

(2006) 06 CAL CK 0021
In the Calcutta High Court
Case No : C.R.A. No. 108 of 1991

Sadananda Mondal and Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 09-06-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 313
Penal Code, 1860 (IPC) — Section 147, 304, 304(1), 324, 325

Citation : (2006) 3 CALLT 210

Hon'ble Judges : Arun Kumar Bhattacharya, J

Bench : Single Bench

Advocate : Y.J. Dastoor, for the Appellant; Biplab Mitra, for the Respondent

Final Decision : Allowed

Judgement

Arun Kumar Bhattacharya, J.—The present appeal is directed against the Judgment and order of conviction and sentence passed by the learned Additional Sessions Judge, 11th Court, Alipore, 24 Pgs(S) in Sessions Case No. 37(2)88 [Sessions Trial No. 3(7)89], on 01.03.1991.

2. Shortly put, the Prosecution case is that on 21.02.1987 at about 11/11.30 p.m. when the defacto complainant's son Bijoy Kumar Mondal was proceeding for guarding the paddy-field to the south of their house, on hearing his cry, the complainant (P.W.1) and his wife (P.W.2) went there and found all the accused persons were assaulting their son with lathi and shabal. While they protested, accused Hemanta Mondal assaulted him with a shabal, for which he fell down. When his wife went to his rescue, she was assaulted by accused Joydeb with lathi on her hand. Despite his request to the accused persons not to assault his son, accused Sadanand Mondal assaulted his son with a shabal on his head and leg and others with lathi. Then they took his son from the side of tank to the drawing room and assaulted him there also. The injured Bijoy was removed from the drawing room of the accused persons to Canning P.H.C. and therefrom to N.R.S. Medical College and Hospital where he succumbed to injuries on 23.02.1987.

Hence, all the accused persons were charged under Sections 304/34 and 324/34 IPC.

3. The defence case, as suggested to P.Ws. and as contended by the accused persons during their examination u/s 313 Cr. PC, is that the victim Bijoy was in the habit of committing theft of paddy and fish from different places at night, for which the people of those villages were very much annoyed with him. The accused persons have been falsely implicated in this case as they complained for various theft committed by Bijoy.

4. Fourteen witnesses were examined on behalf of the Prosecution, while one witness was examined on behalf of the defence, and after considering the facts, circumstances and materials on record, the learned Court below found all the seven, accused persons guilty under Sections 304(1)/34 IPC and 324/34 IPC, convicted them accordingly and sentenced them to suffer R.I. for five years each and to pay fine of Rs. 3000/-, each i.d. to S.I. for one year each and to R.I. for one year each and to pay fine of Rs. 500/- each i.d. to S.I. for six months each respectively.

5. Being aggrieved by and dissatisfied with the said order of conviction and sentence, the accused persons have preferred the present appeal.

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

7. The main witnesses in this case are P.Ws. 1 to 7, 9, 11 to 14.

8. According to the evidence of P.W. 1 Phani Bhusan Mondal (defacto complainant), on 21.02.87 at about 11/11.30 p.m. his son Bijoy Kumar Mondal had been to the paddy-field for guarding the standing crops thereon, and all on a sudden on hearing the loud cries of his said son, he rushed to the land along with his wife (P.W. 2) and found their son lying there in a pool of blood and accused Sadananda and Hemanta armed with shabal, accused Badal with da, accused Rabin with axe, accused Joydev and Dharani with lathi and accused Subal standing there surrounding him. On focusing the torchlight in his hand he found the above accused persons. On his query as to the reason for assault on his son, accused Sadananda and Hemanta hit him on his head with Shabal thereby causing bleeding injuries on his head and his fall on the ground. While his wife Chhabi (P.W.2) requested the accused persons not to assault her son any more, accused Sadananda and Joydev assaulted her by means of shabal and lathi respectively thereby causing fracture of her left wrist. All the accused persons then lifted his injured son to his Baithakkhana, and he remained lying there as he was unable to get up and move. His wife tried to follow his son along with the accused persons but they did not allow her to follow them. His brothers Anukul Mondal (P.W.7), Ratan Mondal (P.W. 12) and daughter Gitabala Mondal (not examined) reached the spot and brought him to his house. He was thereafter given first aid by a local quack Santosh Sasmal and in the next morning he went to the local P.S. and lodged a written complaint (Ext. 1). On his way back home

from the local P.S. he saw the accused persons with second officer Madan Das (P.W. 14) who had been taking his son in a rickshaw to the local P.S. and asked him to go home as he would send his son to hospital. From the local P.S. he was sent to Basanti Hospital for treatment and his son Nirmal Mondal accompanied him there. His wound was dressed and bandaged and he was then released. His son Bijoy was first sent to Canning Hospital and therefrom he was referred to N.R.S. Medical College and Hospital where he succumbed to injuries on the next day.

9. The above evidence regarding assault by the accused persons is supported by P.W.2 Chhabi Mondal, P.W.4 Subed Ali Khan, P.W.5 Sandhya Rani Mondal, P.W.9 Giribala Mondal and P.W. 12 Ratan Mondal who claim to be eyewitnesses to the occurrence. P.W.6 Moinuddin Sheikh and P.W.7 Anukul Chandra Mondal found the accused persons to carry Bijoy Baithakkhana.

10. P.W. 13 Dr. Biswajit Ghosh, M.O. of Basanti P.H.C., on examination of Phani Bhusan Mondal (P.W.I) on 22.02.87 found (1) lacerated injury $V/2''$ x $V8''$ deep over the scalp of upper part on left temporal bone, (2) lacerated injury $1''$ x $V8''$ deep over the left side of the forehead and (3) a contusion with abrasion on left side of scapula. The history of the injuries, as reported on him by the patient, is that he was assaulted by means of shabal and lathi, and he opined that the said injuries might have been caused by blunt side of shabal and lathi. P.W. 11 Dr. (Mrs.) Baruna Mondal, the then M.O. of Canning Rural Hospital, on examination of Bijoy Kumar Mondal on 22.02.87 found multiple cut injuries over the head (skull fracture with head injury) and opined that the head injuries might have been caused by shabal, axe or bamboo-lathi. From the emergency ticket she found history of assault with axe. She did not record the details of the injuries of the injuries as the patient was first treated at Basanti PHC which referred him to their hospital. As the condition of the patient was serious, she referred him to any State hospital. P.W.8 constable Sarbananda some took the dead body of the victim and identified the same before Dr. A.K. Saha (P.W.3). P.W.3 Dr. A.K. Saha on holding post-mortem examination on 24.02.87 over the dead body of Bijoy, brought and identified by P.W.8, at N.R.S. Medical College and Hospital found (1) lacerated wound $1.7''$ x $3/10''$ x muscle deep vertically placed involving right frontal region of the scalp, the lower end of the wound $8/10''$ to the right of the middle line of the head and $2''$ above right eyebrow with haematoma $2 1/2''$ x $2''$, (2) lacerated wound $1.8''$ x $3/10''$ x bone deep obliquely placed involving left frontal region of scalp with haematoma $3''$ x $2''$, anterior and medial end of the wound $1''$ to the left of (he middle line of the head and $1.8''$ above left eyebrow. The wound made a fissured fracture $2''/2''$ long involving left frontal bone underneath the wound; (3) lacerated wound $1.3''$ x $2/10''$ x bone deep obliquely placed involving middle part of frontal region of the scalp (1) on the left side and $3/10''$ on the right side of the midline of the head) with haematoma $2 1/2''$ x $1''$ anterior end of the wound $3/10''$ to the right of the midline of the head and $4''/2''$ above medial end of right eyebrow and posterior end of the wound $1''$ to the left of midline of the head and $4.8''$ above the left eyebrow. The wound made

separation of suture 1 1/2" long between left frontal and left parietal bone underneath the wound; (4) incised wound with clean cut margins 1.8" x 3/10" x bone deep obliquely placed involving right parietal region of the scalp. Posterior end of the wound 1.5" above right parietal eminence and anterior end of the wound 1 1/2" to the right of midline of the head. The wound made a clean cut 1" x 2/10" x both tables of right parietal bones underneath the wound; (5) Extra dural clotted blood weighing 100 gms, on the frontal region of the brain; (6) sub-dural haemorrhage all over the brain, (7) incised wound with clean cut margins 1 1/2" x 3/10" x muscle deep placed more or less transversely over lateral aspect of left thigh 8" above over knee joint; (8) incised wound 8/10" x 2/10" x muscle deep over anterior aspect of the left leg obliquely placed 4" below left knee joint; (9) incised wound with clean cut margins - (a) 12" x 2/10" x muscle deep over right knee, (b) 12" x 1/10" x muscle deep and 3/4" x 1/10" x muscle deep over dorsum of right forearm; (10) abrasion - (a) 1 1/2" x 12" over right knee, (b) 1 1/2" x 1 1/2" and x 3/10" over left knee; (11) on dissection extensive extravasated clotted blood was found over posterior aspect of right arm 8" x 4", (b) posterior aspect of right forearm 10" x 3", (c) posterior lateral aspect of the right thigh - 14" x 6", (d) posterior lateral aspect of the right leg 10" x 4", (e) lateral aspect of the left leg 4" x 2" - extravasated clotted blood in and around the wound and opined that death was due to the effects of the injuries as noted above, ante mortem and homicidal in nature. It is his further opinion that injury Nos. 1 to 3 may be caused by blunt substance like blunt side of shabal, lathi etc., injury Nos. 4, 7 to 9 may be caused by sharp-cutting weapons like da, axe etc., injury No. 10 may be caused if someone is dragged on the ground or due to fall on the ground having rough surface, and injury No. 11 may be caused due to assault by hard and blunt substance like lathi, blunt side of axe, shabal etc.

11. P.W. 14 S.I. Madan Mohan Das, on receipt of a written complain {Ext. 1} from Phani Bhusan Mondal (P.W. 1) drew up formal FIR (Ext. 4), started Basanti P.S. case No. 9 dated 22.02.87 which was endorsed to him by the then O.C., Basanti P.S. for investigation. During the course of investigation visited he visited the P.O., prepared a sketch map with index (Exts. 5 & 5/1), seized one da (Mat Ext. I) with wooden handle from the Baithakkhana of Mondal family i.e. accused persons under a seizure list (Ext. 2) and labelled the same, seized some bloodstained earth alongwith controlled earth and one wooden stick (Mat Ext. II) measuring about two cubits in length from the bank or tank of Jyotiram Mondal under another seizure list (Ext. 3) in presence of witnesses, sent the complainant to Basanti PHC for medical treatment, found the other injured Bijoy Kumar Mondal lying in the Baithakkhana of accused persons and sent him to Canning PHC. On receipt of information on 24.02.87 regarding the death of Bijoy in hospital he prayed for adding Section 304 IPC. He recorded the statements of the witnesses, arrested five accused persons from outside the village, collected injury report and death certificate of Bijoy from N.R.S. Medical College and Hospital, inquest report from Entally P.S., and after completion of investigation submitted charge-sheet against the accused persons under Sections 147,

325/304 IPC.

12. On the other hand, constable Tarun Kumar Mukherjee who was examined as D.W.I proved the GD Entries being Nos. 274 dated 6.12.86 and 556 dated 12.12.86 (Exts. A & B).

13. Mr. Dastoor, learned Counsel for the appellants, on referring the cases of Balaka Singh v. State of Punjab reported in 1975 SCC 601 , Ishwar Singh Vs. State of U.P., and Marudanal Augusti v. State of Kerala reported in 1980 SCC 985 advanced argument contending that though the FIR was lodged on 22.02.87 at 7.45 hrs., the same was despatched to the Court on 23.02.87, and as there is no explanation for such delay, the possibility of tampering with or improving the prosecution version cannot be ruled out. The incident took place at about 23.00/23.30 hrs. on 21.02.87, FIR was lodged at about 7.45 hrs. on 22.02.87 at the P.S. at a distance of about 25 km. from the P.O. and the same was despatched at about 8.00 hrs. on 23.02.87, and on the same date it was received by the learned Magistrate. Mere delay in despatch of FIR to Magistrate is not a circumstance which can throw out the prosecution case in entirety nor it is necessarily fatal specially when it was reported at the earliest possible opportunity and no suspicion is attached to its recording. In this context, reference may be made to the cases of Pala Singh and Another Vs. State of Punjab, and State of U.P. Vs. Gokaran and Others, Moreover, no question was put to I.O. in regard to the reason for the alleged delay in despatch of the FIR. The cases so referred to by the learned Counsel for the appellants are distinguishable, since in Balaka Singh (supra) FIR was drawn after inquest, in Iswar Singh (supra) the Court of Magistrate was nearby the P.S. and in Marudanal Augusti (supra) the I.O. despite being questioned could not explain the delay. Accordingly, the above contention of the learned Counsel for the appellants is not tenable.

14. Mr. Dastoor next contended that no name of offender was disclosed to any of the doctors P.W. 11 or P.W. 13. Mr. Mitra, learned Counsel for the State, submitted that when the names of the offenders were disclosed in the FIR lodged at the P.S. at 7.45 hrs. on 22.02.87 by P.W. 1 who himself was injured, non-disclosure of names of assailants to the doctors is inconsequential and there appears to be enough force in such contention.

15. Mr. Dastoor on drawing Court's attention to various contradictions and omissions submitted that on the face of those discrepancies the prosecution cannot be held to have brought home the charge beyond all reasonable doubt and accordingly his clients are entitled to get benefit of doubt.

16. On hearing the loud cry of his son P.W. 1 being accompanied by his wife P.W. 2 claims to have rushed to his paddy field and found his son Bijoy lying there in a pool of blood and all the accused persons being armed with da, shabal, lathi and axe were standing surrounding his son which is quite inconsistent with the FIR (Ext. 1), according to which after going there he and his wife (P.W. 2) found their

son Bijoy was being assaulted by the accused persons with lathi and shabal. It is the evidence of P.W. 1 that in the focus of torch light in his hand he saw the accused persons which does not find place in the FIR. Undoubtedly, an FIR need not contain all the details, but omission to state an important fact which ought to have been disclosed is a serious lacuna and it tends to disprove the prosecution case. Reference may be made to the cases of Nirmal Karmakar and Others Vs. The State, Ram Kumar Pandey Vs. State of Madhya Pradesh, The above very evidence leads to suggest that it was a dark night and it was difficult to identify the assailants without light. Mr. Mitra contended that as the accused persons are co-villagers and thus well-known to P.W. 1 and other witnesses and that P.W. 1 himself was assaulted and injured, the identification of the accused persons was quite possible even in darkness. Indubitably, identification of accused by a victim is possible without light, but all it depends upon distance, age of the person identifying, his eyesight etc. Here, the above evidence of P.W. 1 who is aged about 76 years, shows that had he not focussed torch light he could not identify the accused persons. The said torch light was neither seized nor produced before the Court, and so the above contention of Mr. Mitra does not inspire confidence. It is the further evidence of P.W. 1 that on his query as to the reason for assaulting his son, accused Sadananda and Hemanta assaulted him with shabal on his head thereby causing bleeding injury and his fall on the ground and when his wife (P.W.2) requested the accused persons not to assault her son any further, accused Sadananda and Joydev assaulted her with a Shabal and lathi respectively on her left wrist causing fracture which too is inconsistent with the FIR as also the evidence of P.W.2 and other witnesses inasmuch as according to the FIR when he and his wife protested accused Hemanta alone assaulted him with a shabal resulting in his fall on the ground, and while his wife went to his rescue accused Joydev assaulted her with a lathi on her hand, and on his request not to assault his son, accused Sadananda assaulted his son with a shabal on his head and leg and others with lathi and thereafter the accused persons took their son from the side of bank to drawing room and assaulted there. If the above evidence of P.W. 1 is taken into consideration it stands that neither he nor his wife P.W.2 had any occasion to witness any assault by any accused on their son. P.W.1 further stated that all the accused persons lifted his injured son to his Baithakkhana and he remained lying on the ground as he was unable to get up and move. His wife tried to follow her son along with the accused persons but they did not allow her to follow them, and his brothers Anukul (P.W.7), Ratan (P.W. 12) and daughter Gitabala Mondal (not examined) then arrived at the spot and took him to house where he was given first aid by a local quack Santosh Sasmal. P.W.2 on being reported by her daughter Minati (not examined) that Bijoy was being assaulted rushed alone to the spot at a distance of about 2 bighas from their house and found her son in a pool of blood lying in the paddy field and accused Badal, Rabin, Sadananda, Dharani and Jayanta assaulting him with shabal, axe, lathi and da which is falsified by the above evidence of P.W. 1 who is the first person to reach there but did not witness any of the accused to assault their son. It is the further evidence of P.W.2 that she flung upon her son

to prevent those persons from assaulting her son further when accused Sadananda assaulted her with a shabal on her left hand near wrist and accused Jaya (i.e. Joydev) assaulted her with a lathi on left hand between wrist and elbow. She was not treated at any hospital but she claims to have been examined by one doctor Sunil at her residence which is contradicted by P.W. 1 who specifically stated that she was not examined by any doctor. If a person is assaulted with shabal and lathi by two persons, he/she is ordinarily expected to suffer some sort of injury, and considering this aspect the story of assault on P.W.2 is belied. P.W.2 is totally silent in regard to her alleged following her son along with the accused persons, as deposed by P.W.1. She stated that accused Sadananda, Hemanta and Rabin assaulted her husband by means of shabal and axe resulting in his fall on the ground which is contradictory to the above evidence of P.W. 1. P.W. 7 Anukul on hearing the cry of his elder brother P.W. 1 went behind their house and saw the villagers bringing him with bleeding from his head and his wife P.W.2 whose hand was fractured, by holding them which is inconsistent with the above evidence of P.W. 1 who nowhere deposed that he cried out. He further stated that he then went to the paddy field, saw Bijoy was lying on the ground by the side of paddy field and then all the accused persons carried him to their Baithakkhana which is negated by P.W. 1 whose specific evidence is that while he was lying on the ground, the accused persons carried his son to his Baithakkhana, and accordingly there was no scope on the part of P.W. 7 to witness the accused persons to carry away to their Baithakkhana. Moreover, there is no earlier statement u/s 161 Cr. PC on his part, as is evident from the evidence of I.O. (P.W. 14), that he saw the hand of wife of P.W. 1 fractured or that he went to the paddy field and saw Bijoy lying on the ground near the paddy field, and as such the above omission being a contradiction on vital point may be excluded from consideration. P.W. 12 Ratan on hearing the cry of his brother P.W. 1 went out of his house and found P.W.7, Subed Ali Khan (P.W.4), Gita Mondal and others of the locality carrying P.W. 1 with bleeding injury on head and his wife whose hand was fractured. He then went to the P.O. and saw the accused persons carrying Bijoy with bleeding injuries on his person to their Baithakkhana. The above evidence like that of P.W. 7 suffers from same discrepancy. He claims that he followed the accused persons to their Baithakkhana where they forced Bijoy to confess his guilt about committing theft of their fish, and when he refused accused Jayanta struck him with lathi on 2/3 places causing bleeding injury on his head and Sadananda assaulted him with blunt side of da on right shoulder. The accused persons assaulted Bijoy from time to time throughout the night and he remained there sitting although. In the absence of any earlier statement on his behalf that he accompanied Bijoy to the Baithakkhana of the accused persons where they carried him and he saw Hemanta to assault Bijoy with a lathi causing bleeding injury on his head and Sadananda assault him with blunt side of a da on his right shoulder and he remained sitting there throughout the night and saw the accused persons assaulting Bijoy, the said evidence being a contradiction due to omission on vital point cannot be taken into account. P.W.4 on hearing a hue and cry coming from

the direction of paddy field of accused Badal, Rabin and Sadananda rushed there, met P.W. 1 with bleeding from head at the bank of tank of P.W. 7 and on his query P.W. 1 informed that his son was being killed. He rushed to the paddy field, found Bijoy lying there in a pool of blood and Sadananda and Hema armed with shabal and Badal. Jaya and Subol with lathi standing there. When he requested Badal not to assault Bijoy any further, Sadananda asked him not to interfere and saying so Sadananda and Hemanta again started assaulting Bijoy with shabal. The above evidence is inconsistent with the evidence of being killed, and it is his specific evidence that when he was lying being injured on the ground the accused persons carried away his son to Baithakkhana and so there was no scope on the part of P.W.4 to witness the alleged assault by those two accused persons on Bijoy. That apart, there is absence of earlier statement on his part of all that as deposed, and the same being contradiction due to omission on vital point may be excluded from consideration. P.W.5 on hearing a hue and cry came but of the house and found her father-in-law (P.W. 1) with bleeding from head was being brought by mother-in-law (P.W. 2) who had a swelling injury on her left wrist and the accused persons brought her husband Bijoy to their Baithakkhana where accused Sadananda started assaulting him with a blunt da, Rabin with broken head of a spade, Hemanta by means of a lathi and Dharani with a shabal. She rushed there and tried to protect her husband but they told that they caught a thief of fish and they would kill him. She claims that the Baithakkhana of the accused persons at a distance of about two bighas intervened by two gardens is directly visible from their house. If the said Baithakkhana is surrounded by houses of others, as deposed by her, that it is directly visible from their house does not prima facie stand. However, in her case too there no previous statement u/s 161 of all that she deposed, and as such her evidence being contradiction due to omission on vital point is of no aid to the Prosecution. P.W.6 on hearing hue and cry went to the house of P.W.I, saw his head injury and on being reported that his son Bijoy was being assaulted in a nearby field with a request for saving his said son he went out of the house and found the accused persons carrying Bijoy to the Baithakkhana of Ananta Mondal which is contradictory to the evidence of P.W. 1 as also other witnesses. There is also no earlier statement that he saw all the accused persons carried Bijoy to the Baithakkhana of Ananta Mondal and that when he went to the house of P.W. 1 he found his head injury and he requested him to save his son Bijoy, as is evident from his cross examination and the evidence of I.O. (P.W. 14). He, however, stated that Bijoy was in the habit of committing theft of fish from the ponds of others in the locality. Similar is the evidence of P.W. 10 Lokman Ali Laskar who was simply tendered for cross-examination and deposed that Bijoy was in the habit of committing theft of fish and paddy in the locality. Therefore, his evidence is also of no aid to the prosecution. P.W.9 on hearing a hue and cry went to the bank of tank and found Rabin, Joydev, Dharani, Hemanta and Sada - one being armed with shabal and others with axe and lathi assaulting Bijoy which is contradictory to the above evidence of P.W, 1. She spoke about bleeding injury of her elder brother P.W.I alone but not of any injury of P.W.2. In her case too there

is no previous statement u/s 161 about all that she deposed above and accordingly the same being a contradiction due to omission on vital point cannot be taken into consideration.

17. The P.O. could not be located since while according to the FIR, it was the bank of tank, but according to the evidence of P.W. 1 it was the land of his elder brother Pulin Mondal, and as per evidence of P.W.2 it was paddy-field but of whom has not been disclosed. According to the evidence of P.W.4, it is the paddy-field of accused Badal, Rabin and Sadananda, while as per evidence of P.W.7 it is by the side of paddy field. As regards second P.O. it is also contradictory, since while as per evidence of P.W.I it was his own Baithakkhana, according to P.Ws.5, 7, 12 and 14 it is the Baithakkhana of the accused persons, and as per evidence of P.W.6 it is Baithakkhana of Ananta Mondal. It is nobody's case that the first P.O. is the bank of tank of Jyotiram Mondal, as was found by P.W. 14.

18. P.W. 14 seized some bloodstained earth, controlled earth and one wooden stick (Mat Ext. II) from the bank of tank of Jyotiram Mondal under a seizure list (Ext. 3) and one da (Mat Ext. I) from the Baithakkhana of Mondal family i.e. accused persons under another seizure list (Ext. 2), but he did not find any blood mark at the said Baithakkhana. He did not send the bloodstained earth, controlled earth and bloodstained wearing apparel of P.W. 1 to FSL, the reason for which is best known to the prosecution. Such omission to send bloodstained earth for chemical examination which could have fixed the situs of assault is a serious omission which goes to the root of the case and raises a reasonable doubt about the prosecution story. In this context, reference may be made to the case of Lakshmi Singh and Others Vs. State of Bihar,

19. To a suggestion that he prepared two seizure lists (Exts. 2 & 3) sitting at the P.S., P.W. 14 denied the same. P.W.4 who proves his signatures on the said seizure lists stated that the police did not seize anything in his presence and that he did not sign any document except at the P.S. which necessarily leads to suggest that the seizure lists were prepared at the P.S.

20. P.W. 11 deposed on consulting emergency ticket issued by her where there is no mention that the injured Bijoy was previously treated at Basanti PHC which referred him to Canning Rural Hospital. Neither the emergency register of Canning Rural Hospital nor injury register of Basanti PHC was seized and produced by I.O. P.W. 11 contended that prior to her coming to Court she consulted emergency register and took note of it. Mr. Dastoor adversely criticized the above evidence contending that prior to her coming to Court she had been to Canning Hospital from Tamluk only for perusal of emergency register is an absurd story and there appears to be some force in it. The report of inquest conducted by S.I. T.P. Dutta of Entally P.S., since retired, was not produced and exhibited.

21. It is the specific defence case that they have been falsely implicated in this case out of grudge as they had been complaining against Bijoy for various theft

committed by him and the people of nearby villages were against him for that reason. P.Ws. 6 and 10, supported the above defence version saying that Bijoy was in the habit of committing theft of paddy and fish in the locality.

22. Therefore, considering all the above, the prosecution cannot be held to have brought home the charges beyond all reasonable doubt.

23. Accordingly, the appeal be allowed. The impugned order of conviction and sentence passed by the learned Court below is set aside.

24. The accused persons are found not guilty and they be acquitted of the charges and be set at liberty at once.

Alamats, if any, be destroyed after the period of appeal is over.

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

Urgent xerox certified copy of this Judgment, if applied for, be supplied to the parties as expeditiously as possible.