

(2004) 06 CAL CK 0038
In the Calcutta High Court
Case No : C.R.A. No. 337 of 1994

Gangadhar Singh and Others

APPELLANT

Vs

The State of West Bengal

RESPONDENT

Date of Decision : 10-06-2004

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154
Evidence Act, 1872 — Section 137, 138, 3
Penal Code, 1860 (IPC) — Section 148, 149, 302, 307, 324

Citation : (2004) 3 CALLT 199

Hon'ble Judges : Nure Alam Chowdhury, J; Arun Kumar Bhattacharya, J

Bench : Division Bench

Advocate : Arup C. Chatterjee, for the Appellant; Asimash Goswami, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Bhattacharya, J.—The hearing stems from an appeal preferred against the Judgment and order of conviction and sentence passed by the learned Additional Sessions Judge, 5th Court, Midnapore in S. T. Case No. XVI of January, 1993 on 25.02.1994.

2. Shortly put, the Prosecution case is that over the issue of catching fish from a tank on the previous day i.e. 03.02.1992, the accused persons at the instance of one Phani Bhusan Taldi & Chittaranjan Das confined Ashim Das of village Alash and snatched away Rs.1,500/- and a Hero cycle from him on 04.02.2002. At about 3.00 p.m. on that date (04.02.1992) they being armed with arrows, bows, tangies, spears etc. abused Binode Behari Makurh, Gangadhar Ghorai, Susanta Makur, Kanailal Jana, Santosh Makur and Radhagobinda Das of village Alash filthily and attacked them resulting in death of Binode Behari Makurh and Gangadhar Ghoari on the spot due to assault and injuries of other persons who are under treatment at Midnapore Sadar Hospital and Keshiary Primary Health Centre. Hence, all the 10 accused persons were charged under Sub-sections 148,

302/149, 307/149, 324/149, 379/149 Indian Penal Code and in addition separate charge was framed u/s 411 Indian Penal Code against accused Jadu Singh, against whom the case was abated due to his death during pendency of the trial.

3. The defence cases, as suggested to P.Ws., as contended by the accused persons during their examination u/s 313 Cr. PC and as deposed by D.Ws. 2 to 4, is that no such incident took place on 4.2.1992. The accused persons all along used to possess the Kapsia Tank and inhabitants of the Adibasi village used the water of the said tank and make pisciculture there although. On 03.02.1992 over the issue of distribution of fish and forcible possession of the said tank, the defacto-complainant and his men being armed with deadly weapons were aggressors, and there was a fight between them and villagers when they assaulted Biswanath Singh and Marang Singh resulting in their severe injuries and hospitalisation in Keshiary Hospital. In the said fight in darkness the defacto-complainant and his men used weapons indiscriminately resulting in death of those two persons and injuries of others. At the time of incident, accused Madan Singh was away to his place of service in the district of Howrah and accused Ram Charan Barik went to the house of his father-in-law at Keshiary on Sunday-the 18th Magh with rice and came back after two days on Tuesday. The present case is the outcome of conspiracy of the inhabitants of Bangales Para, some police officers and witnesses in order to grab the Kapsia Tank forcibly and the accused persons have been falsely implicated in this case out of political rivalry.

4. 28 witnesses were examined on behalf of the Prosecution while 4 witnesses were examined on behalf of the defence, and after Considering the facts, circumstances and materials on record, the learned Court below found all the nine accused persons guilty under Sections 302/ 149, 307/149, 148 IPC, convicted them accordingly and sentenced them to suffer imprisonment for life and to pay fine of Rs. 1000/- each i/d to R.I. for six months each, to suffer R.I. for 5 years each and to pay fine of Rs. 500/- each i.d. to R.I. for three months each and to suffer R.I. for one year each and to pay fine of Rs. 300/- each i.d. to R.I. for one month each respectively and acquitted them of the charge u/s 379/149 IPC.

5. Being aggrieved by and dissatisfied with the above order of conviction and sentence, the convicts have preferred the present appeal.

6. All that now requires to be considered is whether the learned Court below was justified in passing the said order of conviction and sentence.

7. Out of the above Prosecution witnesses, P.Ws. 1 to 6, P.W. 8, P.W. 11, P.Ws. 14 to 21 being eye-witnesses, P.W. 22 (surgeon of Midnapore District Hospital) P.W. 25 (M.O. of Keshiray B.P.H.C), P.W. 27 (autopsy surgeon) & P.W. 28 (I.O.) are witnesses, out of whom 3 witnesses viz. P.W. 12, P.W. 13 & P.W. 24 were simply tendered for cross-examination.

8. According to the evidence of P.W. 1 (defacto-complainant), as the khas tank, popularly known as Kapsia, of their village was not settled with any person in

1992, the young persons of Bangalee Para decided to install a pump machine to draw out water therefrom and to distribute the fish among themselves, and accordingly they installed a machine in the said tank on 02.02.1992, and on 03.02.1992 they started catching fish from the tank. At about 6.00 p.m. while after collecting fish and keeping it in a place they were about to distribute it amongst themselves, barring against Haru Singh and Ram Chandra Barik, other 8 accused persons along with others, appeared there from Adibasi Para and demanded half share of the fish and on their refusal the accused persons unsuccessfully tried to take out the fish forcibly resulting in a scuffle between them and the accused persons. At that time, the accused Kartick Singh snatched away the tangi from the hand of accused Biswanath Singh and tried to chase them, and in the process accused Biswanath was injured by the said tangi. They left the place on threatening them. ON 04.02.1992 at about 11.30 a.m. when Ashim Das (P.W. 15) of Bangalee Para with Gurupada Routh (P.W. 14) was returning in a cycle with medicine bag and money in front of the house of accused Jadu Singh (since deceased), accused Jadu, Gangadhar, Madan, Kartick, Maran, Biswanath & Bindu Singh took him to the house of accused Jadu. On receipt of this information from Gurupada, the mother of Ashim immediately rushed to the house of accused Jadu and on her request Ashim was released but not the cycle and the medicine bag, as he came to learn from Gourhari Makurh, Prafulla Chandra and others. On that date at about 2.30/3.00 p.m. when he left his house in a cycle, on hearing a shout he rushed towards the house of Anil Das and found Binode Makurh @ Bhim Makurh running towards him with serious bleeding injuries and 5/6 persons chasing him with tangi, lathi etc. The cause of the said bleeding injuries, as explained by P.W. 6, is that he was assaulted by accused Biswanath with a lathi on his head. However, accused Madan was armed with tangi, accused Bidu with a lathi of about 1 1/2 cubits, accused Kartick, Gangadhar, Haru & Biswanath with lathis. Accused Bidu suddenly threw the said lathi in his hand aiming towards Binode resulting in his fall on the road followed by assault by accused Madan with tangi on his head and then assault by accused Kartick & Gangadhar with lathis on his head. His father (Gangadhar Ghorai) who was coming from northern side was shouting and requesting to stop assault. Accused Jadu and Gangadhar Singh ran towards his father and suddenly accused Gangadhar struck with a lathi on his father resulting in his death on the spot. After the incident, the accused persons left the place but before leaving accused Maran, Haru, Biswanath & Ram Chandra again assaulted Binode severely on his left leg with lathi. Kanailal Jana (P.W. 20) , Gobinda Das (P.W.), Santosh Makurh (P.W. 6) and Susanta Makurh (P.W. 21) were also injured due to assault by the accused persons, as he came to learn from the said injured persons. His father, Binode and other injured persons were shifted to Keshiary Hospital and therefrom Kanailal and Susanta were shifted to Midnapore Hospital. Thereafter he went to the P.S. and lodged the F.I.R. {Ext. 1}. The above evidence on material particulars is corroborated by P.Ws. 2 to 6, P.W. 8, P.W. 11, P.Ws. 14 to 21 as also by medical evidence, P.W. 2 Gourhari Makurh who with his two brothers and Kanailal (P.W. 20) were working in the house of Dipak Routh

deposed that Kanailal went to his house at about 1.30 p.m. and suddenly on hearing a big shout coming from the direction of Akshay Das (P.W. 9) he out of curiosity started for that place and found accused Jadu, Kanka @ Bablu, Madan, Kartick, Haru and some others chasing Gobinda Das (P.W. 8) and accused Kanka to assault Gobinda with a lathi on his head resulting in his fall on the road near the house of Akshay. When Santosh and Susanta tried to resist the assault, accused Gangadhar Singh assaulted Santosh with a lathi on his head and accused Madan assaulted Susanta with a tangi, while accused Gangadhar, Jadu and Kanka assaulted Susanta with lathi. In order to save his life, Santosh crossed the fencing and reached the wall of the house of Dipak Routh. That Binode was assaulted by accused Biswanath and then by accused Bidu by throwing a small lathi resulting in his fall on the road followed by assault by accused Madan with Tangi on his head, by accused Kartick and Gangadhar with lathi on his head and thereafter before departure by accused Maran, Haru, Biswanath & Ram Chandra with lathis on his left leg is buttressed by the testimony of P.Ws. 1 to 3, 5, 6, 11, 18 & 19, that Gangadhar Ghorai was assaulted by accused Gangadhar Singh with a lathi on his head, as deposed by P.W. 1, is supported by P.Ws. 2, 3, 5, 6, 11, 18 & 19, that Santosh (P.W. 6) was assaulted by accused Gangadhar Singh with a lathi on his head, that the Gobinda (P.W. 8) was assaulted by accused Kanka with lathi on head, as stated by P.W. 2, is supported by P.Ws. 6, 14, 15 & 21 and P.Ws. 4, 8, 14 and 15 respectively. Kanailal (P.W. 20) was assaulted by accused Jadu Singh with lathi on his head and right hand, as stated by P.W. 4, and Susanta (P.W. 21) by accused Madan with a tangi and by accused Gangadhar, Jadu and Kanka with lathi, as deposed by P.W. 2, gets supported from the evidence of P.Ws. 8, 15, 20 and P.Ws. 6, 21 respectively. P.W. 25 (M.O.) on examination of Susanta (P.W. 21) on 04.02.1992 at about 4.15 p.m. at Keshiary B.P.H.C. found two lacerated injuries 4" x 1/2" x 1/2" and 2 1/2" x 1/2" x 1/2" over scalp and one swelling over left arm and opined that injury Nos. 1 & 2 may be caused by sharp-cutting weapon and injury No.3 may be caused by lathi. The history of the injuries, as reported to him by the patient, is that he was assaulted by Gangadhar Singh, Jadu Singh, Bablu Singh, Madan Singh and Bidu Singh with lathi and tangi. On examination of Kanailal Jana (P.W. 20) on the same date he found one lacerated injury 4" x 1/2" x 1/2" over scalp and one swelling on his right forearm which may be fractured and opined that both the injuries may be caused by lathi. The history of the said injuries, as informed by the patient to him, is that he was assaulted by Jadu Singh with lathi. On examination of Santosh Makurh (P.W. 6) on the same date he found one lacerated injury of about 3" in length over scalp which, he opined, may be caused by blunt object. On examination of Gobinda Das (P.W. 8) on the same date he found one head injury over scalp which may be caused by lathi and the history of the injury, as reported to him by the patient, is that he was assaulted by Madan Singh and Kanka Singh. On examination of Binode Makurh & Gangadhar Ghorai on the same date he found them dead with multiple bleeding injuries over the scalp of Binode and injury on head of Gangadhar. The injuries of the above persons could be caused about 3-4 hours before his examination. He applied stitches to the

injuries, as was found necessary and referred Susanta and Kanailal to Midnapore Sadar Hospital for further treatment. P.W. 22 on examination of Susanta on 04.02.1992 at Midnapore District Hospital found scalp injury 3" on left parietal region, 1?" stitched wound on right occipital region and fracture of both bone of left forearm. On examination of Kanailal Jana on the same date he found 1?" stitched wound on the vault of the scalp and plan and swelling on right hand and elbow. The above evidence appears to be more or less in consonance with the testimony of the injured and other witnesses and thus it strengthens the Prosecution story. P.W. 27 on holding P.M. Examination over the dead body of Gangadhar Ghorai on 05.02.1992 at about 2.30 p.m. found rigor mortis at the declining stage, one deep lacerated injury over left side of frontal bone about 4.5 cm. x 2.5 cm. x 3.5 Cm. bone deep extending up to the brain, the brain materials came out and fracture of the skull and opined that death was due to the aforesaid head injuries which was homicidal in nature and can be caused within 24 hours due to assault with a heavy lathi. On holding P.M. Examination over the dead body of Binode Makurh at about 2.00 p.m. on the same date he found rigor mortis at the declining stage, fracture of skull and multiple lacerated injuries viz (a) one deep lacerated injury of about 7 cm. x 2 cm. x 2.5 cm. bone deep over occipital bone, (b) one deep incised wound of about 5 cm. x 2 cm. x 2 Cm. bone deep over parietal bone, (c) another lacerated injury over left parietal bone behind ear - 2 cm. x 1.5 cm. x 1.5 cm. and (d) one lacerated injury of about 2 cm. x 1.5 cm. x 1 cm. over the left eye extending laterally. Brain showed multiple injuries with clothed blood and impacted bone. Both bones below left knee fractured. Injury (b) can be caused by sharp-cutting weapon like tangi and other injury by lathi. Death, he opined, was on account of shock and hemorrhage due to those multiple lethal injuries of about 24 hours old, which were homicidal in nature. The above injuries and opinion of P.W. 27 regarding the cause of death of Gangadhar and Binode appear to be quite consistent with the said evidence of eye-witnesses including injured persons.

Statement to police are meant to be brief, and omission amounts to contradiction when it is in respect of a vital point *Surender Kumar Aggarwal Vs. Satyapal Varshneya*, , but omission to minor details cannot be utilised as contradiction *Tahsildar Singh and Another Vs. The State of Uttar Pradesh*, . Here, there are a few contradictions due to omission on vital point on the part of some witnesses which hardly affect the Prosecution case, since there are specific and clear evidence on those points on behalf of other witnesses.

9. Indubitably, there was an incident near Kapsia Tank over the distribution of fish as will be evinced from the evidence of D.Ws. 2 to 4 also, but the question is whether it was on 03.02.1992 corresponding to 19th Magh, 1398 B.S., as contended by the accused persons or on 04.02.1992 as alleged by the Prosecution. The sum and substance of the evidence of D.Ws. 2 to 4 is that there is a temple of Lord Shiva at the village and its lands are cultivated by accused Jadu, Biswanath, Gangadhar, Bidu, Saptra Singh, sons of Kedarnath Barik i.e. Ram Chandra Barik etc. as Bargadars, and as the sebaits Dipak Routh, Atul

Routh and others refused to grant receipts on their demand, they stopped delivery of paddy to the sebaits resulting in starting of a trouble. A suggestion was put to P.W. 15 and P.W. 20 regarding the alleged bargadarship of those accused persons under the sebaits and stopping of delivery of paddy by them to the sebaits due to refusal of granting receipts by the latter on their demand, to which they expressed their ignorance. There is nothing to suggest that the alleged trouble gave rise to an enmity between the parties. Even if the said ground, for argument sake, is considered to have led to an enmity, it may at best be between the sebaits of Shiva Temple and those accused persons but how it has nexus with the present incident is not at all clear. No document to substantiate the alleged bargadarship of those accused persons under the sebaits has been produced. Nevertheless, a glance to the evidence of P.Ws. 2 to 4 will reveal that part of the incident took place on 03.02.1992 in the evening when a pump machine was installed for drawing out water from Kapsia Tank, fish was caught and collected at a place and the accused barring accused Haru & Ram Chandra, on account of refusal of their demand for half share of the fish unsuccessfully tried to snatch away the fish resulting in a scuffle and they left the place on threatening. It is the evidence of P.W. 1 that at the time of said incident on 03.02.1992, accused Biswanath was armed with a tangi and during the scuffle accused Kartick on snatching away the said tangi from the hand of accused Biswanath tried to chase them and in the process accused Biswanath was injured which is buttressed by the evidence of P.Ws. 5 & 8. The said Biswanath Singh @ Matra Singh who was examined as D.W. 3 contended that on 19th Magh between 6.00 & 7.00 p.m. over the issue of distribution of fish of Kapsia Tank Malakar Makurh - brother of Binode Makurh assaulted him with a tangi causing serious injuries on his hand and he received treatment from Keshiary Hospital and that Maran Singh on being injured with him on head with a lathi was admitted in the said Hospital for three days. The evidence of the said Maran Singh @ Bablu Singh (D.W. 4) is not only self-contradictory but also inconsistent with the evidence of D.W. 3 since he stated that on 3rd after returning to his house at 10.00 p.m. he heard about a trouble in the Kapsia Tank between the Congress Party & CPI(M) Party over the issue of distribution of fish and on that date (i.e. 3rd) in the morning there was a trouble between inhabitants of Bangalee Para & Adibasi Para over the issue of water of a khas tank situated in front of the house of Kochi Singh where he sustained injury on account of assault with a lathi on his head resulting in his hospitalization at Keshiary Hospital for three days. Who assaulted him has not been disclosed. If the first part of his above evidence is taken into account, it stands that he was not present at the time of incident on 03.02.1992 at about 6.00 p.m. and so the question of sustaining injury due to alleged, assault with a lathi, as deposed by D.W. 3, does not stand. If the second part is taken into consideration it is nobody's case that on third there was any incident in the morning. D.W. 1 (M.O.) on examination of D.W. 3 on 04.02.1992" found one incised wound 2 1/2" x 1/2" x 1/2" on right hand, caused by sharp-cutting weapon like tangi and the history of the injury, as informed by the patient, is that he was assaulted by Malakar Makurh with a tangi. On examination of D.W. 4

on 04.02.1992 at about 4.15 p.m. he found one lacerated injury on scalp which was of grievous nature, caused by lathi by Gangadhar Singh, Jadu Singh, Madhab Singh, Bidu Singh and he was transferred to Midnapore Hospital for better treatment. The said injuries of D.W. 3 & D.W. 4 might be caused within 24 hours and before 20/22 hours respectively. There is nothing to suggest that the opponent party or Malakar Makurh was armed with tangi and deadly weapon, and so the question of alleged assault by Malakar does not appear to be worthy of belief. On the contrary, the above very evidence of D.w. 1 leads to show that the accused persons were armed. Why there was abnormal delay in going to the hospital, which is about one mile away from the village, after about 24 hours has not been explained by D.W. 3. Moreover, no reliance can be placed upon the above uncorroborated testimony of D.W. 3 regarding assault by Malakar with tangi. So the evidence of P.Ws. 1, 5 and 8 regarding injury of D.W. 3 appears to be acceptable. For failure to explain the injuries on the person of accused, it must reasonably be shown in all probability that the injuries were caused to him in the same transaction in which the victim was injured which is not the case here. Furthermore, Prosecution is not to explain injuries on the accused in all cases and in all circumstances Bhaba Nanda Sarma and Others Vs. State of Assam, . Injuries on the accused when are not consistent with defence version it need not be explained (Abdul Waheed Vs. The State of Maharashtra,). Merely because D.Ws. 3 and 4 sustained injuries in an accident of 03.02.1992, it will not lead the Court to hold, in discarding the evidence of so many eye-witnesses, that the main incident took place on 03.02.1992 and not on 04.02.1992. The said incident of 03.02.1992 is completely different from the incident of 04.02.1992 involving commission of dual murder and severe injuries of four persons. The FIR was lodged within one hour forty-five minutes from the time of incident and the injured persons as also two victims of murder were immediately shifted to the hospital. Accordingly, the defence story of taking place of the main incident on 03.02.1992 is belied.

10. Onus to prove alibi is on the accused as it is a matter within his special knowledge Chandrika Prasad Singh and Others Vs. The State of Bihar, and plea of alibi when taken by an accused must be proved by him State of Haryana Vs. Sher Singh and Others, . He must lead evidence to show that he was so far off at the moment of the crime from the place when the offence was committed and that he could not have committed the offence (). In the present case, it was contended by accused Madan Singh during his examination u/s 313 Cr. PC that at the time of incident he was away to his place of service in the district of Howrah. Similarly, accused Ram Chandra Barik took the plea that he went to Keshiary with rice to the house of his father-in-law on 18th Magh, Sunday and after staying there for two days he returned to his house on Tuesday and when he went to Keshiary Hospital with Patit Paban to see the injured, the said Patit Paban made over him to police. No suggestion was put in cross-examination of any of the P.Ws. regarding the alleged alibi nor any evidence has been adduced on behalf of accused Madan Singh to substantiate his claim that he was on that

date at the place of his service in the district of Howrah. Even where he works and in which capacity has not been disclosed. As regards accused Ram Chandra Barik his sister D.W. 2 deposed that on 19th Magh & 20th Magh, 1398 B.S. Ram Chadnra was away to his father-in-law's house at Talida and after his return on Tuesday when he was changing his dress, Swapan Bhanja, Ekadasi Makurh and Pradip Maity took him to Keshiary Hospital where he was taken into custody by police, as she came to learn from Pradip Maity later. The above uncorroborated testimony is not at all convincing and satisfactory and cannot discard the testimony of so many eye-witnesses who cannot exculpate the real offenders. So, we may examine the defence story of those two accused persons which sounds oblique and importable and collapses like a pricked balloon on an insightful judicial probe.

11. Undoubtedly, there are certain discrepancies in the evidence of some P.Ws, which are minor and cannot undo the effect of evidence otherwise sufficient on record. It is to be borne in mind that the witnesses are deposing after a lapse of about more than one year three months, and so as memory faints, some discrepancies in regard to co-lateral or subsidiary facts in their testimony are bound to occur. Over-much importance cannot be attached to it. Discrepancies which do not got to the root of the matter and do not shake the basic variation of the witnesses cannot be annexed with undue importance National Textile Workers" Union Vs. P.R. Ramakrishnan and Others, .

12. Mr. Arup Chatterjee, learned counsel for the appellants, adversely criticized the cryptic nature of the FIR As a matter of fact, FIR is meant to give only the substance of allegation, and it is not intended to be a detailed document nor it may contain all the details stated in Court (AIR 1985 SC 1385); 1979 Cri. LJ 1295 SC). In other words, it is not an encyclopedia which is expected to contain all the details of the prosecution case; it may often be sufficient if broad facts constituting the prosecution case alone appear. Such requirement has been fulfilled here. The circumstances under which the grief stricken defacto-complainant (P.W. 1) who lost his father Gangadhar Ghoral in the said incident of 04.02.1992 lodged FIR, within 1 hour 45 minutes of the incident should not be lost sight of.

13. Mr. Chatterjee on referring to the evidence of P.W. 3-sister of Binode Makurh contended that according to her the incident took place between the houses of Sankar Maity and Anil Das on the road which is inconsistent with the testimony of P.W. 2 according to whom it took place in front of the of Akshay Das (P.W. 9). The evidence of P.W. 3 reveals that the house of Sankar Maltly is to the adjacent south of the house of Anil Das. The places where the murder of two persons took place and injured persons were assaulted have been shown in the rough sketch map. The entire incident took place on the road and it was not confined in a specific place as some of the injured persons and one of the victims of murder i.e. Binode were chased. Gangadhar Ghorai and Binode were murdered in front of the house of Sankar Maity as will be evident from the evidence of P.Ws. and

D.W. 2 Kanailal (P.W. 20) was injured in front of the house of Bijoy Routh, Gobinda (P.W. 8) was injured at a bit distance. So, there appears to be no discrepancy in regard to the Presiding Officer nor discrepancy, if any, in this regard is vital so as to throw out the Prosecution story.

14. The next argument advanced by Mr. Chatterjee is that though P.W. 1 and P.W. 5 claim to be eye-witnesses, it is falsified by P.W. 4 whose specific evidence is that he narrated the incident to P.W. 1, P.W. 5 and Patit Paban Maity (P.W. 7) on their query as they did not witness the incident. The said P.W. 4 witnessed the incident of assault on Kanailal and Gobinda only standing near the house of Bijoy Krishna Routh followed by his taking Kanailal who was senseless to the house of Akshay Das and then going to the temple and finding Binode and Gangadhar lying on the road with severe bleeding injuries. The prosecution story is not confined to the incident of assault on Kanailal and Gobinda but that is a part of it. P.W. 1 who deposed regarding assault on Binode and his father Gangadhar never claimed to have witnessed the incident of assault on the injured persons but it is his specific evidence that he came to learn about it from the injured persons. Similarly, P.W. 5 who deposed regarding assault on Binode and Gangadhar did not claim to have witnessed the assault on the injured persons but heard about it. No suggestion was put to P.Ws. 1 & 5 that they did not witness the incident at all. P.W. 4 whose attention was confined to that part of the incident cannot be expected to divert his attention to see who others were witnessing other parts of the incident. Unless a person notices some part of the incident, he cannot describe it so vividly, as has been done by P.Ws. 1 & 5. So, no importance can be attached to the said stray evidence of P.W. 4. Patit Paban Maity (P.W. 7) who is an witness to the seizure and some other points did not claim to have witnessed the incident of assault.

15. Mr. Chatterjee adversely criticized for non-examination of Akshay Das, Anil Das & Sankar Maity, in front of whose houses the incident took place. The said Akshay Das who is an witness to the seizure of blood-stained earth etc. has been examined here as P.W. 9 but there is nothing to suggest that he witnessed the occurrence. It is the evidence of P.W. 7 that the murder took place in front of their house but his elder brother Sankar Maity was not present at the house at that time. So, the question of his becoming a witness in this case is out of the way. As regards Anil Das - father of P.W. 15, there is no indication in the evidence of any P.W. that he witnessed the occurrence, and as such the question of his becoming a witness of this case does not arise. It is not as of every witness who has something to do with some part of the prosecution story should pass through the witness box. If the said Sankar Maity and Anil Das were essential to unfold the prosecution story and were suspiciously suppressed, the question of adverse presumption would have arisen. It is a platitude to say that witnesses have to be weighed and not counted since quality matters more than quantity in human affairs.

16. Mr. Chatterjee next contended that P.W. 19 deposed regarding assault on her

husband Gangadhar Ghorai alone. There is no hard and fast rule that a witness has to depose covering A to Z of the prosecution story. The said P.W. 19 being the wife of Gangadhar Ghorai would obviously be interested with her husband's condition and whatever she witnessed she deposed on that point.

17. At the end, Mr. Chatterjee on referring the decisions reported in 1994 SCC (Cr) 326, 1994 SCC (Cr) 348 & 2003 (3) CHN 389 contended that in the facts and circumstances of the case only four accused persons viz Biswanath, Madan, Gangadhar and Kartick at best may be held liable for commission of murder due to their overt acts, but as regards others as they have no common object to commit murder but to cause injury they may be held liable for an offence u/s 326/149 IPC Mr. Asimesh Goswami, learned Additional Public Prosecutor, on the other hand, on referring the decisions reported in 2003 C.Cr. LR (Cal) 621 & AIR 2004 SCW 1329 contended that since everybody shared the common object to commit murder, all the members of the unlawful assembly are liable for punishment under Sections 302/149 IPC etc. Section 149 of the Indian Penal Code is declaratory of the vicarious liability of the members of an unlawful assembly for acts done in prosecution of the common object of that assembly or for such offences as the members of the unlawful assembly knew to be likely to be committed in prosecution of that object. There are two ways in which the liability of a member of an unlawful assembly may arise for an offence not committed by him but by another member of such assembly. The first part of section 149 states about the commission of an offence in prosecution of the common object of the assembly whereas the second part takes within its fold knowledge of likelihood of the commission of that offence in prosecution of the common object. Such knowledge may be collected from the nature of the assembly, its common object, the kind of arms its members carry and their behaviour at or before the actual conflict (AIR 2000 SC 2111). The distinction between the common intention required by Section 34 IPC and the common object set out in Section 149 lies in that u/s 149 there need not be a prior meeting of minds, and it is enough that each has the same object in view, their number is 5 or more and that they act as an assembly to achieve that object. Section 34 limits itself to the furtherance of the common intention, while Section 149 goes further and is more strongly worded than Section 34 *Nemai Adak and Others Vs. The State*, . "It is well settled", as was held in the case reported in 1993 SCC (Cr) 1086, "that common object has to be inferred from various factors like the weapons with which the members were armed, their movements, the acts of violence committed by them and from the results thereof. Where certain accused persons were members of an unlawful assembly, the unlawful object of which developed at the spot of occurrence and they continued as its members not merely as passive or innocent spectators but indulged in overt acts along with others, the accused persons must be held liable for conviction, as was held in the three Judges' Bench decision in *Chandrika Prasad Singh and Others Vs. The State of Bihar*, . In the case on hand, being failure to snatch away fish the accused persons who were armed with deadly weapons left the place on the

previous evening on threatening and on the next day i.e. 04.02.1992 all of them along with others being armed with deadly weapons attacked and chased the persons of Bangalee Para with the common object of committing murder and grievous injuries, used weapons on them indiscriminately, committed murder of two persons on the spot and caused grievous injuries of four persons, in an attempt to commit their murder and even after fall of one of the victims of murder viz Binode on the road they did not stop but assaulted him with lathi on leg. The said common object was well-knit with what followed as the dangerous finale of assault which assumed the fearful character implicit in the illegal action undertaken by them. So the above contention of Mr. Chatterjee cannot at all be sustained and the accused persons have rightly been roped with the offence of murder and attempt to commit murder invoking the provision of Section 149 IPC. In this connection, the decisions reported in 2002 Cr. LJ 2024 & 1993 Cr. LJ 408 (SC) may well be referred to.

18. In the premises, in the light of the above discussion, there being no material to interfere with the findings of the learned Court below, the present appeal be dismissed on contest.

19. The judgment and order of conviction and sentence passed by the learned Additional Sessions Judge, 5th Court, Midnapore in S.T. Case No. XVI of January, 1993 is hereby confirmed.

Let a copy of this judgment along with the LCR be sent down at once to the learned Court below.

N.A. Chowdhury, J.

20. I agree.