorai, is the wife of the victim and the defacto complainant in the present case. PW3, Pravash Gorai, is the brother of the victim, and PW4, Laxmi Rani Gorai, is the wife of PW3. Thus, all three are closely related to the deceased and are admittedly interested witnesses. Each of them has claimed to have witnessed the incident of assault alleged to have taken place at about 12:00 midnight and has asserted that the victim sustained injuries accompanied by considerable bleeding.

24. PW4, Laxmi Rani Gorai, has deposed that upon hearing a commotion, she along with PW1 proceeded to the "club ghar" to ascertain the cause of the shouts. On reaching there, they

allegedly saw the appellants assaulting the victim. According to her, they then returned and informed PW3, and thereafter again went to the "club ghar," where they found that the victim was still being assaulted by a few persons while some of the assailants had already left.

25. Ordinarily, when a close family member is found in an injured and bleeding condition as a result of an assault, the natural and instinctive human response would be to render immediate assistance, either by shifting the victim to a safer place, taking him home, arranging conveyance to a hospital, or at the very least summoning medical aid without delay. However, in the present case, despite their claimed presence at the spot and their acknowledgement that the victim was bleeding profusely, these witnesses admittedly left the victim lying at the place of occurrence and made no effort to secure medical help until the following morning. Such indifferent and passive conduct is wholly inconsistent with normal human behaviour, particularly from close relatives. This unnatural conduct renders their claimed presence at the time of occurrence doubtful and significantly erodes the credibility of their assertion that they actually witnessed the assault.

26. As per the statements of PW4, there was bleeding from the nose, ear, and mouth of the victim. She sought to explain the inaction by stating that since it was midnight, they could not do anything at

night, and that the victim was taken to the hospital only the next morning, where he ultimately succumbed to his injuries. PW1 and PW3 have also deposed on similar lines, stating that the victim was in a bleeding condition. However, while these witnesses have categorically spoken of profuse bleeding due to the assault, the prosecution's own seizure of the victim's wearing apparel reportedly did not reveal any bloodstains. This glaring inconsistency between the oral testimony and the physical evidence strikes at the root of the prosecution case. If the bleeding was indeed as profuse as alleged, it would be reasonable to expect visible blood marks on the clothes worn by the victim. The absence of such material evidence materially weakens the prosecution version and creates a serious dent in its reliability.

27. The testimony of PW1 is clouded by material improvements over her earlier version. In her deposition before the Court, she stated that upon hearing the alarm of her injured husband, she, along with PW4, rushed to the spot and saw the appellants assaulting him. She also explained that owing to her advanced stage of pregnancy she could not raise an alarm, and she returned home and later revisited the spot with PW3. However, these significant facts were conspicuously absent from the written complaint lodged at the earliest point of time. The omission of such vital details from the first version, which is ordinarily expected to contain the essential and material facts of the occurrence, cannot be brushed

aside as a minor lapse. Rather, it constitutes a material omission amounting to improvement and contradiction, suggesting embellishment at a later stage. Such improvements materially impair the evidentiary value of her testimony and render it unsafe to rely upon in the absence of independent corroboration.

28. Furthermore, PW1 has stated in her evidence that her husband was being mercilessly assaulted by the appellants. In contrast, PW2 has stated that PW1 did not disclose the names of the appellants. PW3, on the other hand, has deposed that he saw only appellant no.1 giving kicks on the chest of the victim while he was lying on the ground, and that upon reaching the spot he found merely two to four persons present. These discrepancies regarding the identity and number of assailants are not minor variations but go to the core of the prosecution case concerning the participation of the accused persons.

29. At the very outset, it is an undisputed position on record that PW1, PW3, and PW4 are close relatives of the deceased, being respectively the wife, brother, and sister-in-law of the victim. It is a settled principle of criminal jurisprudence that the evidence of related or interested witnesses cannot be discarded solely on the ground of relationship. However, it is equally well settled that such evidence must be subjected to greater caution and careful scrutiny. The Court must remain alive to the possibility of exaggeration, over-implication, or a tendency to rope in certain persons due to

prior enmity or emotional involvement, particularly in cases where independent corroboration is lacking. Therefore, the testimonies of such witnesses must inspire confidence by being consistent, cogent, and supported by reliable independent evidence.

30. In the present case, the evidence on record reveals that PW3 mentioned only the name of appellant no.1, and even then, he did not attribute any clear or specific overt act to the other appellants. His testimony is conspicuously silent regarding the precise role or participation of the remaining accused persons. Similarly, neither PW1 nor PW4 assigned any distinct or individual role to any particular appellant. In cases involving multiple accused, the prosecution is under a duty to establish the specific role and participation of each accused person. Vague and omnibus allegations against a group of persons, without delineating individual acts, are inherently weak in nature and unsafe to form the sole basis of conviction. Criminal liability is personal, and in the absence of clear evidence regarding individual involvement, it would be hazardous to sustain a conviction.

31. It is further significant that no independent local witness has come forward to corroborate the testimonies of PW1, PW3, and PW4. The alleged occurrence is said to have taken place in a locality where the presence and availability of independent witnesses would be natural and expected. In such circumstances, the absence of support from disinterested witnesses creates a serious lacuna in

the prosecution case and gives rise to a legitimate doubt as to whether the appellants were in fact identified as assailants at the earliest opportunity. Non-examination of available independent witnesses, without satisfactory explanation, permits an adverse inference against the prosecution.

32. The version of PW3 also appears uncertain and internally inconsistent. He stated that he saw only one appellant giving a kick on the chest of his brother while the victim was lying on the ground. He further stated that upon reaching the spot he found two to four persons present. This statement introduces ambiguity regarding both the identity and the number of persons involved in the alleged assault. If, by his own admission, he witnessed only one appellant assaulting the victim and others were merely present among a small group of persons, the subsequent implication of multiple appellants, without clear attribution of overt acts, becomes doubtful and susceptible to the charge of embellishment.

33. The testimony of PW2, Bholanath Dogra, also materially affects the prosecution story. He deposed that he learned from PW1, the defacto complainant that her husband had been called to a meeting at about midnight and was assaulted. Significantly, he stated that PW1 did not disclose the names of the assailants to him. The natural and probable conduct of a person whose husband had just been assaulted would be to immediately disclose the names of the assailants, if known. The omission to do so raises a serious doubt

about the spontaneity and truthfulness of the prosecution version and casts a shadow over the subsequent naming of the appellants.

34. If the depositions discussed above are considered cumulatively, it becomes apparent that there is a marked absence of specific roles attributed to each of the appellants. The uncertain and wavering version of PW3, coupled with the omission on the part of PW1 to disclose the names of the assailants at the earliest opportunity, cumulatively renders the prosecution case doubtful. These infirmities strike at the root of the reliability and credibility of the prosecution evidence. In such circumstances, it would be unsafe to base a conviction solely upon such testimony in the absence of strong, clear, and independent corroboration. The benefit of doubt arising from these deficiencies must necessarily enure to the appellants.

35. The testimony of P.W.1 regarding the lodging and drafting of the First Information Report (F.I.R.) is marked by glaring inconsistencies and mutually destructive versions, which seriously impair the credibility of this witness and render her evidence unreliable on this vital aspect of the prosecution case.

36. P.W.1 stated in her evidence that P.W.12, who is admittedly a member of a political party, wrote the complaint at the police station. She deposed that she first went to the police station and thereafter P.W.12 arrived, advised her to lodge the F.I.R., drafted it himself, and she put her L.T.I. (Left Thumb Impression) on the

same. This version suggests that the complaint was not a spontaneous narration by the informant but a document prepared by a third person with political affiliation, which by itself calls for cautious evaluation, particularly in a criminal case where impartiality and voluntariness in setting the criminal law in motion are of great importance.

37. However, in the same breath, P.W.1 gave a completely different version by stating that she first narrated the incident to the Officer-in-Charge (O.C.) and that he recorded her statement. This version implies that the F.I.R. originated from her direct narration to the police officer and not from a complaint drafted by P.W.12. Both versions cannot stand together. If the O.C. recorded her statement upon narration, there was little occasion or necessity for P.W.12 to draft the complaint separately. This contradiction strikes at the root of the prosecution story regarding the very genesis of the F.I.R. Her evidence becomes further doubtful when she stated that she left for Chandrakona Police Station in connection with her injured husband and stayed there till his death. This would suggest her continuous presence there. Yet, she again stated that she left the police station at about 10 A.M., and at that time P.W.12 came and drafted another F.I.R. on which she put her L.T.I. This introduces the improbable suggestion of multiple F.I.R.s or multiple complaints being drafted at different times. The law contemplates registration of the earliest information relating to the commission

of a cognizable offence; the concept of repeated drafting of F.I.R.s on the same occurrence is inherently suspicious and legally untenable.

38. The contradictions do not end there. P.W.1 again stated that at 10 A.M. she went to the police station and P.W.12 wrote the complaint as per her dictation. This is yet another version, inconsistent with her earlier claims that (i) the O.C. recorded her statement, and (ii) P.W.12 drafted the F.I.R. after advising her to lodge it. Thus, her evidence presents shifting stands: at one stage the O.C. is the recorder, at another P.W.12 is the draftsman, and at yet another point there appears to be more than one complaint.

39. These inconsistent and self-contradictory statements on a crucial aspect like the lodging of the F.I.R. are not minor discrepancies but material contradictions going to the root of the prosecution case. The F.I.R. is the foundation of the prosecution story, and its authenticity, spontaneity, and timing are of paramount importance. When the maker of the F.I.R. herself gives conflicting versions about who drafted it, when it was drafted, and how it was recorded, the possibility of deliberation, tutoring, or subsequent embellishment cannot be ruled out.

40. Further, the admitted role of P.W.12, a politically affiliated person, in drafting the complaint raises the possibility of outside influence and detracts from the independence and purity of the earliest version. When this factor is viewed alongside the contradictory

statements of P.W.1, the reliability of the prosecution's version regarding the initiation of the case becomes highly doubtful.

41. In such circumstances, it would be unsafe to place reliance on the testimony of P.W.1 on this score. Her vacillating and inconsistent statements make her a wholly unreliable witness regarding the lodging of the F.I.R., and this infirmity inevitably casts a serious shadow on the credibility of the prosecution case as a whole. Where the foundation itself appears shaky, the superstructure built upon it cannot be said to be free from reasonable doubt.

42. The evidence relating to the manner in which the injured victim was provided medical treatment suffers from material inconsistencies, which strike at the reliability of the prosecution version and raise serious doubt about the true sequence of events. In the written complaint, P.W.1 categorically stated that some villagers had arranged for the treatment of the victim through a local doctor and that her husband was admitted to the hospital on the following morning. This version clearly indicates that the initial initiative for medical treatment came from local villagers and that there was a delay until the next morning before hospital admission. Such a statement suggests a particular sequence of events and attributes the responsibility for treatment to private individuals rather than the police.

43. However, in her deposition before the Court, P.W.1 gave a materially different version by stating that the Officer-in-Charge

(P.W.13) arranged for sending her husband to the hospital. This shifts the entire responsibility and initiative from the villagers to the police authority. These two versions are mutually inconsistent and cannot be reconciled. If villagers had already arranged treatment through a local doctor and facilitated hospital admission the next morning, the question naturally arises as to how and when the O.C. took charge of sending the victim to the hospital. Conversely, if the O.C. arranged for the hospitalisation, the earlier claim regarding villagers and a local doctor becomes doubtful.

44. These are not minor discrepancies but material contradictions affecting a vital aspect of the case, namely the immediate aftermath of the alleged assault and the steps taken to save the victim. The manner and promptness of medical treatment are often closely linked with the credibility of the prosecution story, the seriousness of injuries, and the conduct of the witnesses. Contradictory versions on such a crucial point weaken the trustworthiness of the informant.

45. Significantly, P.W.8, the attending medical officer and an independent professional witness, did not clarify either of these two versions. There is no clear evidence from P.W.8 as to who actually brought the victim to the hospital, at whose instance he was admitted, or whether he had received any prior local treatment. The absence of such clarification from the medical officer, who

would be the most reliable and neutral witness on this aspect, leaves a material gap in the prosecution case.

46. When the informant gives conflicting accounts and the independent medical evidence fails to resolve the inconsistency, the Court is left with uncertainty regarding the true facts. This uncertainty assumes importance because the prosecution is required to present a consistent and coherent narrative. The contradictions here suggest either lack of truthfulness or lack of certainty in the prosecution version.

47. Therefore, the conflicting statements of P.W.1 regarding who arranged medical treatment, coupled with the failure of P.W.8 to clarify the factual position, create a serious dent in the prosecution case. Such inconsistencies give rise to reasonable doubt and make it unsafe to rely implicitly on the version projected by the prosecution on this aspect. In criminal jurisprudence, where the benefit of doubt must go to the accused, such infirmities necessarily operate in favour of the defence.

48. It is a well-settled principle of criminal jurisprudence that the credibility of a witness is tested on the touchstone of consistency, probability, and conformity with the earliest version of events. When a witness makes contradictory statements at different stages of the proceeding, or introduces vital facts for the first time at a later stage which were absent in the statement made at the earliest opportunity, such conduct materially affects the reliability

of that witness. The law attaches great importance to the earliest version because it is presumed to be free from deliberation, tutoring, or embellishment. Therefore, a very vital omission in the initial statement particularly regarding material facts amounts to a contradiction in substance and cannot be treated as a minor discrepancy.

49. Where a witness improves upon his or her earlier version by adding new facts that go to the root of the prosecution story, the evidentiary value of such testimony becomes doubtful. Material improvements or omissions shake the credibility of a witness because they indicate either afterthought or an attempt to tailor the evidence to suit the prosecution case. In such circumstances, it becomes unsafe to place implicit reliance on the testimony of such witnesses unless there is strong and independent corroboration.

50. In the present context, the prosecution case itself suggests that a large number of villagers witnessed the alleged assault and that there were several houses surrounding the place of occurrence. In a situation like this, the natural and expected course for the prosecution would be to examine independent local witnesses who could provide unbiased accounts. Independent witnesses residing nearby would be the most natural witnesses to the occurrence. However, the prosecution has chosen not to examine any such independent witnesses without offering any satisfactory explanation. This deliberate withholding of natural witnesses gives

rise to an adverse inference against the prosecution, as it creates a legitimate doubt whether those witnesses would have supported the prosecution version.

51. The evidence of P.W.6 Ganesh Santra further highlights the weakness of the prosecution case. P.W.6 stated that he saw the victim being assaulted by several persons whom he did not know. His statement does not support the prosecution's attempt to specifically implicate the named appellants. Rather, it introduces uncertainty regarding the identity of the assailants. If a witness present at the spot could not identify the alleged assailants, the prosecution version regarding the specific involvement of the accused persons becomes doubtful.

52. Moreover, it is evident from the record that the learned Trial Court placed reliance upon what P.W.6 was alleged to have stated before the Investigating Officer, notwithstanding the fact that P.W.6 did not admit to having made any such statement. This approach is legally untenable and contrary to the settled principles governing appreciation of evidence. A statement recorded under Section 161 of the Code of Criminal Procedure is not substantive evidence. Its use is strictly circumscribed by law and is confined to the limited purpose of contradicting a witness in the manner prescribed under Section 145 of the Evidence Act.

53. Where a witness does not admit having made a particular statement before the Investigating Officer, the prosecution is

required to duly prove such contradiction through the Investigating Officer by drawing his attention to the specific portion of the previous statement. Unless this procedure is scrupulously followed, the alleged prior statement cannot be read in evidence. In the absence of such proof, the contents of a Section 161 statement remain legally inconsequential and cannot be treated as substantive material against the accused. Therefore, any reliance placed by the Trial Court on such unproved and disputed prior statements amounts to a clear misapplication of evidentiary rules and vitiates the finding to that extent.

54. Further, the testimony of P.W.7, who was the medical practitioner attending the victim immediately after the occurrence, does not support the prosecution case regarding the identity of the assailants. P.W.7 categorically stated that he was called by P.W.4 and was informed that her husband's brother had been assaulted. Significantly, this witness did not disclose the names or identities of any assailants. Being an independent witness who came into the picture immediately after the incident, his silence on the identity of the offenders assumes importance. It weakens the prosecution's version that the assailants were clearly known and named from the outset.

55. The evidence of P.W.11, the Investigating Officer, also gives rise to serious doubts. He stated that the place of occurrence was in front of 'Shama Sangha Club' and was the first witness to mention the

name of this club. None of the other prosecution witnesses referred to the alleged place of occurrence by naming the 'club ghar.' This omission on the part of other witnesses creates a discrepancy regarding the exact situs of the incident. When the Investigating Officer introduces a specific location for the first time, unsupported by prior witness accounts, it casts doubt on the certainty and consistency of the prosecution story.

56. Additionally, P.W.11 admitted that he did not seize any blood-stained earth from the place of occurrence. In a case involving an alleged assault resulting in injuries, the non-seizure of blood-stained earth or other physical evidence from the scene is a serious lapse in investigation. Such omission deprives the prosecution of valuable corroborative evidence and raises questions about whether the alleged place of occurrence was properly verified.

57. More importantly, P.W.11 clearly admitted that he did not examine P.W.12 during the investigation and conceded that it was a mistake on his part. As a result, no prior statement of P.W.12 was recorded under Section 161 Cr.P.C. The testimony of P.W.12 before the Trial Court thus emerged for the first time in Court without any prior version on record. Such evidence, lacking the safeguard of prior examination and being introduced without investigative scrutiny, becomes inherently weak and unreliable. The defence was also deprived of the opportunity to confront the witness with prior statements, thereby affecting the fairness of the trial.

58. Taken cumulatively, these aspects reveal significant investigative lapses, inconsistencies, and improper reliance on inadmissible material. The Trial Court, instead of scrutinizing these deficiencies with caution, appears to have overlooked them and based its conclusions on legally impermissible considerations. This results in material irregularity and illegality in the appreciation of evidence.

59. In view of the aforesaid facts, circumstances, and the legal position discussed above, the impugned judgment suffers from serious infirmities. The findings recorded therein cannot be sustained in the eye of law. Consequently, the judgment is liable to be set aside as it fails to meet the standard of proof and legal scrutiny required in a criminal trial.

60. Thus, the instant appeal be and the same is hereby **allowed**.

61. The impugned judgment and order of conviction dated March 30, 1988 passed by the learned Trial Court in connection with Sessions Trial Case No. 13th April, 1987 is hereby set aside.

62. Appellants are on bail. They are to be discharged from their respective bail bonds and be set at liberty, if they are not wanted in connection with other case.

63. In terms of the mandate of Section 437A of the Code of Criminal Procedure (corresponding to Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023), the appellant is required to execute bail bonds with adequate sureties. Such bonds, upon execution, shall remain valid and operative for a period of six months, so as to

ensure the availability and appearance of the appellant before the higher court as and when called upon, thereby safeguarding the due course of justice.

64. Let a copy of this judgment along with the Trial Court record be sent down to the Trial Court immediately for necessary compliance.

65. Urgent Photostat certified copy of this order, if applied for, be given to the parties on payment of requisite fees.

(Prasenjit Biswas, J.)