

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

Present:

The Hon'ble **Justice Prasenjit Biswas**

**C.R.A. 396 of 2005**

**Sukh Chand Ghosh & Ors.**

**-Versus-**

**The State of West Bengal**

For the Appellants : **Mr. Suman Biswas,**

For the State : **Ms. Faria Hossain, Ld. APP,  
Ms. Sonali Bhar.**

Hearing concluded on : **27.02.2026**

Judgment On : **10.03.2026**

**Prasenjit Biswas, J:-**

- 1.** This appeal is directed against the impugned judgment and order of conviction dated 21.05.2005 passed by the learned Additional Sessions Judge, 5<sup>th</sup> Fast Track Court, Malda in connection with Sessions Case No. 95/03 corresponding to Sessions Trial No. 19(4)04 arising out of English Bazar P.S. Case No. 68/93 dated 09.03.93 (G.R. Case No. 303/93).

**C.R.A. 396 of 2005**

2. By passing the impugned judgment these appellants were found guilty for commission of offence punishable under Section 186/34 of the Indian Penal Code and they were sentenced to suffer simple imprisonment for three months each along with a fine of Rs.200/- each and in default of payment of fine to undergo further simple imprisonment for five days each.
3. Being aggrieved and by dissatisfied with the said impugned judgment and order of conviction the present appeal is preferred at the instance of the appellants.
4. In short compass, the case of the prosecution, as unfolded from the written complaint and the materials collected during investigation, may be delineated herein below:

*"According to the prosecution, the instant criminal proceeding was set into motion on the basis of a complaint lodged by the de-facto complainant before the concerned police station. In the said complaint it was, inter alia, alleged that on 9<sup>th</sup> March, 1993 at about 17:30 hours, at a place known as Piyasbari, all the accused persons, including the present appellants and some other associates, unlawfully assembled together and formed an*

**C.R.A. 396 of 2005**

*unlawful assembly with a common object to commit acts of violence and to obstruct the police officials in the lawful discharge of their duties. It was specifically alleged that the members of the said unlawful assembly were variously armed with deadly and dangerous weapons such as arrows, hasua (a sharp cutting instrument), lathis and other implements capable of causing serious bodily harm. While being so armed, the accused persons allegedly indulged in rioting and wrongfully restrained the defacto complainant along with the accompanying police force from discharging their lawful public functions. The prosecution case further proceeds that in the course of the said incident the accused persons, acting in furtherance of their common object, allegedly launched a violent attack upon the police personnel present at the spot. In particular, it was alleged that Sub-Inspector Bijoy Krishna Dey and Assistant Sub-Inspector Ananda Kumar Mondal were assaulted by the members of the unlawful assembly with the aforesaid weapons with the intention of causing their death or, at the very least, with the knowledge that such acts were likely to*

**C.R.A. 396 of 2005**

*result in fatal consequences. As a result of the alleged assault, both the aforesaid police officers sustained injuries and were subsequently taken to the hospital where they received medical treatment. The incident was reported to the police and, on the basis of the said written complaint, a formal police case being English Bazar Police Station Case No. 68 of 1993 dated 09.03.1993 was registered. Thereafter, the police authorities undertook investigation into the allegations made in the complaint. Upon completion of the investigation, the Investigating Agency submitted a charge-sheet against the present appellants and other accused persons alleging commission of offences punishable under Sections 147, 148, 149, 186, 353 and 307 of the Indian Penal Code, thereby setting the criminal law into motion against them for standing trial before the learned Trial Court.”*

- 5.** The charge was framed against the accused persons by the Trial Court under Section 148, 186/34, 353/34 and 307/34 of the Indian Penal Code which was read over and explained to

**C.R.A. 396 of 2005**

the accused persons and in reply they pleaded not guilty and claimed to be tried.

- 6.** In order to prove the case against the accused persons, the prosecution had examined eighteen (18) witnesses and proved some documents as exhibits. Neither any oral nor any documentary evidence was adduced on the side of the appellants.
- 7.** Mr. Suman Biswas, learned Advocate appearing on behalf of the appellants, has strenuously assailed the impugned judgment and order of conviction passed by the learned Trial Court. At the outset, the learned Advocate submitted that the prosecution case suffers from serious infirmities and inconsistencies which go to the root of the matter and render the prosecution version highly doubtful.
- 8.** It has been contended by Mr. Biswas, the learned Advocate that there exist glaring discrepancies between the version narrated in the First Information Report and the depositions of the prosecution witnesses with regard to the nature and extent of the injuries allegedly sustained in the course of the incident. According to him, while the prosecution has attempted to project a grave and violent assault upon the police personnel, the oral testimonies of the witnesses do not consistently support such allegations and materially deviate

**C.R.A. 396 of 2005**

from the version as recorded in the FIR. Such inconsistencies, according to the learned Advocate, cast a serious doubt upon the veracity and reliability of the prosecution case.

9. The learned Advocate further submitted that the statements of the prosecution witnesses are replete with material contradictions and omissions which have remained unexplained by the prosecution. It has been argued that the witnesses examined on behalf of the prosecution have not given a consistent and coherent account of the alleged occurrence and, in several material particulars, their statements contradict each other. These contradictions and omissions, according to the learned Advocate, materially affect the credibility of the witnesses and weaken the prosecution's attempt to establish the guilt of the appellants. It has also been vehemently argued that the prosecution has failed to examine any independent witness in order to corroborate the allegations made in the complaint. According to the learned Advocate, the entire prosecution case rests primarily upon the testimonies of police personnel who were themselves allegedly involved in the incident. In the absence of any independent and disinterested witness to support the prosecution version, the evidentiary value of such interested testimonies ought to

**C.R.A. 396 of 2005**

have been scrutinized with greater caution by the learned Trial Court.

- 10.** In this connection, the learned Advocate specifically referred to the evidence of PW4, Lalu Rajak, and PW10, Sachindranath Mondal, who were cited by the prosecution as witnesses to the alleged seizure of certain articles. It has been pointed out that neither of the said witnesses stated anything in their evidence regarding the seizure allegedly effected by the police. Their failure to support the prosecution in respect of the alleged seizure, according to the learned Advocate, seriously undermines the prosecution's claim regarding the recovery of the incriminating articles.
- 11.** The learned Advocate further contended that the alleged seized articles were neither produced before the learned Trial Court nor marked as material exhibits during the course of trial. Such omission, according to him, creates a serious lacuna in the prosecution case and raises grave doubts regarding the genuineness of the alleged seizure and the overall narrative of the prosecution with regard to the occurrence of the incident.
- 12.** It has also been submitted that although the prosecution claimed that PW18, Sub-Inspector Bijoy Krishna Dey, and PW15, Constable/36 Jagabandhu Adhikari, had sustained

**C.R.A. 396 of 2005**

injuries during the alleged incident and were admitted to the hospital for treatment, no proper medical documents in support of such injuries were brought on record. The learned Advocate pointed out that apart from two medical admission tickets indicating their admission to the hospital, no injury report, medical certificate, or other relevant medical document was produced before the Court to substantiate the claim that they had in fact sustained injuries in the alleged assault. According to the learned Advocate, no explanation whatsoever has been offered either by the prosecution or by the Investigating Officer as to why the injury reports of the alleged injured persons were not collected during the course of investigation and produced before the Court. The absence of such crucial medical evidence, it is argued, creates a serious doubt regarding the prosecution's allegation that the said police personnel had sustained injuries in the incident as alleged.

- 13.** The learned Advocate further argued that the learned Trial Court, while passing the impugned judgment of conviction, placed undue reliance upon the testimonies of the police personnel who were examined as prosecution witnesses. According to him, despite the existence of material discrepancies and inconsistencies in their evidence, the

**C.R.A. 396 of 2005**

learned Trial Court accepted their statements without proper scrutiny and proceeded to record the conviction of the appellants.

- 14.** It has also been emphasized that no independent witness came forward to support the prosecution case, although there was ample opportunity and scope for the prosecution to cite and examine such witnesses. The failure of the prosecution to examine independent witnesses, particularly in a case of this nature where the incident allegedly took place in a populated locality, according to the learned Advocate, further weakens the prosecution case.
- 15.** The learned Advocate further contended that the learned Trial Court erred in relying solely upon the testimonies of the alleged victims themselves to conclude that the appellants had attacked them. According to him, such a finding, in the absence of corroborative independent evidence and in the face of material contradictions and deficiencies in the prosecution case, cannot be sustained in the eye of law.
- 16.** Lastly, the learned Advocate submitted that it is a well-settled principle of criminal jurisprudence that the burden lies squarely upon the prosecution to prove its case beyond all reasonable doubt. In the present case, according to him, the prosecution has failed to discharge that burden inasmuch as

**C.R.A. 396 of 2005**

the evidence adduced is neither consistent nor credible and suffers from serious lacunae.

- 17.** On these grounds, the learned Advocate urged that the prosecution has failed to establish the guilt of the appellants beyond reasonable doubt and, therefore, the impugned judgment and order of conviction passed by the learned Trial Court is liable to be set aside. Accordingly, it has been prayed that the present appeal be allowed and the appellants be acquitted of the charges levelled against them.
- 18.** Ms. Faria Hossain, learned Advocate appearing on behalf of the State, has strongly defended the impugned judgment and order of conviction, submitting that the prosecution has successfully discharged its burden of proof beyond reasonable doubt. The learned Advocate contended that there are no materials on record which would render the evidence of the key prosecution witnesses namely PW2, PW14, PW15, and PW18 untrustworthy. She emphasized that all these witnesses deposed consistently before the learned Trial Court in support of the prosecution case and that their veracities were not shaken during cross-examination. Consequently, their testimonies, according to the learned Advocate, deserve full credence and cannot be disbelieved.

**C.R.A. 396 of 2005**

- 19.** In particular, attention was drawn to the evidence of PW14, Sub-Inspector of Police Ananda Kumar Mondal, who is also one of the alleged injured witnesses. PW14 deposed that he, along with PW18, Sub-Inspector Bijoy Krishna Dey, sustained injuries as a result of the assault by a large crowd throwing brickbats and stones at the police personnel. PW14 further stated that the crowd was armed with weapons such as lathis, hasua, and farse, and that he and the other injured police personnel were subsequently treated at Malda Sadar Hospital. The learned Advocate submitted that the medical tickets produced and marked as Exhibit-7 corroborate the fact that these witnesses received treatment for injuries sustained in the incident, thereby lending credibility to their account.
- 20.** Further, the learned Advocate emphasized the testimony of PW15, Constable No. 36 Jagabandhu Adhikari, and another alleged injured witness. PW15 deposed in alignment with PW14, stating that prior to reaching Piyasbari, they were attacked by the crowd, which threw brickbats at them. He further alleged that the accused persons actively participated in the assault by throwing hasua and farse towards the police personnel. Importantly, PW15 identified the five accused persons present at the scene during the incident. The learned Advocate highlighted that the cross-examination conducted by

**C.R.A. 396 of 2005**

the defence failed to shake the veracity of PW15's testimony, and therefore his statements remain reliable and admissible as substantive evidence.

- 21.** PW18, Sub-Inspector Bijoy Krishna Dey, also corroborated the statements of PW14 and PW15. He deposed that upon reaching Piyasbari, they were confronted by a mob of 300/400 people, armed with hasua, lathis, stones, arrows, and bows. According to PW18, the crowd attacked not only the police personnel but also their jeep with hasua and brickbats. As a result, both PW14 and PW15 sustained injuries. PW18 further testified that he himself received injuries in the attack and that he, along with PW14 and PW15, was treated at Malda Sadar Hospital.
- 22.** The learned Advocate also relied on the medical evidence provided by PW17, Dr. Ruchira Banerjee, who examined PW18 in the Emergency Department. The doctor stated that upon examination, he found an abrasion on PW18's right hand. This emergency treatment ticket was marked as Exhibit-7 and corroborates the occurrence of injuries resulting from the incident.
- 23.** In summation, the learned Advocate submitted that a thorough appreciation of all the evidences including oral testimony of PW2, PW14, PW15, and PW18, as well as the

**C.R.A. 396 of 2005**

documentary evidence such as Exhibit-7 demonstrates that the prosecution successfully proved the occurrence of the incident and the injuries sustained by the injured persons. The learned Advocate argued that the learned Trial Court rightly relied upon this consistent and unshaken evidence to convict the appellants. She emphasized that there is no material irregularity, illegality, or procedural defect in the impugned judgment and order of conviction.

- 24.** Accordingly, it was prayed by the learned Advocate that the impugned judgment and order of conviction passed by the learned Trial Court be upheld in its entirety and that the present appeal preferred by the appellants be dismissed, as there exists no valid ground to interfere with the lawful conviction recorded against them.
- 25.** I have anxiously considered the rival submissions advanced by both the parties and have gone through all the materials on record.
- 26.** In the present case, the prosecution has examined several witnesses in order to substantiate the allegations levelled against the appellants. Among them, PW3 Mukul Mondal, PW4 Lalu Rajak, PW5 Jiten Das, PW6 Ratan Das, PW8 Niren Ghosh and PW9 Sonatan Rajak were cited as independent witnesses by the prosecution. PW7 was examined as the medical officer.

**C.R.A. 396 of 2005**

Apart from these witnesses, the remaining witnesses examined by the prosecution are police personnel who were either members of the alleged police force present at the spot or were otherwise connected with the investigation of the case.

- 27.** Thus, it is evident that the prosecution had the opportunity to rely upon independent witnesses in order to lend corroboration to the allegations made in the complaint and to strengthen the credibility of the prosecution version. However, a careful scrutiny of the evidence adduced during the trial reveals that the testimony of such independent witnesses does not substantially support the case of the prosecution.
- 28.** In this connection, particular importance is attached to the evidence of PW4 Lalu Rajak and PW10 Sachindranath Mondal, who were cited by the prosecution as witnesses to the alleged seizure of certain articles in connection with the case. The prosecution sought to rely upon their testimony to prove that incriminating articles were seized during the course of investigation, thereby lending support to the allegation that the accused persons had used weapons during the incident.
- 29.** However, the evidence of PW4 Lalu Rajak does not support the prosecution case in this regard. PW4 categorically stated in his deposition that he did not put his left thumb impression

**C.R.A. 396 of 2005**

(L.T.I.) on the seizure list dated 09.03.1993. When the alleged thumb impression appearing on the said seizure list was shown to him during the course of his examination, he virtually denied the same and did not admit that the said thumb impression belonged to him. Moreover, PW4 further stated that he knew nothing about the incident in question. Thus, far from supporting the prosecution case, the testimony of this witness casts serious doubt on the authenticity and genuineness of the alleged seizure list.

- 30.** Significantly, despite such statements made by PW4 which were clearly inconsistent with the prosecution version, the prosecution did not take steps to declare him hostile nor did it cross-examine him with the permission of the Court in order to confront him with his earlier statement or to elicit the truth. The failure of the prosecution to adopt such a course assumes considerable importance, as it indicates that the testimony of the witness remained unchallenged and untested by the prosecution itself.
- 31.** Similarly, the evidence of PW10 Sachindranath Mondal, who was also cited as a witness to the seizure, does not advance the case of the prosecution. In his cross-examination, PW10 stated that he had signed the seizure list on a road which was situated at a distance of about one and a half kilometres from

**C.R.A. 396 of 2005**

Piyasbari, the alleged place of occurrence. He further stated that he had put his signature on the seizure list at the instance and direction of the police personnel. More importantly, PW10 clearly stated that he did not know what articles had been seized in connection with the case.

- 32.** The statements made by PW10 clearly indicate that he had no personal knowledge about the alleged seizure and that his signature was obtained merely at the instance of the police without being aware of the contents or the articles mentioned in the seizure list. Such evidence seriously undermines the evidentiary value of the seizure list and casts doubt on the manner in which the alleged seizure was conducted.
- 33.** It is also noteworthy that, similar to PW4, this witness PW10 was also not declared hostile by the prosecution, despite the fact that his testimony did not support the prosecution case regarding the seizure of the alleged articles. Consequently, the prosecution did not cross-examine him to clarify the circumstances under which his signature was obtained or to establish the authenticity of the seizure proceedings.
- 34.** Therefore, from the evidence of both PW4 and PW10, it clearly emerges that the witnesses cited by the prosecution to prove the seizure have not supported the prosecution case in any meaningful manner. On the contrary, their statements create

**C.R.A. 396 of 2005**

a serious doubt regarding the genuineness of the alleged seizure and the manner in which the investigation was conducted.

- 35.** In such circumstances, when the very witnesses cited to prove the seizure fail to support the prosecution case and the prosecution does not even attempt to treat them as hostile or challenge their testimony, the evidentiary value of the alleged seizure becomes highly doubtful. This circumstance materially weakens the prosecution case and creates a significant gap in the chain of evidence sought to be established against the appellants.
- 36.** PW18, Sub-Inspector of Police Bijoy Krishna Dey, who is also the defacto complainant in the present case, has been examined by the prosecution as one of the principal witnesses to establish the alleged occurrence. In his deposition before the Court, PW18 stated that as soon as the police force reached Piyasbari, a large mob consisting of about 300 to 400 persons suddenly attacked them. According to him, the said mob was armed with various weapons such as hasua, lathi, stones, arrows and bows, and they allegedly assaulted the police personnel and even attacked the police jeep with hasua and brickbats. However, a careful examination of the materials on record reveals that the said version of PW18 is not

**C.R.A. 396 of 2005**

satisfactorily supported by the investigation conducted in the case. Although the witness alleged that the assailants were armed with weapons like hasua and lathis and that those weapons were used during the alleged attack, the Investigating Agency did not seize any such weapons during the course of investigation. The non-seizure of such allegedly used weapons assumes considerable significance, particularly when the prosecution case is that the accused persons were armed with deadly and dangerous weapons and had used them in the course of the incident. The failure on the part of the Investigating Officer to recover or seize any of those weapons creates a serious gap in the prosecution case and casts doubt on the veracity of the allegations made regarding the nature of the attack.

- 37.** PW18 further stated in his evidence that during the course of the alleged incident PW14, Assistant Sub-Inspector of Police Ananda Kumar Mondal, was assaulted with brickbats and that PW15, Constable No. 36 Jagabandhu Adhikari, also sustained injuries as a result of the said attack. However, the statement made by PW18 in this regard appears to be inconsistent with the evidence of PW16, Sub-Inspector of Police Nepal Chandra Sen. In his cross-examination, PW16 categorically stated that PW15 did not suffer any injury from the throwing of stones.

**C.R.A. 396 of 2005**

This contradiction between the testimonies of the prosecution witnesses on the question of whether PW15 actually sustained injuries during the alleged incident creates a serious doubt regarding the truthfulness and reliability of the prosecution version.

- 38.** PW18 further stated that after the incident he went to Malda Sadar Hospital along with PW14 and PW15 for treatment and that they were treated there for the injuries sustained in the alleged attack. However, despite such claim, no injury report or medical certificate indicating the nature, extent or seriousness of the injuries sustained by the alleged victims was produced before the Court. In the present case, the prosecution merely produced certain medical admission tickets which were marked as Exhibit-7. These documents only indicate that the persons concerned were admitted to the hospital, but they do not disclose the nature of the injuries allegedly sustained by them. The absence of any injury report or medical opinion regarding the injuries significantly weakens the prosecution case, particularly when the allegation is that the police personnel were violently attacked by a large armed mob.
- 39.** Similarly, PW15, Constable No. 36 Jagabandhu Adhikari, who was also projected as one of the injured witnesses, stated in

**C.R.A. 396 of 2005**

his cross-examination that he sustained an injury on his leg due to the throwing of stones and that he received treatment at Malda Hospital for the said injury. However, quite surprisingly, no injury report, medical certificate or treatment record was brought on record by the prosecution in order to substantiate his claim. In the absence of such medical evidence, the assertion made by PW15 regarding the injury allegedly sustained by him remains uncorroborated and unsupported by any documentary proof.

- 40.** Furthermore, PW15 stated in his cross-examination that the Investigating Officer had seized a rifle and cartridges in connection with the case. However, during the course of trial those alleged seized articles were neither produced before the Court nor shown to the witness. PW15 himself admitted during his deposition that he did not find the said seized rifle and cartridges in the Court at the time when he was giving his evidence. The non-production of the alleged seized rifle and cartridges before the Court creates a serious lacuna in the prosecution case. When the prosecution asserts that certain incriminating articles were seized during the investigation, it is incumbent upon the prosecution to produce those articles before the Court and have them marked as material exhibits in order to establish the authenticity of the seizure. The failure

**C.R.A. 396 of 2005**

to do so raises legitimate doubts regarding whether such seizure was in fact made in the manner alleged by the prosecution.

- 41.** Thus, the absence of seizure of the alleged weapons used in the attack, the contradictions in the testimonies of the prosecution witnesses regarding the injuries sustained, the failure to produce injury reports of the alleged injured persons, and the non-production of the alleged seized rifle and cartridges before the Court collectively create serious doubts about the prosecution story. These deficiencies materially weaken the prosecution case and undermine the reliability of the evidence relied upon to establish the guilt of the appellants.
- 42.** PW14, Sub-Inspector of Police Ananda Kumar Mondal, who has also been projected by the prosecution as one of the injured witnesses in the alleged occurrence, stated in his deposition that on 09.03.1993 he noticed about 200/250 persons belonging to the Ghosh community assembled at the place of occurrence and that they were allegedly creating disturbance among themselves while being armed with weapons such as lathis, swords and similar articles. According to him, the situation at the spot was tense and the persons assembled there were equipped with such weapons.

**C.R.A. 396 of 2005**

- 43.** However, a careful examination of the record reveals that none of the alleged weapons such as lathis or swords, which according to this witness were present at the spot, were seized by the Investigating Agency during the course of investigation. Nor were any such articles produced before the Court and marked as material exhibits during the trial in order to substantiate the prosecution case. When the prosecution alleges that a large number of persons were present at the place of occurrence armed with weapons and that those weapons were used in the course of the incident, it becomes the duty of the Investigating Officer to seize such articles, if available, and produce the same before the Court to corroborate the oral testimony of the witnesses. The failure to seize or produce such weapons in the present case creates a significant gap in the prosecution case and raises doubt regarding the veracity of the allegations made by the witness.
- 44.** PW14 further stated that he, along with the other alleged injured police personnel, was taken to Malda Hospital where they were treated for the injuries sustained by them in the course of the incident. However, despite such claim, no injury report or medical certificate relating to the injuries allegedly sustained by him was produced before the Court. The prosecution has not brought on record any medical document

**C.R.A. 396 of 2005**

which could indicate the nature, extent or seriousness of the injury allegedly suffered by PW14. In the absence of any such documentary medical evidence, the claim made by this witness regarding the injuries sustained by him remains unsubstantiated. Therefore, in the absence of any cogent and reliable medical document, the assertion made by PW14 regarding the injuries allegedly suffered by him cannot be accepted with certainty.

- 45.** It is also noteworthy that several independent witnesses cited by the prosecution, namely PW3 Mukul Mondal, PW5 Jiten Das, PW6 Ratan Das, PW8 Niren Ghosh and PW9 Sonatan Rajak, did not support the prosecution case during their examination before the Court. As their testimony did not align with the prosecution version, they were declared hostile by the prosecution and were subjected to cross-examination by the prosecution itself. However, even after such cross-examination, nothing could be elicited from their testimony which would lend support to the case of the prosecution or corroborate the allegations made against the accused persons. Consequently, the evidence of these witnesses does not advance the prosecution case in any material manner.
- 46.** PW7, Police Driver No. 112 Jiban Bhoumik, stated in his evidence that when he arrived at the place of occurrence he

**C.R.A. 396 of 2005**

noticed that both parties were attempting to create disturbance with hasua and lathis and that upon seeing the police personnel, the mob started attacking them with bricks. In his cross-examination, this witness stated that the glasses of the police jeep were broken due to the throwing of bricks. However, he was unable to state whether Sub-Inspector Anil Rai sustained any injury as a result of such brick throwing. Significantly, this witness did not state anything in his evidence regarding the injuries allegedly sustained by PW14, PW15 or PW18. Thus, his testimony does not provide any corroboration regarding the alleged injuries claimed by those witnesses.

- 47.** The medical evidence in the present case also does not satisfactorily support the prosecution case. PW17, Dr. Ruchira Banerjee, who examined PW18 in the Emergency Department, stated that upon examination she found one abrasion on the right hand of PW18. However, during her cross-examination she admitted that she had not recorded the history of assault in the medical ticket, nor had she mentioned the name of the father of the said injured person in the medical record. She further stated that if a person falls upon a blunt object or surface, he or she may sustain an abrasion on the body.

**C.R.A. 396 of 2005**

- 48.** Thus, the medical evidence given by the doctor does not conclusively establish that the abrasion found on PW18 was the result of an assault by the accused persons as alleged by the prosecution. The possibility of such injury being caused by a fall on a blunt surface has not been ruled out by the medical witness. Moreover, as already noted, no detailed injury report or medical certificate was produced by the prosecution showing the injuries allegedly sustained by PW14, PW15 and PW18.
- 49.** Therefore, when the alleged injured persons claim to have sustained injuries in the course of a violent attack by a large mob but the prosecution fails to produce proper medical records showing the nature of such injuries, the evidentiary value of their claim becomes doubtful. The absence of injury reports, coupled with the inconclusive medical testimony and the failure to produce alleged weapons, significantly weakens the prosecution case and raises serious doubt regarding the manner in which the alleged incident is said to have occurred.
- 50.** A careful scrutiny of the evidence of the prosecution witnesses in the instant case reveals substantial infirmities, omissions, and contradictions which seriously undermine the prosecution case. In particular, the testimony of PW1, H.G. 339 Faruq Sk., virtually demolishes the prosecution narrative regarding both

**C.R.A. 396 of 2005**

the alleged injuries and the alleged firing by police personnel during the incident.

- 51.** PW1, in his examination-in-chief, candidly stated that he could not say whether any police officer sustained injuries as a result of the attack by the accused persons on the date of the incident. The prosecution had alleged that one of the members of the mob sustained injury due to firing by PW15, Constable Jagabandhu Adhikari. PW1, although claiming presence at the scene, admitted that he could not testify with certainty as to whether any of the mob had been injured by the firing. He merely stated that he "later came to learn" that someone from the mob was allegedly injured. Such a vague assertion, made without personal knowledge and based solely on hearsay, considerably diminishes the credibility of the prosecution's claim regarding injuries caused by gunfire. Further, during cross-examination, PW1 disclosed that he was never examined by the Investigating Officer and that his statement was being recorded for the first time in Court. The fact that this witness did not provide any statement during the investigation makes his testimony extremely weak and unreliable. Statements made for the first time in Court without prior examination by the Investigating Officer are generally accorded very limited

**C.R.A. 396 of 2005**

evidentiary value, particularly in cases involving allegations of violence and injuries.

**52.** Similarly, PW2, Sub-Inspector of Police Anil Kumar Roy, deposed that the mob threw bricks at the police personnel, and that as a result PW18 (S.I. Bijoy Krishna Dey) and PW14 (A.S.I. Ananda Kumar Mondal) sustained injuries. However, as already highlighted, no injury reports in respect of PW18 and PW14 were ever produced before the Court. The absence of any medical documentation renders the claims of PW2 regarding the injuries inherently doubtful. Moreover, PW2 failed to identify any of the alleged miscreants before the Court, further weakening the prosecution's assertion that the accused persons specifically caused the injuries. Without corroborative medical evidence and identification of the perpetrators, the testimony of PW2 lacks credibility and cannot be relied upon to establish the alleged assault.

**53.** PW16, Sub-Inspector Nepal Chandra Sen, the first Investigating Officer, also revealed substantial deficiencies in the prosecution case. PW16 stated that he had seized one rifle and one cartridge through a seizure list dated 10.03.1993 (Exhibit-5/3), but admitted that these items were neither produced in Court nor marked as material exhibits. This non-production of the alleged seized articles significantly

**C.R.A. 396 of 2005**

undermines the authenticity of the seizure and raises serious doubts regarding the prosecution's claim of recovering incriminating articles used in the incident. PW16 further stated that he had sent a requisition to the hospital on 30.03.1993 for the collection of injury reports of the alleged injured persons. Yet, no such injury reports were ever produced in Court, and the Investigating Officer failed to provide any explanation for this glaring omission. The absence of these reports is particularly significant because it prevents verification of the alleged injuries and undermines the prosecution's claim that police personnel sustained harm during the incident.

- 54.** In addition, PW16 acknowledged that he did not identify the accused persons in Court at the time of his deposition. He also recounted statements allegedly made to him by PW3, Mukul Mondal, wherein PW3 claimed that on 09.03.1993 he witnessed a dispute between the Ghosh and Mondal communities at Piyasbari, that the police arrived around 5:30 P.M., and that about 300 persons surrounded the police party, throwing brickbats at them, prompting the police to fire in self-defense. However, at the time of giving evidence in Court, PW3 had turned hostile and did not support his earlier statement made before PW16. The same fate befell PW6 and

**C.R.A. 396 of 2005**

PW9, who were also declared hostile and failed to corroborate the narrative they had allegedly provided to the Investigating Officer. This divergence between pre-trial statements and courtroom testimony severely weakens the reliability of the Investigating Officer's account and raises questions regarding the consistency and authenticity of the prosecution evidence.

- 55.** PW16 further admitted that he did not collect the injury reports in connection with the case and that he did not see the seized articles in Court when giving his deposition. Importantly, he also stated that PW15, Constable Jagabandhu Adhikari, did not suffer any injury from the stones allegedly thrown by the mob. This admission directly contradicts the evidence of PW18, who claimed in his examination-in-chief that PW15 sustained injury due to the attack. Such contradictions between key prosecution witnesses significantly erode the credibility of the prosecution's narrative regarding the injuries and the sequence of events during the alleged attack.
- 56.** In sum, the testimony of PW1, PW2, and PW16, taken together, highlights multiple infirmities in the prosecution case: the absence of injury reports for the alleged injured, non-production of seized articles, hostile or uncorroborated witnesses, failure to identify accused persons, and internal

**C.R.A. 396 of 2005**

contradictions regarding injuries sustained by police personnel. These factors collectively create serious doubt about the reliability and veracity of the prosecution's story and seriously undermine the foundation upon which the conviction of the appellants was based.

- 57.** Upon a careful and holistic appreciation of the evidence brought on record, it becomes manifest that the prosecution has failed to establish the occurrence of the alleged incident beyond reasonable doubt. Equally, the prosecution has not been able to substantiate the claim regarding the injuries allegedly sustained by the so-called injured persons, as no proper medical documentation was placed before the Court to corroborate their assertions. The absence of injury reports, certificates, or any medical evidence severely undermines the credibility of the claim that the police personnel sustained injuries during the alleged attack.
- 58.** A significant weakness in the prosecution case is the conspicuous absence of independent witnesses to corroborate the version of the prosecution. The learned Trial Judge, in the impugned judgment, relied solely upon the testimonies of witnesses who were police personnel involved in the incident. However, these very witnesses' statements are replete with contradictions, omissions, and inconsistencies. Their

**C.R.A. 396 of 2005**

testimonies do not form a coherent and consistent narrative of the alleged events. In particular, discrepancies exist regarding the number of persons present at the scene, the nature and extent of the injuries sustained, and the sequence of the alleged assault and firing. Such contradictions render their testimony inherently unreliable, especially when the evidence of disinterested witnesses is entirely absent.

- 59.** Further, the prosecution has asserted that certain articles, allegedly used as weapons during the incident, were seized in the presence of independent witnesses. However, during their depositions, PW4 and PW10, who were cited as witnesses to the seizure, explicitly disavowed any knowledge of the alleged seizure. PW4 denied putting his thumb impression on the seizure list and stated that he knew nothing about the incident, while PW10 admitted that he had merely signed the seizure list at the instance of the police and had no knowledge of the articles seized. Such evidence renders the prosecution's claim regarding the seizure of the offending weapons highly doubtful and casts serious doubt on the authenticity of the seizure proceedings.
- 60.** Additionally, the prosecution repeatedly claimed that large mobs, varying from 200 to 400 persons, were present at the place of occurrence. Despite this, the prosecution failed to

**C.R.A. 396 of 2005**

examine a single person from among such crowds as an independent witness to corroborate their case. The absence of testimony from any person who was allegedly present at the scene further weakens the prosecution's account and underscores the lack of corroborative evidence to establish the occurrence of the incident.

- 61.** In light of these deficiencies, it is apparent that the learned Trial Court placed undue reliance solely upon the testimony of police personnel without any independent corroboration. Convictions based solely on the statements of interested witnesses, when such statements are fraught with contradictions and omissions, cannot be sustained under the principles of criminal law. The findings recorded by the learned Trial Court are therefore replete with conjectures and surmises, rather than being founded upon evidence beyond reasonable doubt.
- 62.** Moreover, the alleged offending weapons, which were claimed to have been used by the accused, were never produced before the Court nor marked as material exhibits. The non-production of these critical articles amounts to a material irregularity and demonstrates a failure on the part of the prosecution to establish essential aspects of its case.

**C.R.A. 396 of 2005**

- 63.** In view of the foregoing discussions, it is evident that the impugned judgment and order of conviction are vitiated by material irregularities, illegality, and a failure to appreciate the evidentiary lacunae in the prosecution case. The conviction recorded by the learned Trial Court cannot be sustained under the eyes of law and is, therefore, liable to be set aside, and the appellants deserve to be acquitted of all charges levelled against them.
- 64.** So, the instant appeal be and the same is hereby **allowed**,
- 65.** Accordingly, the impugned judgment and order of conviction passed by the learned Trial Court dated 21.05.2005 passed by the learned Additional Sessions Judge, 5<sup>th</sup> Fast Track Court, Malda in connection with Sessions Case No. 95/03 corresponding to Sessions Trial No. 19(4)04 arising out of English Bazar P.S. Case No. 68/93 dated 09.03.93 (G.R. Case No. 303/93) is hereby set aside.
- 66.** The appellants are on bail. They are to be discharged from their respective bail bonds and be set at liberty if they are not wanted in connection with other case.
- 67.** In compliance with the mandate of Section 437A of the Code of Criminal Procedure (corresponding to Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023), the appellant is required to execute bail bonds with adequate sureties. Such

**C.R.A. 396 of 2005**

bonds, upon being furnished, shall remain operative and binding for a period of six months, thereby ensuring the availability of the appellant to appear before the higher forum, if so required, and safeguarding the proper administration of justice.

- 68.** Let a copy of this judgment along with the Trial Court record be sent down to the Trial Court immediately.
- 69.** Urgent Photostat certified copy of this order, if applied for, be given to the parties on payment of requisite fees.

**(Prasenjit Biswas, J.)**