



**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

Criminal Appeal No.558 of 2021

Sadek Ali @ Md. Sadek Ali and Anr.

...Appellants

Versus

The State of Assam and Anr.

...Respondents

With

Criminal Appeal No.850 of 2021

Criminal Appeal No.1264 of 2021

Criminal Appeal No.1428 of 2021

Criminal Appeal No.1096 of 2021

Criminal Appeal No.852 of 2022

Criminal Appeal No.266 of 2023

Criminal Appeal No..... of 2026

(@SLP (Crl.) No.....of 2026 @

Diary No.46790 of 2024)

J U D G M E N T

K. Vinod Chandran, J.

An inept investigation or a scripted enquiry, both are fatal to criminal prosecution; but the latter has lethal consequences when there is a possibility of totally innocent persons being crucified. In the present case 16 persons were charge-sheeted as accused, of which one died during

the trial. Out of the remaining, 12 were convicted and sentenced under Sections 147, 341, 326, 307, 323 and 302 read with Section 149 of the Indian Penal Code, 1860¹. Eighteen witnesses were examined before the trial court, of which six were eyewitnesses: one disbelieved by the trial court and the High Court. The defense examined two witnesses and denied their culpability. The appellants are the convicted accused, two of whom have passed away.

2. Ms. Vibha Datta Makhija, learned Senior Counsel for some of the appellants, emphasized that though a GD entry was made and immediately police went to the place of occurrence (P.O) the FIR was registered after three days on the written complaint of PW1 naming all the accused: clearly making the arraignment after due deliberation. The investigation was commenced on the GD entry, but the prosecution is based on the FIR, which was pursuant to another GD entry. The eyewitnesses are said to be wholly unreliable, there being inconsistencies in their own narration and amongst themselves. The deposition regarding the overt acts is disparate and the injuries were never compared with the weapons, and they were also

¹ For brevity, 'IPC'

inconsistent with the post-mortem report. There is no recovery of weapons and even the seized weapons were never sent for forensic analysis. There was no proof regarding the injuries suffered by the so-called injured witnesses, making their very presence at the P.O doubtful. The learned Senior Counsel would also point out that no statements under Section 161, Cr. P.C. were taken from the witnesses paraded before Court and the statements under Section 164, Cr. P.C were recorded far later. The learned Counsel appearing for the other appellants adopted the arguments raised by the learned Senior Counsel.

3. Mr. Chinmoy Sharma learned Senior AAG appearing for the respondent-State vehemently argued that there were five eyewitnesses, believed concurrently by the trial court and the High Court. The eyewitnesses remained unshaken in cross-examination. The Investigating Officer (IO-PW18) spoke of the injury suffered by PW14, one of the injured eyewitnesses; his statement having been recorded at a hospital. The investigation had proceeded based on the GD entry and the High Court correctly found the same to be the first information. The eyewitnesses who were accompanying the deceased at the time of the incident had

run away from the P.O, out of fear for their lives, the concerted attack having been made by 16 persons carrying deadly weapons. The other witnesses who came to the P.O immediately after the attack fully corroborated the eyewitnesses. The postmortem report indicated the death having been caused from injuries inflicted by sharp cutting weapons from different directions some of which were bone deep and the others impacting vital organs like the brain and lung. The evidence led at the trial, according to the learned Senior Counsel, was sufficient to find the accused guilty of the offences and there is no reason to upset the findings.

4. The High Court extracted and approved the findings of the trial court that the witnesses were examined on the strength of the GD entry, especially PW2 and PW13 who were eyewitnesses. The trial court found that since such examination was immediately after the incident, there is no reason to discard the evidence of other witnesses also, since otherwise it will send a wrong message. The High Court found that the attempt of the appellants' counsel to decry the investigation on the ground of a delayed FIR falls flat, since there was already a GD entry recorded in the jurisdictional

Police Station immediately after the incident which can be termed as the FIR in the above case thus relegating the statement leading to the registration of the FIR as one under Section 161, which would be hit by Section 162 of the Cr.P.C since it was signed. The High Court upheld the conviction and sentence awarded to the 11 accused except that of the second appellant in Criminal Appeal No.318 of 2017, who stood acquitted.

5. The prosecution case was that on 08.07.2008, the deceased along with the five eyewitnesses (PW2, PW7, PW13, PW14 and PW15) were returning home from Karbala Bazar on four motor bikes. While they were travelling on the Gobindapur-Rabhapara PWD road, nearby the house of accused No.1, a lonely spot, the 4 bikes were waylaid with a thick steel wire tied across the road. The abrupt braking of bikes resulted in the riders falling down, when a sudden attack was launched by the accused on the deceased who was first blinded by throwing chili powder in his eyes. Multiple injuries were inflicted on the deceased with cutting weapons, and his left hand was severed from the wrist. The eyewitnesses spoke in tandem about the incident, but we will deal with that a little later.

6. The police reached the spot based on a GD entry produced as Annexure P1 in Criminal Appeal No.558 of 2021; the documents from which are referred to herein. An inquest was carried out at about 9.30 P.M on 08.07.2008 itself, produced as Annexure P2 and seizures effected as seen from Annexure P3 & P4 from the P.O. Postmortem was conducted on 09.07.2008; the report produced as Annexure P6. A written complaint was filed by PW1, produced as Annexure P8 based on which Annexure P9 FIR was registered. Annexure P8 named 13 accused, all of whom were spoken of as residents of Gobindapur. The FIS by PW1 specifically mentioned the presence of 10 to 12 other accused persons who could be identified on sight.

7. That the victim died from a brutal attack with cutting weapons is more than clear from the postmortem report, which speaks of multiple cut injuries on the body of the deceased; specifically three on the head and face, one on the right side of the neck, another below the nipple on the left chest and compound fractures on both the legs. There is also an injury seen on the frontal part of the forehead, which fractured the maxilla, mandible and frontal bone. The hematoma on the frontal lobe of the cerebrum extended to

the subdural space. The 4th and 5th ribs were fractured, and the right lung revealed another hematoma on the left side. The left hand was severed at the wrist. That the death was homicidal stands established.

8. The GD entry is seen to have been made at 09.15 P.M on 08.07.2008, on information received over the phone from the Secretary of VDP, Gobindapur and recorded by the Inspector in-charge of the Goalpara Police Station, one Padma Dhar Chutiya. Neither the informant was examined nor the Inspector who recorded the entry in the general diary maintained at the Police Station; negating the finding of the High Court that this entry is the first information report. The evidence of PW18, the I.O, who was deputed immediately on the GD entry being made clearly indicates that he reached the spot on 08.07.2008 at 9.30 P.M, when PW1 was available at the spot. PW18 conducted an inquest on the spot and sent the body for postmortem to the hospital. However, he did not choose to register an FIR on the basis of the information supplied by PW1, immediately on his return to the Police Station. PW18 also does not speak of any names having been disclosed by PW1 who identified the deceased at the P.O along with PW3, another relative. PW18

does not speak of the presence of the eyewitnesses at the P.O.

9. Seizures were made from the spot of a *beki dao*, *lathi*, spike and 4 motor bikes, which is evident from the seizure list produced as Annexures P3 and P4. Annexure P4, seizure list not only contained the description of the bikes but also the name of the persons who travelled in each; who are the eyewitnesses. The FIR was registered two days later on 10.07.2008 at 11.50 A.M, the FIS leading to which named 13 accused. It is pertinent that while naming the 13 accused in the complaint produced as Annexure P8, the first informant also spoke of 10 to 12 other accused persons and categorically stated: *"I don't know their names, but I will be able to recognize them at sight"*. However, PW1 is not cited as an eyewitness, and he does not claim to have seen the incident. The delay in registering the FIR based on the FIS, which indicated the name of 13 accused is suspect especially since PW1 does not speak of having witnessed the incident.

10. We have to pertinently observe that PW1 and the other eyewitnesses are close relatives of the deceased. Even if the five eyewitnesses are found credible; which we are not

convinced of, there was due deliberation before the FIS was lodged. The fact that none of the eyewitnesses thought it fit to make a statement before the police further raises the suspicion regarding the array of accused as stated in the FIS. It is pertinent that PW1 categorically stated in his deposition that he did not witness the incident and that it was one Ashad Ali who spoke of the assault made by the accused leading to the death of his nephew, Wahab and injuries sustained on Omar; PW14, the son-in-law of the deceased. Ashad Ali was not examined before Court.

11. The High Court termed the GD entry as the FIR based on which the investigation was commenced especially noticing that PW2 and PW13 were examined by the police immediately after the incident. PW2 spoke in tandem with the prosecution story regarding the attack unleashed on the deceased by the named accused and spoke of injuries inflicted on him, one of which led to his left hand being severed at the wrist. He also spoke of Omar Ali, PW14 having sustained injuries. He did not speak of having fled from the P.O but categorically stated that when the villagers gathered the assailants took to their heels and that Abdul Wahab died on the spot. With respect to the statement

recorded by the police, he was not sure when he was questioned. He only confirmed that the police questioned him and spoke of his statement having been recorded under Section 164 of the Cr.P.C. If the police had questioned PW2, who is said to have been available at the spot, PW18 who reached the spot at 9.30 P.M would definitely have registered an FIR on his return to the Police Station. PW18 does not speak of the presence of PW2 at the P.O or any statement having recorded from him. The High Court and the trial court egregiously erred in finding the investigation having commenced with the examination of PW2.

12. It is also relevant that PW13 deposed that he was questioned before the dead body was taken from the P.O, but PW18 does not corroborate that. Likewise, PW15 another eyewitness, also spoke of having been questioned at the place of occurrence. The presence of eyewitnesses PW2, PW13 and PW15 at the P.O when the villagers gathered there is affirmed by PW3, PW6 and PW8 who reached the P.O immediately after the incident. But PW18 does not speak of recording a statement from any of them. When the eyewitnesses were present at the P.O there is no

explanation as to why their statement was not recorded or the accused arrayed in a proper FIR immediately thereafter.

13. Now we come to PW14, one of the injured witnesses on whom reliance was placed by both the High Court and the trial court. PW18 does not speak of any statement having been recorded from PW14 in his chief-examination. However, in cross-examination PW18 stated that PW14 was examined at Solace Hospital, Goalpara on 22.07.2008; long after the registration of the FIR. The other five eyewitnesses were also stated to have been examined under Section 164 Cr.P.C. on 19.07.2008. There is no statement by PW1 as to any statement under Section 161 having been recorded from the said witnesses. Interestingly, PW18 also says that PW14 did not state before him that he had tried to obstruct the assault on the deceased. PW18 also denied PW14 having informed him of the treatment taken at different places or that he was assaulted by a *beki dao*. In this context, we have to notice the deposition of PW14 that during the course of the attack he became unconscious and he regained his consciousness in the Solace Hospital around 1'o Clock on the following day. He also deposed that he had been referred to the Government Medical College Hospital,

Guwahati on that day, that is 09.07.2008. The statement in cross-examination of PW18 that he examined PW14 on 22.07.2008 at Solace Hospital, Goalpara hence cannot be believed.

14. PW14 spoke of cut blows on his hand and legs, on his right wrist and the waist as also the right arm. He also deposed that his legs were plastered. His deposition indicates that he was first treated at one Solace Hospital and then referred to GMCH, Guwahati. Absolutely, no intimation to the Police Station was received from the Solace Hospital in which he was admitted on 08.07.2008. There is no wound certificate issued either from Solace Hospital or the GMCH, produced in the trial. The injury sustained by PW14 though spoken by all eyewitnesses there was nothing to establish that PW14 actually sustained the said injuries.

15. The eyewitnesses spoke of the incident in tune with the prosecution story about the attack on the deceased, PW14 and PW6. PW6 is said to have suffered stab injuries and she speaks of having lost her consciousness at the P.O. Again, there was no proof of the injuries sustained by PW6. We pause here to notice that despite the police having reached the spot immediately after the assault in which

allegedly one person was killed and two others injured grievously, no attempt was made to collect the blood spilled at the P.O, so as to match it with that of the deceased and the injured.

16. PW6, as we noticed, was disbelieved by the trial court and the High Court and the injury sustained by PW14 has also not been proved in which circumstance, we cannot find the narration of the incident as one proffered by 'injured eyewitness'. The credibility of an injured eyewitness, as has been held by this Court is a tad higher than an eyewitness who has just seen the incident. The very fact that the witness suffered an injury in the same transaction adds to its credibility. On the other hand, when the prosecution fails to prove the very injuries projected as sustained in the same transaction, not only are we unable to concede a greater credibility than that available to a chance witness, but it also makes doubtful their very presence in the P.O.

17. Insofar as the other eyewitnesses are concerned though they supported the prosecution as to the crime proper and identified the assailants, they too spoke of the injuries suffered by PW6 & PW14, raising a cloud of suspicion accentuated by the fact that all of them are related

witnesses, in fact close relatives. Related witnesses, as is trite, cannot always be termed to be interested witnesses, but here the incident having occurred on a public road their presence together cannot be presumed as natural. The prosecution case is also that the eyewitnesses having met at the Karbala Bazar were travelling on four motorbikes to their homes in the locality. All the four bikes were seized by the police from the P.O, by the seizure list Annexure P4 detailing the engine number, chassis number and the registration number of the bikes with a description of the make and color along with the owners' name and specifically indicating who drove each bike and who was travelling pillion. If such an account was made by any of the eyewitnesses, it is strange that the I.O did not record an FIS, then and there with the name of the assailants arrayed as accused. In the given circumstances, we are unable to give any credence to Annexure P4, which proclaims the seizure to have been made at the spot, immediately after the crime; alarmingly doubtful.

18. Further, despite the ownership of the vehicles having been indicated in the seizure Mahazar, there is no document produced before the Court to substantiate such ownership.

The motor bikes seized were also not produced before Court at any time before or at the time of trial to confront the witnesses; neither the eyewitness who travelled in the bikes or the other witnesses who gathered at the spot immediately thereafter. The very story of six people having proceeded on four bikes stand effaced by reason of no worthy evidence having been produced to substantiate the same: putting the eyewitnesses' testimonies under grave suspicion.

19. It also assumes relevance that the eyewitnesses never fled from the P.O and most of them claimed their presence even when the villagers gathered at the spot and when the police arrived. PW3 to PW6 and PW8 to PW11 are persons who converged at the P.O immediately after the incident. They spoke of the presence of some of the eyewitnesses which itself is suspect since then the name of the assailants would have been disclosed at that point itself, all of the assailants being of the very same village. But for the deceased having been attacked brutally with grievous injuries inflicted and his left hand severed at the wrist, spoken of by the witnesses who converged on the spot, also evidenced by the inquest and the postmortem report, there is no credible evidence to substantiate the prosecution

case. The eyewitnesses paraded before the Court are not believable since their presence in the P.O is highly improbable for not being established unequivocally; in the context of no evidence having been adduced to substantiate the story of the five witnesses, close relatives, having travelled with the deceased on four bikes.

20. Though the police moved to the spot on the basis of a GD entry, there was no FIR registered for two days, waiting for PW1 to make a complaint with the names and asserting identification on sight of the other 10-12 assailants who is said to have participated in the assault when PW1 was not an eyewitness. It is also the evidence at the trial that at least three eyewitnesses were present at the spot when the police arrived.

21. The seizure list of the motor bikes; doubtful in its genesis, though indicating the ownership of the respective bikes, there are no documents seized indicating such ownership; which was never proved. The weapons seized were neither sent for forensic analysis, nor were they confronted to the eyewitnesses or the Doctor who conducted the postmortem.

22. It is unfortunate that PW18, the police officer who reached the spot immediately after the incident took place, on the basis of an information over telephone, failed to follow due procedure to put the criminal investigation in motion as per the Code of Criminal Procedure, 1973. Be it ignorance, inefficiency or malicious motivation, the crime is left unresolved and considerable time and money has been spent in the prosecution of 16 persons, some of whom died during trial and the others suffered incarceration for long periods. The State and its Department of Home would do well to better equip their officers in investigating crimes and educating them of due procedure.

23. The appeals are allowed, acquitting the appellants and cancelling the bail bonds of the accused who is/are on bail.

24. Pending application(s), if any, shall stand disposed of.

..... J.
(SANJAY KUMAR)

..... J.
(K. VINOD CHANDRAN)

**NEW DELHI;
APRIL 28, 2026.**