

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

**PRESENT:
THE HON'BLE JUSTICE UDAY KUMAR**

CRR 3581 OF 2017

**ANIL BARUI
-VS-
STATE OF WEST BENGAL AND ANR.**

For the Petitioners : Mr. Soumik Ganguly
Ms. Rajnandini Das

For the State : Mr. Ramashis Mukherjee
Mr. Neel Chakraborty

Reserved on : 28.08.2026

Pronounced on : 18.09.2026

UDAY KUMAR, J.: –

1. The administration of criminal justice rests upon the immutable bedrock that suspicion, howsoever grave, can never be permitted to take the place of legal proof. When a criminal prosecution is initiated in an atmosphere saturated with pre-existing animosity, marked by an unexplained and inordinate delay in setting the investigative machinery in motion, and riddled with structural defects that compromise the integrity of qualitative evidence, the courts are duty-bound to pierce the veil of concurrent findings.
2. The instant revisional application brings to the fore the delicate but vital exercise of judicial review, demanding an analytical scrutiny of

whether a conviction under Section 323 of the Indian Penal Code, 1860, can survive when the foundational pillars of the prosecution case are hollowed out by delay, alternative medical etiologies (referring to plausible, non-criminal medical explanations for an injury rather than the specific assault alleged), and perfunctory investigation.

- 3.** The factual matrix unfurls from an incident alleged to have taken place on May 9, 2008, at around 3:00 PM. According to the prosecution case, the opposite party no. 2, Prasanta Barui (the injured-complainant / PW 1), was proceeding toward Beliatore riding his motorcycle, accompanied by Dhiren Roy (PW 2). *En-route* near Markha village, the petitioner, Anil Barui, allegedly intercepted the motorcycle, forced the victim to alight, and assaulted him on the head, neck, and left hand with a lathi (stick), causing severe trauma and unconsciousness. The injured was initially shifted to Beliatore Primary Health Centre and subsequently referred in a critical condition to Govindanagar Hospital, Bankura, where treatment was rendered, X-rays were advised, and he was discharged after a few days.
- 4.** Despite the gravity of the alleged assault, the local police took no immediate cognizance upon verbal reporting. Consequently, after an unexplained lapse of weeks, a complaint was allegedly sent by registered post to the Superintendent of Police, Bankura, on May 30, 2008, followed by a formal petition filed under Section 156(3) CrPC before the learned Chief Judicial Magistrate, Bankura. This belated and defective petition ultimately culminated in the registration of Beliatore Police Station Case No. 22 of 2008 on August 15, 2008, under Sections

323/324/326 of the Indian Penal Code, setting into motion a judicial process that suffered from profound structural and procedural infirmities.

5. Upon completion of the investigation, the Investigating Officer submitted a chargesheet under Section 326 IPC. During the ensuing trial in T.R. No. 469T of 2008 before the learned Judicial Magistrate, 6th Court, Bankura, the prosecution examined thirteen witnesses to substantiate its case, while the defence examined none, relying instead on effective cross-examination to impeach the prosecution's narrative. The learned Judicial Magistrate, by judgment dated August 30, 2011, acquitted the petitioner of the major charge under Section 326 IPC but convicted him under Section 323 IPC, sentencing him to three months' rigorous imprisonment with a set-off provision under Section 428 of the Code of Criminal Procedure.
6. Feeling aggrieved by and dissatisfied with the judgment of the trial court, the petitioner preferred an appeal before the Sessions Court, Bankura, registered as Criminal Appeal No. 36 of 2011. The appeal was heard by the learned Additional Sessions Judge, 2nd Court, Bankura, who affirmed the conviction and sentence of the petitioner vide judgment dated August 29, 2017, holding that the trial court rightly exercised discretion to convict the petitioner under the lesser offence of Section 323 of the Indian Penal Code.
7. Being anguished by the concurrent failure of both courts below to appreciate the totality of the facts, the glaring statutory non-compliances, the unexamined witness testimonies, and the alternative

medical etiology, the petitioner has approached this Court under its revisional jurisdiction invoking Section 401 read with Section 482 of the Code of Criminal Procedure, 1973, seeking the setting aside of the impugned appellate and trial court judgments.

8. Assailing these concurrent judgments of conviction and sentence, Mr. Soumik Ganguly, learned counsel appearing on behalf of the petitioner, launched a comprehensive, multifaceted attack, contending that the entire criminal proceeding is inherently defective and tainted, structurally defective, and legally non-est.
9. He commenced his submissions by focusing on the glaring, unexplained inordinate delay that affected the very inception of the prosecution case adversely inasmuch as the alleged incident though occurred on May 9, 2008, but the criminal machinery was set in motion through a Section 156(3) CrPC petition of complaint that culminated in an FIR registered only on August 15, 2008, more than three months later, thus creating an irresistible inference of afterthought and false implication arising from a long-standing, bitter dispute over land between the families.
10. Learned counsel pointed out that while the complainant vaguely asserts that an approach was made to file a complaint at the local police station and failing thus, a registered post enclosing the complaint was dispatched to the Superintendent of Police on May 30, 2008, however no such postal receipt or complaint copy was ever produced or exhibited during trial. Crucially, the prior compliance of mandatory statutory prerequisites under Section 154(1) and Section 154(3) CrPC were entirely avoided here. When this monumental and unexplained

delay is viewed against the backdrop of an admitted, long-standing, and bitter land dispute between the two families, Mr. Ganguly forcefully submitted that the prosecution story stands unmasked as a belated afterthought, a fabricated concoction designed purely to settle civil scores out of deep-seated malice.

- 11.** Expanding his challenge to the core evidentiary fabric, Mr. Ganguly turned upon the monumental procedural illegality surrounding the examination of most important witnesses, notably PW 2, Dhiren Roy, projected by the prosecution as an indispensable eyewitness and the co-rider on the victim's motorcycle at the exact time of the alleged interception.
- 12.** PW 2 (projected as an eyewitness and co-rider) made a surprise appearance directly in the witness box during trial, candidly admitting under cross-examination that he was never interrogated, examined, or questioned by the Investigating Officer during the statutory investigation phase. Mr. Ganguly vehemently submitted that introducing PW2 for the first time at trial without any prior police statement under Section 161 CrPC strikes at the very heart of a fair trial. It robs the defence of its invaluable statutory right under Section 162 CrPC to confront the witness with previous omissions and contradictions, thereby rendering his deposition legally inadmissible and entirely untrustworthy. In the same vein, he assailed the testimony of PW 3, the complainant's wife (claimed to be an eyewitness), pointing out that she was not a rider on the motorcycle and could only have arrived at the spot post-occurrence upon hearing a hue and cry,

making her claim of witnessing the actual assault inherently impossible and self-contradictory. In respect of the other key witnesses, such as PW 6 and PW 10, he submitted that they were either interrogated solely prior to the formal registration of the FIR months later or were mere hearsay arrivals, leaving the substantive ocular account of the incident entirely unsupported by credible, tested testimony.

- 13.** Proceeding to the medical and other material aspects of the case, learned counsel for the petitioner underscores the fatal vacuum in the prosecution's scientific and physical evidence. The primary injury report, exhibited through the medical officer PW 8, is astonishingly blank and devoid of any classification regarding the nature, gravity, or depth of the hurt, failing completely to establish whether the alleged injury was simple or grievous. Compounding this, the primary weapon of offence, the lathi or stick allegedly used to inflict brutal fractures, was never recovered, seized, or produced by the police throughout the entire course of the investigation. Most decisively, Mr. Ganguly has drawn our specific attention to the candid admission of the treating doctor, PW 13, who explicitly conceded during cross-examination that the injuries found on the victim's arms could equally and plausibly be sustained by a person falling down from a running motorcycle onto a hard road surface. This unrefuted medical alternative, coupled with the objective physical evidence of the motorcycle lying right beside the unconscious victim as deposed by PW 4, successfully establishes a strong alternative medical etiology that the prosecution miserably failed to exclude.

- 14.** To anchor these formidable propositions in binding legal authority, Mr. Ganguly placed reliance upon authoritative pronouncements of the Hon'ble Apex Court, including *Darshan Singh v. State of Punjab* [(2024) 3 SCC 164], *K.A. Kotarappa Reddy & Anr. v. Rayara Manjunatha Reddy alias N.R. Manjunatha & Ors.* [(2016) 14 SCC 729], and *Rajesh Patel v. State of Jharkhand* [(2013) 13 SCC 791]. He submitted that these landmark rulings cement the principle that an unexplained delay in lodging FIR coupled with previous land-related enmity, un-investigated surprise witnesses introduced without Section 161 statements, blank medical reports, and unrecovered weapons must deal a death blow to a criminal prosecution.
- 15.** He concluded his submissions by asserting that the courts below committed grave perversity by attempting to bridge the chasms in the prosecution's case and shifting the burden of proof onto the defence. Suspicion, howsoever strong, can never be permitted to usurp the place of legal proof, and because the foundational narrative of the prosecution has completely collapsed under the weight of its own contradictions and statutory violations, Mr. Ganguly prayed for the absolute setting aside of the concurrent convictions and sentences and the honourable acquittal of the petitioner.
- 16.** Mr. Ramashis Mukherjee assisted by Neel Chakraborty, learned Public Prosecutor-in-Charge appearing on behalf of the State, opened his submissions by stoutly defending the concurrent findings of guilt returned by both the trial court and the first appellate court, maintaining that the conviction under Section 323 of the Indian Penal

Code is firmly rooted in reliable ocular and medical evidence. He contended at the very outset that the core testimony of the injured complainant, Prasanta Barui (PW 1), remains steadfast, consistent, and completely unshaken through a rigorous and extensive cross-examination. PW 1 has categorically and graphically described how his motorcycle was intercepted near Markha village by the petitioner Anil Barui, who dragged him down and inflicted severe blows with a lathi on his head, neck, and left hand, rendering him unconscious. Mr. Mukherjee submitted that the testimony of an injured witness carries a special and premium weight in criminal jurisprudence, as their presence at the scene of the crime is natural and stamped with inherent truthfulness, since an injured person would rarely spare the actual assailant and falsely implicate an innocent party.

- 17.** Addressing the contention regarding the delay in lodging the formal First Information Report, Mr. Mukherjee submitted that the delay stands fully explained when viewed through the desperate circumstances faced by the family. Immediately following the brutal assault, the victim's wife and villagers rushed to the spot, and the victim was promptly shifted to Beliatore Primary Health Centre and subsequently referred in a critical, semi-conscious condition to Govindanagar Hospital, Bankura. The primary concern of the family at that critical juncture was naturally the preservation of human life and emergency medical treatment of the victim/complainant rather than rushing to a police station. Furthermore, when the local police at Beliatore declined to take immediate action, a registered post enclosing

the complaint was dispatched to the Superintendent of Police on May 30, 2008, followed ultimately by a statutory petition of complaint under Section 156(3) of the Code of Criminal Procedure filed before the Chief Judicial Magistrate, Bankura. Mr. Mukherjee argued that any laches or omissions on the part of the investigating machinery, including the failure of the Investigating Officer as PW 12 to formally verify the veracity of the allegation as to whether prior to the registration of the formal FIR, the complainant had dispatched a registered post enclosing the complaint, or for his failure to enquire into the reason for delay in lodging the FIR, cannot be permitted to invalidate a genuine prosecution case or prejudice the suffering victim.

- 18.** In response to the challenge of the petitioner concerning the medical evidence, the learned Public Prosecutor urged that the testimonies of the examining medical officers, Dr. Swapan Ghosh as PW 8 and Dr. C.N. Banerjee as PW 13, corroborated by Exhibit 2(series) and Exhibit 5(series), conclusively establish that the victim sustained bodily injuries and underwent prolonged medical treatment. He submitted that the alternative theory of a motorcycle accident suggested by the defence based on the position of the bike on the ground following the incident is a mere afterthought conjured up during cross-examination, completely devoid of any foundational support in the substantive defence evidence, during the cross-examination of the victim, or in the statement of the accused recorded under Section 313 of the Code of Criminal Procedure. The concurrent factual finding by both trial and first appellate courts that the injuries sustained by the complainant/victim were inflicted by

manual assault rather than vehicular transit is based on a sound appreciation of record and warrants no interference in revisional jurisdiction.

- 19.** Placing heavy reliance upon the recent pronouncement of the Apex Court in *Edakkandi Dineshan alias P. Dineshan & Ors. v. State of Kerala* [(2025) 3 SCC 273], the learned counsel for the State contended that minor omissions, procedural lags, or defects in investigation do not ensure to the benefit of the accused to secure an outright acquittal, and that concurrent independent findings against the petitioner regarding minor hurt under Section 323 of the Indian Penal Code warrant no revisional interference. He submitted that these landmark authorities reiterate the settled propositions that minor discrepancies or procedural lapses by the investigating agency do not vitiate a trial where ocular testimony is cogent, that the testimony of an injured witness stands on a higher pedestal and requires formidable reasons to be discarded, and that revisional courts under Section 401 ought not to interfere with concurrent findings of fact unless there is a glaring perversity or gross miscarriage of justice. Concluding his submissions, Mr. Mukherjee asserted that no such perversity exists in the present case, and he accordingly prays for the outright dismissal of the revisional application and the affirmation of the conviction and sentence awarded to the petitioner.
- 20.** Having heard the learned counsel for the contesting parties and upon a meticulous perusal of the trial court and the first appellate court

records, the questions for determination that fall for consideration before this Court are:

Firstly, Whether the unexplained inordinate delay of over three months in registering the First Information Report, coupled with an admitted, long-standing, and bitter land enmity between the parties, renders the prosecution case a belated afterthought and a product of false implication;

Secondly, Whether the substantive reliance placed upon the testimony of PW 2 (Dhiren Roy), who admittedly was never examined or interrogated by the Investigating Officer during the statutory investigation, violates Section 162 of the Code of Criminal Procedure and severely prejudices the defence by depriving it of the right of contradiction;

Thirdly, Whether the prosecution successfully established the essential ingredients of the offence and excluded the plausible alternative medical etiology, conceded by the treating doctors, that the injuries could have been sustained due to a fall from a running motorcycle onto a hard surface, particularly when the primary weapon of offence (lathi) was never recovered or seized; and

Fourthly, Whether both the trial and appellate courts committed a grave error in law by shifting the burden of proof

onto the defence to cure the fundamental lacunae and structural collapse of the prosecution case.

- 21.** Addressing the first and foremost question that strikes at the very root of the prosecution's edifice, I must examine whether the unexplained, inordinate delay of over three months in setting the criminal machinery into motion, when viewed against the backdrop of an unverified preliminary grievance and a complete absence of contemporaneous postal proof, shatters the credibility of the prosecution's foundational narrative.
- 22.** Indubitably, the record reveals that though the alleged incident took place on May 9, 2008, but the formal First Information Report giving rise to Beliatore Police Station Case No. 22 of 2008 was registered only on August 15, 2008, pursuant to a belated petition of complaint filed under Section 156(3) of the Code of Criminal Procedure. To overcome this glaring temporal chasm, the prosecution set up an explanatory story asserting that the victim's wife initially approached the local police station and that, upon their inaction, a registered post enclosing the complaint was subsequently dispatched to the Superintendent of Police, Bankura, on May 30, 2008, invoking the statutory mechanism under Section 154(3) of the Code of Criminal Procedure, 1973 (corresponding to Section 173 of the Bharatiya Nagarik Suraksha Sanhita, 2023). Under sub-section (1) of Section 154, every information relating to the commission of a cognizable offence must be reduced to writing, and sub-section (3) provides that if local police fail or refuse to register it, the substance of such information may be sent in writing, by post, to

the Superintendent of Police. However, a meticulous scanning of the evidence discloses a total vacuum: neither the postal receipt, nor the tracking report, nor a copy of the said dispatch of the said complaint was ever produced, proved, or exhibited during the trial by the prosecution to substantiate this statutory plea.

- 23.** Turning to the evidentiary records of the trial, it is incumbent to revisit the specific admissions made by the Investigating Officer, PW 12 (Prabodh Kr. Pal), during his cross-examination. PW 12 candidly admitted that "he did not investigate on this score during investigation to ascertain whether prior to filing of the complaint under Section 156(3) of the Cr.P.C., a complaint was lodged about the incident to Beliatore PS or whether a copy of complaint was sent to the S.P., Bankura."
- 24.** It is a well-settled principle of criminal jurisprudence, as authoritatively enunciated by the Hon'ble Apex Court in *Thulia Kali v. State of Tamil Nadu*, [(1972) 3 SCC 393], that a prompt and early lodging of a First Information Report is an essential safeguard that provides an assurance regarding the truth of the prosecution case and upon delay being noticed, the court is duty-bound to cast a suspicious eye on the entire prosecution case to see if such delay has been craftily used to introduce false implication. The Hon'ble Supreme Court, in Paragraph 12 of the report has observed:

"12. ... The object of insisting upon prompt lodging of the report to the police in respect of commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of the actual culprits and the part played

by them as well as the names of eyewitnesses present at the scene of occurrence. Delay in lodging the first information report quite often results in embellishment which is a creature of afterthought. On account of delay, the report not only gets bereft of the advantage of spontaneity, danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of deliberation and consultation. It is, therefore, essential that the delay in the lodging of the first information report should be satisfactorily explained."

- 25.** The same has been authoritatively reiterated by the Hon'ble Supreme Court in *Darshan Singh (supra)* and *K.A. Kotarappa Reddy (supra)* that prompt lodging of an FIR serves as an invaluable safeguard to ensure the authenticity of the prosecution's initial version and shields it from subsequent deliberations, embellishments, or malicious concoctions. When an inordinate delay remains completely unexplained and is compounded by admitted, long-standing land disputes revealing deep-seated malice and enmity between the parties, the shadow of false implication looms large. The Hon'ble Supreme Court, in *K.A. Kotarappa Reddy*, has illuminatingly observed that an unexplained, inordinate delay in setting the criminal machinery in motion, particularly when viewed in the light of pre-existing civil and land disputes between the parties, casts a grave shadow of doubt on the veracity of the prosecution case, rendering it unsafe to base a conviction thereon.
- 26.** In a criminal trial, an unexplained delay in lodging the FIR is not a mere technicality; it strikes at the genesis of the prosecution story, transforming a genuine grievance, if any, into a belated, fabricated afterthought designed to settle civil scores. When there is an

unconscionable and unexplained delay in setting the law in motion, the report loses its vital stamp of spontaneity, opening the door wide for embellishment, tutoring, and the fabrication of a coloured version without requiring any immediate structural cross-reference to separate disputes.

- 27.** The learned trial court attempted to negotiate this hurdle by relying upon general provisions of law, notably citing authorities to the effect that delay in lodging an FIR is not fatal *per se* unless it is coupled with demonstrable concoction, and that the court must scrutinize the evidence with caution. The trial court observed that notwithstanding the delay between the occurrence of the incident on May 9, 2008, and the eventual registration of the said FIR on August 15, 2008, the ocular testimony of the injured complainant could bridge the gap.
- 28.** When the matter travelled in appeal, the first appellate court sought to gloss over this fatal lacuna through a deeply flawed line of reasoning. In its impugned judgment dated August 29, 2017, while dealing with this precise issue, the first appellate court recorded the following finding:

"...from the complaint petition u/s 156(3) (Ext. 1) filed by the de facto complainant, it is found that the de facto complainant/injured (PW 1) categorically mentioned that his wife filed complaint about the incident to Beliatore PS and he sent the said complaint to the S.P., Bankura, by registered post on 30.05.2008, but here, it is surprising and painful to note that the I.O./PW 12, Prabodh Kr. Pal did not hold inquiry over this aspect. It was his fault, and due to his said fault, the prosecution case cannot be washed out. In such circumstances, I am not inclined to accept the argument of the ld. Advocate for appellant/convict that

the prosecution has failed to explain the delay in lodging the complaint, rather I am of considered view that the prosecution has explained the delay in filing complaint properly."

- 29.** Conceding that the Investigating Officer (PW 12) completely failed to investigate whether any prior complaint via registered post was sent to the Superintendent of Police, the appellate court labelled it as a "fault of the I.O." but held in the same breath that "due to his said fault, the prosecution case cannot be washed out," thereby concluding that the prosecution had explained the delay without any positive/affirmative finding in this regard. With utmost respect to the learned judge of the first appellate court, such reasoning turns the foundational tenets of criminal law completely on their head. Under Sections 101, 102, and 103 of the Indian Evidence Act, 1872, the burden to explain an abnormal and suspicious delay in lodging an FIR, rests squarely on the shoulders of the prosecution. It is never for the defence to prove/disprove an unverified oral assertion, nor is it open to a court to convert an investigating officer's absolute failure into a successful explanation by the prosecution. By brushing aside an unverified three-month delay and shifting the blame entirely onto a negligent Investigating Officer, both trial and first appellate courts converted suspicion into proof and bridged the prosecution's glaring lacunae by judicial fiat.
- 30.** When a three-month delay in lodging the FIR remains entirely unexplained by objective proof, and when contemporaneous postal trails to higher authorities are neither exhibited nor verified by the

police, the entire substratum of the prosecution case becomes highly untrustworthy. The first appellate court's attempt to salvage the conviction by treating the I.O.'s failure as a mere irregularity that cannot wash out the prosecution case amounts to perverse appreciation of evidence. Consequently, I have no hesitation in holding that the unexplained inordinate delay of over three months, operating in tandem with an un-investigated and unproven preliminary grievance, renders the prosecution case a belated afterthought. This first question is accordingly answered in the affirmative in favour of the petitioner, leading to the inescapable conclusion that the judgments of conviction and sentence passed by the courts below cannot be sustained on this ground.

- 31.** Turning to the second point for determination, I must evaluate whether the substantive reliance placed by the trial and appellate courts upon the testimony of PW 2 (Dhiren Roy), who admittedly was never examined, questioned, or interrogated by the Investigating Officer during the statutory investigation, violates Section 162 of the Code of Criminal Procedure, 1973 (corresponding to Section 181 of the Bharatiya Nagarik Suraksha Sanhita, 2023) and severely prejudices the defence by depriving it of the valuable right of contradiction.
- 32.** Indubitably, a rigorous scrutiny of the deposition of Dhiren Roy (PW 2), whom the prosecution projected as a star eyewitness and the co-rider on the victim's motorcycle at the exact moment of the alleged interception, reveals an astonishing admission during his cross-examination. PW 2 candidly confessed that he was never interrogated,

questioned, or examined by the Investigating Officer during the entire course of the police investigation. His name and version of the alleged incident were completely absent from the police case diary. Despite this glaring omission, both the trial court and the first appellate court utilized his unverified testimony as a primary pillar to corroborate the ocular account of the assault.

33. Under the statutory framework of the Code of Criminal Procedure, particularly Sections 161 and 162, the statement of a witness recorded by a police officer during investigation serves a vital and indispensable purpose. Sub-section (1) of Section 162 explicitly mandates that no statement made by any person to a police officer in the course of an investigation shall, if reduced to writing, be signed by the person making it, nor shall any such statement or any record thereof be used for any purpose at any inquiry or trial in respect of any offence under investigation at the time when such statement was made, save and except that when any witness is called for the prosecution in such inquiry or trial, any part of his statement may be used by the accused, and with the permission of the Court, by the prosecution, to contradict such witness in the manner provided by Section 145 of the Indian Evidence Act, 1872(corresponding to Section 148 of the Bhartiya Sakshya Adhiniyam, 2023).

34. This statutory framework provides the defence with the absolute and invaluable tool of contradiction, enabling accused persons to test the veracity, consistency, and reliability of prosecution witnesses by confronting them with previous omissions, improvements, or variances

when they appear in the witness box. When a witness is introduced directly at trial without having been examined by the investigating agency during the statutory investigation period, it amounts to a surprise production that strikes at the very root of a fair trial. The trial court failed to undertake any legal analysis regarding the relevancy and admissibility of such un-investigated evidence, merely brushing aside the defect as a routine or common procedural lapse that loses significance once the victim's injury is proved. When the matter reached the first appellate court, this grave illegality was similarly glossed over, treating the total absence of a pre-trial police statement as a minor irregularity attributable entirely to the Investigating Officer's negligence, reasoning that an omission or default by the police cannot wash out an otherwise credible ocular narrative.

35. This approach represents a fundamental inversion of criminal jurisprudence. In classic pronouncements such as *Ram Lakhan Singh & Ors. v. State of Uttar Pradesh* [(1977) 3 SCC 268], the Hon'ble Supreme Court specifically scrutinized the practice of bringing forward witnesses at trial who had never been questioned or examined by the police during the investigation, observing how such a practice deeply compromises the safety of a conviction:

"4. Only three inmates, PWs 1 to 3, an inimical neighbour (PW 4) and a witness (PW 5), out of the hundred who gathered and who had not even been examined by the police during the investigation, are before us to testify to the guilt of the four assailants...."

5. A perusal of the High Court judgment shows that it was more confined to the proof of the crime than to a close scrutiny about the complicity of the accused.....

26. we find that the appreciation of the evidence against the accused is replete with infirmities pointed out above affecting the very quality of appreciation..... This Court will not deny protection under Article 136 of the Constitution when there is a pervading sense of judicial unsafety in relying upon the evidence for the purpose of conviction.

38. ... we are unable to affirm the convictionand to hold that the prosecution has established the charges against the accused beyond reasonable doubt....."

36. Similarly, the Hon'ble Supreme Court in *Ram Bali v. State of Uttar Pradesh*, [(2004) 10 SCC 598] underscored that the foundational objective of recording police statements under the statutory provisions is to ensure that the accused is made fully aware of the case and the material witnesses against him, avoiding any element of surprise or concoction at the trial stage. The observation of the Apex Court, in Paragraph 5 of the report, is thus:

"5. ... As there is perversity in appreciation and want of care and caution required for examining truthfulness of related witnesses' version, both the trial court's and the High Court's judgment become vulnerable. Though the presence of several others has been accepted, no reason has been given for their non-examination."

37. From a legal and logical standpoint, examining a co-rider witness in court without his earlier statement recorded by the police under Section 161 CrPC is severely detrimental to the fairness of a criminal trial. Under Section 162 of the Code of Criminal Procedure, 1973, the

previous statement of a witness recorded by the police is a valuable statutory tool in the hands of the defence to elicit contradictions, omissions, and improvements, thereby testing the veracity of the witness. The legal principle governing this aspect is firmly rooted in the pronouncement of the Supreme Court in *Rajesh Patel v. State of Jharkhand* [(2013) 3 SCC 791], wherein it was held that material witnesses introduced without prior police interrogation render their trial depositions legally fragile and unsafe for reliance.

38. On this specific question, this Court finds that the evidence of PW 2 is legally impermissible to the extent that it seeks to introduce unverified, surprise ocular assertions that bypass statutory scrutiny, and the resulting omission or variance is exceptionally material. When a material witness, especially one claimed to be an immediate co-rider present at the exact spot of occurrence is introduced for the first time directly during trial without any prior police interrogation or recorded statement, the accused/defence is completely deprived of this statutory right of contradiction. Such a defect is material and fatal in nature, as it converts trial testimony into an unverified, untestable assertion. Furthermore, the testimony of PW 3 (the wife) is equally unbelievable; she was not a rider on the motorcycle and could not possibly have witnessed the occurrence from the spot as she arrived post-occurrence after hearing a hue and cry, rendering her claim of witnessing the assault legally worthless.

39. The first appellate court committed a patent illegality by sweeping this fundamental statutory violation under the rug, treating the total

absence of police examination of the PW 2 as a minor irregularity rather than a fatal structural flaw. A conviction cannot be lawfully anchored on the un-investigated testimony of a surprise witness whose version was never subjected to the rigors of pre-trial police scrutiny. Accordingly, the second point for determination is answered in the affirmative in favour of the petitioner: the substantive reliance on the un-investigated testimony of PW 2 violates Section 162 CrPC and vitiates the foundational integrity of the prosecution case, entitling the petitioner to succeed on this count as well.

- 40.** Now, I proceed to examine the third question, as to whether the prosecution successfully established the essential ingredients of the offence and excluded the plausible alternative medical etiology conceded by the treating doctors, namely, that the injuries could have been sustained due to a fall from a running motorcycle onto a hard surface, particularly when the primary weapon of offence, the lathi, was never recovered or seized.
- 41.** The petitioner, Anil Barui, stands convicted under Section 323 of the Indian Penal Code, 1860. The essential ingredients of this offence require the prosecution to prove that the accused voluntarily caused 'hurt', which is legally defined under Section 319 IPC as causing bodily pain, disease, or infirmity to any person through a conscious, unlawful act, coupled with the requisite criminal intent or knowledge.
- 42.** A meticulous examination of the evidentiary record reveals a total vacuum in the scientific and physical proofs adduced by the prosecution. The primary injury report, exhibited through Dr. Swapan

Ghosh (PW 8), is astonishingly blank and devoid of any medical classification regarding the nature, gravity, or depth of the alleged hurt, failing completely to establish the fundamental ingredients of simple hurt under Section 319 of the IPC to attract the offence under Section 323 of the Indian Penal Code. Compounding this foundational lacuna, the primary weapon of offence, the lathi or stick allegedly wielded by the petitioner to inflict injuries on the complainant/victim, was never recovered, seized, or produced by the police throughout the entire course of the investigation, leaving a gaping hole in the physical chain of evidence.

- 43.** Faced with this total absence of physical and weapon proof, the learned trial court adopted a shortcut by observing that in cases of simple injury, the exact role of the injury report and the evidence of the doctor are not essentially material since simple hurt does not require severe physical trauma, thereby convicting the petitioner under Section 323 instead of Section 326 IPC. When the matter travelled in appeal, the first appellate court attempted to bridge the chasm by recording a definitive finding:

“I have already held in my foregoing observation that Prasanta Barui did not sustain injury due to fall down from his motorcycle... In evidence Prasanta Barui, PW 1 has categorically stated that when he was going from his house on a motorcycle through road and reached at Marka village, accused detained him and suddenly assaulted him on his head, neck and left hand with lathi, as a result, he sustained injury and became unconscious. The evidence of PW 2 Dhiren Roy, PW 3 Sudha rani Barui, PW 4 Dhananjay Barui, PW 6 Sushil De and PW 7 Gopal

Koley reflects that they had been at the spot just after the incident and found Prasanta lying on the ground in senseless condition having injury... Evidence of PW 8 Dr.Swapan Ghosh and PW 13 Dr. C.N. Banerjee coupled with Ext 2 (Injury report) and Ext 5 clearly supported the prosecution case... Thus, I am inclined to hold that the evidence of PW 1 is true, consistent and trustworthy being supported by the other witnesses as to his sustaining injury due to assault inflicted by the accused and accordingly, his evidence is accepted.”

- 44.** Upon a careful appraisal of the matter, I am unable to subscribe to this conclusion of the appellate court, as it completely disregards the unrefuted medical testimony on record. Most decisively, the medical testimony itself introduces an alternative hypothesis that cuts right through the prosecution's narrative. Dr. C.N. Banerjee (PW 13), the treating doctor who examined the victim, candidly conceded during cross-examination that the injuries found on the victim's arms could equally and plausibly be sustained by a person falling down from a running motorcycle onto a hard road surface. This medical concession finds direct corroboration in the objective physical testimony of Dhananjay Barui (PW 4), who deposed that upon arriving at the spot, he found the injured Prasanta lying on the ground in a senseless condition with his motorcycle lying right beside him.
- 45.** It is a cardinal principle of criminal jurisprudence, as repeatedly affirmed by the Hon'ble Supreme Court in landmark authorities such as *Mahabir Singh v. State of Haryana*, [(2001) 7 SCC 148] and *State of Punjab v. Bhajan Singh & Ors.*, [(1975) 4 SCC 472], that where the direct ocular testimony is rendered highly vulnerable and improbable by

the medical evidence, which points patently to an accidental origin of injuries rather than an assault by heavy weapons, and where the primary weapon of assault has neither been recovered nor linked to the crime, it is unsafe to rest a conviction on such shaky foundations. Where the failure of the prosecution to eliminate a plausible alternative accidental cause leaves an unbridgeable chasm in the chain of circumstances, the benefit of the doubt must unhesitatingly go to the accused.

46. Thus, I conclude that both the trial and first appellate courts committed grave perversity by brushing aside this vital medical alternative and attempting to cure the missing weapon seizure and blank injury reports by shifting the burden of proof onto the defence, while accepting ocular testimony that ignored the physical reality of the motorcycle accident. Suspicion can never take the place of legal proof, and because the prosecution miserably failed to establish the foundational medical and physical ingredients of the assault while leaving a plausible accidental etiology wide open, this question is also answered in the negative in favour of the petitioner, demonstrating that the conviction cannot stand on this score either.

47. Addressing the final question for determination, this Court must consider whether both the trial court and the appellate court committed a grave error in law by improperly shifting the burden of proof onto the defence in an unconstitutional attempt to cure the fundamental lacunae and structural collapse of the prosecution case.

- 48.** A holistic review of the judgments rendered by both trial and first appellate courts reveals a recurring, fatal methodological flaw: whenever confronted with gaping holes in the prosecution's case, such as the unverified three-month delay in lodging the First Information Report, the total absence of seizure of the weapon of offence (lathi), the blank medical injury reports, and the un-investigated status of pivotal witnesses, both of the courts turned their analytical lens not toward the absolute strength of the prosecution's evidence, but toward what the defence failed to disprove. Specifically, both the trial court and the appellate court faulted the petitioner for not affirmatively establishing the alternative motorcycle accident theory during his examination under Section 313 of the Code of Criminal Procedure, 1973, and for failing to disprove the unproven oral assertions regarding the postal dispatch of a preliminary complaint to the Superintendent of Police.
- 49.** This venture goes diametrically opposite to the cardinal and unshakeable tenets of criminal jurisprudence. Under Sections 101, 102, and 103 of the Indian Evidence Act, 1872, the bedrock principle of criminal law enshrined in the presumption of innocence dictates that the burden of proving every single ingredient of the charge beyond a reasonable doubt rests squarely and exclusively on the prosecution from the first mile to the last. The prosecution must stand on its own legs and can never derive any strength from the perceived weaknesses, omissions, or explanations or lack thereof of the defence.
- 50.** As the Hon'ble Supreme Court has repeatedly affirmed in landmark pronouncements such as *Rang Bahadur Singh & Ors. v. State of Uttar*

Pradesh, [(2000) 3 SCC 454] and *Sujit Biswas v. State of West Bengal*, [(2013) 12 SCC 406], suspicion, no matter how grave, and conjecture, no matter how appealing, can never take the place of legal proof. When the foundational pillars of a prosecution viz. prompt reporting, reliable ocular testimony, corroborative medical science, and physical recovery of weapon scramble under judicial scrutiny, the courts cannot invent rationalizations to rescue a failing case or demand that the accused establish his innocence. By improperly shifting the burden of proof onto the defence to bridge the chasms left by a perfunctory investigation and a deeply flawed prosecution, both trial and first appellate courts committed patent perversity and a gross miscarriage of justice.

- 51.** In resisting the revisional application, the State placed heavy reliance upon the recent judgment of the Supreme Court in *Edakkandi Dineshan (supra)*, contending that minor contradictions do not destroy a prosecution case, that the maxim *falsus in uno, falsus in omnibus* does not apply in India, and that defects in investigation should not enure to the benefit of the accused. However, a careful analysis reveals that the ratio in *Edakkandi Dineshan* is clearly distinguishable and has no application to the facts of the present case. In *Dineshan*, the Supreme Court upheld convictions because the prosecution case was otherwise supported by clinching, unimpeachable, and sterling eyewitness testimony, corroborated by positive medical evidence and the recovery of weapons. By contrast, in the instant case before this Court, there is a total absence of clinching evidence: the weapon (lathi) is missing, the medical report is blank regarding the nature of injuries sustained by

the complainant/victim, the core eyewitness (PW 2) was never examined by the police during investigation, the other eyewitness (PW 3) was physically absent from the spot at the time of occurrence rendering her eyewitness testimony legally worthless, and the delay of over three months remains entirely unexplained amidst deep-seated land enmity between the parties. When the foundational pillars of a prosecution case are completely hollowed out, the exposition of law laid down in *Edakkandi Dineshan (supra)* cannot come to the rescue of the prosecution to salvage a perfunctory and speculative conviction.

- 52.** In criminal jurisprudence, where doubts are substantial and foundational pillars of the prosecution are broken, the benefit must unequivocally be extended to the petitioner.
- 53.** Accordingly, this fourth question is also answered in the affirmative in favour of the petitioner. Both the trial and the first appellate courts committed a grave error in law by improperly shifting the burden of proof onto the defence to establish his innocence.
- 54.** The cumulative weight of these structural failures demonstrates that the judgments rendered by the Trial and First Appellate Courts are suffering from patent perversity, misreading of evidence, and flagrant disregard of binding statutory provisions and judicial precedents. The conviction of the petitioner, in view of the aforesaid grounds, is legally unsustainable.
- 55.** The concurrent findings of guilt against the petitioner under Section 323 of the Indian Penal Code are patently perverse, and cannot be permitted to stand.

56. In view of my findings answering all the points for determination in favour of the petitioner, the criminal revisional application succeeds.

C.R.R. 3581 of 2017 is allowed.

57. The impugned judgments and orders of conviction and sentence dated August 29, 2017, passed against the petitioner by the learned Additional Sessions Judge, 2nd Court, Bankura, in Criminal Appeal No. 36 of 2011, affirming the judgment dated August 30, 2011, passed by the learned Judicial Magistrate, 6th Court, Bankura, in T.R. No. 469T of 2008 (G.R. Case No. 534 of 2008), are hereby set aside.

58. The petitioner, Anil Barui, is acquitted of the charge under Section 323 of the Indian Penal Code, 1860, extending the benefit of doubt.

59. The petitioner is discharged from his bail bonds accordingly.

60. Interim order, if any, stands vacated.

61. There shall be no order as to costs.

62. Let a copy of this judgment along with the Trial Court and First Appellate Court Records be transmitted down immediately to the Trial and First Appellate Courts respectively for information and necessary compliance.

63. Case diary, be returned to the Learned Counsel for the State.

64. Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Uday Kumar, J.)