Form No: J(1)

IN THE HIGH COURT AT CALCUTTA

CRIMINAL APPELLATE JURISDICTION

APPELLATE SIDE

Present:

The Hon'ble Justice Rajasekhar Mantha

And

The Hon'ble Justice Anuj Singh

CRIMINAL APPEAL NO. 560 OF 2010

Suresh Barman & Ors.

v.

The State of West Bengal.

AND

CRIMINAL APPEAL NO. 511 OF 2010

Anil Basunia & Ors.

Vs.

The State of West Bengal

For the Appellants : Mr. Prabir Kumar Mitra, Ld. Sr. Adv
Mr. Kaustav Talukdar
Ms. Sudarshana Srivastave
Ms. Ankita Dutta
.....Advocates

For the State : Mr. Debojyoti Deb
Ms. Nayana Mukhopdhyay
.....Advocates

Hearing concluded on : 22.09.2026

Judgment pronounced on : 14.10.2026

ANUJ SINGH, J:.

1. These appeals are directed against the judgment of conviction dated July 29, 2010 and the order of sentence dated July 30, 2010 passed by the learned SpecialcumAdditional Sessions Judge, Cooch Behar in Sessions Case No. 48 of 1998 (Sessions Trial No. 4(1)/03, State of West Bengal v. Anil Basunia and others, whereby the Appellantswere convicted of offences punishable under Sections 302 and 324 read with Section 149 of the Indian Penal Code. Each Appellant was sentenced to imprisonment for life and a fine of Rs. 5,000, with imprisonment for six months in default of payment, for the offence punishable under Section 302 read with Section 149, and to imprisonment for two years and fine of Rs. 1,000, with imprisonment for one month in default of payment, for the offence punishable under Section 324 read with Section 149. The case arose out of Mathabhanga Police Station Case No. 6 of 1985, dated 7 August 1985, registered under Sections 148, 302 read with Section 149, 427, 307 read with Section 149, and 324 of the Indian Penal Code.

2. The appellants before us in the present appeals are Suresh Barman, Monbhola Barman, Sarat Barman @ Sarat Chandra Barman, Saila Barman and Sashi Kanta Barman (in CRA 560 of 2010) and Anil Basunia, Sunil Basunia, Mahesh Barman, Suresh Barman, Dhanbar Barman, Manindranath Barman and Amullya Barman (in CRA 511 of 2010).

3. It appears that during pendency of the present appeals, the following appellants namely Suresh Barman @ Goda, son of Andaru Barman, Monbhola Barman, Saila Barman, Anil Basunia and Suresh Barman @ Jhunu, son of Sakalu Barman, have died. Thus, the surviving appellants before us are Sarat Barman and Shashi Kanta Baran in CRA 560 of 2010 and Sunil, Dhanbar, Manindranath, Amullya and Mahesh.

Background to the Occurrence of offence.

4. The prosecution case has its genesis in the political rivalry between supporters of Congress(I) and CPI(M) in Village Bhogramguri within the jurisdiction of Mathabhanga Police Station in District of Cooch Behar, West Bengal.

5. Sometime before the occurrence of the offence that forms the subject matter of the present appeal, one, Sabita Barman wife of Brojindra Nath Barman, a Congress (I) supporter, died by hanging at her matrimonial home. According to the prosecution, her father initially did not lodge any complain with the police but was subsequently compelled by CPI(M) supporters to lodge a complaint alleging that Brojindra had murdered his wife. This incident flared up the existing political tension in the village. The prosecution further alleges that CPI(M) supporters imposed a social boycott on Brojindra's family by preventing the barber and the priest from giving their services to their family.

Prosecution Case

6. On August 7, 1985 the Congress party had convened a meeting at Gopalpur. Several members of the Congress party decided to assemble at the residence of Tushar Kanti Roy and then go to the meeting together. At about 10am Mahesh Basunia, the General Secretary of the Mathabhanga Block Congress, reached the house of Tushar Kanti Roy. Tushar Kanti Roy, Mahesh Basunia, Gorachand, Sachindra Roy, Surendra Nath Barman, Hemant Barman, Makhan Barman, Brojendra Barman, Debendra Barman, Binanda Barman, Agrendra Barman, and many other Congress supportersstarted walking on foot from their village to Ichhaganj Mor for reaching Gopalpur by boarding a minibus named 'Poushali', bearing registration No. WGY 9769 to proceed to Gopalpur for the meeting.

7. At about 2.30 pm, the bus reached Santababur mor, where the road had been blocked with stones. About 20 to 25 CPI(M) supporters, including the appellants,who were waiting there armed with lathis, ballams, khapras (spears), spades, etc stopped the bus and attacked it. Thereafter, the said miscreants got into the bus and started beating Congress supporters after identifying them. In the course of the merciless assault, Mahesh Basunia and Gora Chand died on the spot. Their dead bodies were lying inside the bus. The assailants left the scene once they realized that Mahesh and Gorachand were dead. About 20 to 25 minutes later, Tushar Kanti Roy got another bus to Mathabhanga Police Station. After reaching the police station, he gave an oral statement to the Officer in Charge, SI B.N. Bose, who wrote down and explained the content of the complaint to him. The complaint was said to have been recorded at 17.10 hours, which is about 3 hours from the time of occurrence of the alleged offence. This led to registration of the FIR for investigation into the case under Sections 147, 148, 149, 127, 427, 323, 324, 307, and 302 of the Indian Penal Code against 20 accused persons who were named in the FIR.

8. Prior to the aforesaid one, Punam Chand Lakhani, President of Mathabhanga Block Congress had already gone to the Police Station at about 3 pm. One, Harimohan Talukdar had told him that a mini bus carrying Congress supporters had been held up by CPI(M) supporters and that Sudhir Kumar Barman saw the bus being stopped at Ichaganj more. He first went to the BSF camp at Chengrakhata, which took no action, and then he informed the Police from the post office. SI KB Chhetri went to the spot and held inquests over the dead bodies inside the bus between 3 pm and 4.30 pm.

9. The investigating officer of the case prepared a Surathal Report over the dead body of Gora Chand on 7.8.1985 between 3 to 3.30 pm. The second Surathal Report over the dead body of Mahesh Basunia was prepared after the inspection conducted between 3.30 pm and 4 pm on 7.8.1985. The

Investigating officer of the case also prepared a rough Sketch Map of the place of occurrence on 7.8.1985. The post-mortem was conducted, and a post-mortem report was prepared on 8.8.1985 in respect of both the dead bodies.

10. After investigation of the case, the police submitted a Charge Sheet on 20.10.1987 against 26 accused persons under Section 148/302/149/427/307/324 of the Indian Penal Code of 1860. On or about 13.8.1991, Charges were framed against the appellants and others by the Special Judge, Additional Sessions Judge, Cooch Behar.

The Trial

11. The prosecution examined as many as 20 witnesses to prove its case. The prosecution exhibited 17 documentary exhibits and 1 material exhibit in the course of its examination.

12. PW-1, Tushar Kanti Roy deposed about the political hostility between the two groups following the suicide of Brojendra Nath Barman's wife. He further deposed about the subsequent case filed against Brojendra and an alleged social boycott of Brojendra's family. PW-1 deposed that Mahesh Basunia and about 12 to 13 Congress supporters assembled at his house on the fateful day to proceed to attend a meeting at Gopalpur. All of them thereafter boarded the 'Poushali' mini bus at Ichhaganj mor at about 2.30 pm. Near Santababur Pakkamor, he found that the road was blocked by placing stones, and 20 to 25 persons were standing there. They were armed with lathi, ballam, khapar (spear), beki, sword, ramdo, etc. They detained the bus and surrounded it. There were considerable number of passengers inside the bus. They permitted other passengers to leave the bus, detained their group, and damaged the bus. PW-1 deposed that he, Mahesh, Gorachand, Sachin, Deben Barman, Suren Barman, Makhan Barman, Brojendra Barman, Binendra Barman, Aagan Roy, Pran Krishna were all inside the bus. When Gorachand attempted to get down from the

bus by unlocking the door of the mini bus, Goda @ Suresh gave him a blow of khapar on the neck, and Gorachand fell down inside the bus and sustained injury. He named Sarat, Saila, Manbhola, Sashi alias Naltigiri, Goda, and Aijit alias Manglu among people entering the bus and assaulting the victims. He stated that Manglu was armed with a lathi, and the other named persons were armed with khapar, ballam, etc. All of them started assaulting the Congress supporters, including PW-1. When they prayed for mercy, they did not spare them. He further deposed that Manbhola struck and cut Mahesh's neck when Mahesh asked for water in the course of their altercation. Mahesh and Gorachand died inside the bus. PW-1 further deposed that he sustained injury on his head and forehead. Sachin Roy, Naresh, Makhan, Pran Krishna, Suren, Agan, and Deben also sustained injuries on their person. Chabbor mia, stood at the entrance of the bus while other armed accused persons surrounded the bus. The PW-1 identified the accused persons in the court and described his own injuries as well and the injuries inflicted upon others inside the bus. He further deposed about traveling to the Mathabhanga Police Station, where his complaint was recorded by the police. He proved his signature on the complaint marked Exhibit 1, and that he was thereafter medically treated. In cross-examination, the defense attempted to highlight the inconsistencies in the statements made by the PW-1 before the police while lodging the initial complaint and the deposition made before the court in the course of trial. The defense attempted to highlight that the version in court was more detailed and, as such, an afterthought.

13. PW2 Naresh Barman, another eye witness, also described the dispute regarding Brojendra and the fact that all of them gathered at the house of Tushar Kanti Roy hours before traveling for the Congress meeting. He stated that the armed accused persons stopped their mini bus near Santababur mor, allowed other passengers to leave the bus, and then attacked their group. The PW2 stated that the blow on Gorachand's neck

was inflicted by Goda. He named Goda, Sashi, Manbola, Sarat, and Saila as entering the bus. He deposed that Goda, Sashi, and Manbhola injured him with khapar. He deposed that Manbhola cut Mahesh's neck when Mahesh asked for water, and that both the deceased died inside the bus after being mercilessly assaulted. He further described Sutkawala standing at the entrance of the bus and others surrounding the bus. PW2 further deposed that Tushar Kanti, Binod, Agan, Brojen, Sachin Roy, Cheltu Barman, Suren Barman, Hemant Barman, Makhan Barman, and Pran Krishna Barman were also assaulted by them and sustained injuries PW2 also identified the accused persons in court and stated that he went by public bus to the police station and was treated at Mathabhanga Hospital for 7 or 8 days.

14. PW3 Pran Krishna Barman, another eye witness stated that he accompanied Mahesh Basunia and Makhan to the residence of Tushar Kanti Roy on the fateful day. He described that all of them boarded the minibus when suddenly the accused persons, with others, all armed with weapons, blocked the road,boarded the bus, and permitted other passengers to leave the bus, before assaulting their group. The said witness stated that Gorachand's neck was struck by Goda, when he attempted to leave the bus. He named Goda, Sarat, Saila, Laltigiri, and Manbhola as entering the bus and attacking Mahesh. He stated that Manbhola injured Brojendra near the rectum and inflicted a neck blow to Mahesh. He further deposed that Goda struck him with the handle of a khapar, and Manglu struck his head and leg with a lathi when he attempted to escape the bus through the driver's door. He described Sutkawala guarding the door of the bus and named other accused persons surrounding the bus. He deposed how all of the Congress supporters, including himself, were injured during the assault. He had identified the accused persons in court and stated that he, along with Naresh and Suren, travelled by jeep to the police station and were subsequently sent for treatment.

15. PW4, Deben Barman,being another eye witness also described the prior political dispute. He deposed about the fact that all of them assembled at the residence of Tushar before proceeding to board the mini bus. He gave an eye witness account of how the accused persons obstructed the mini bus near Santababur pucca mor. He deposed that when Gorachand tried to get down from the bus, a tussle started between Gorachand and Andaru Barman, being his maternal uncle. Goda Barman, being the eldest son of Andaru, gave a blow of khapar on Gorachand, and Gorachand fell down. PW4 named Manglu, Chhabor Mia, Manbhola, Driver Mia, and Saila among the persons entering the bus and assaulted them, despite fact that they prayed for mercy. PW4 attributed an initial ballam assault on Mahesh to Chhabor Mia and subsequent cutting of Mahesh's neck to Manbhola. He said Manglu had struck him with a lathi, and Suresh, son of Sakalu, injured him by throwing a stone. He deposed that other armed accused persons stood outside the bus and shouted that all of us should be killed. He identified the accused persons in court and stated that he travelled bybus to Police station and received treatment at Mathabhanga Hospital for a day.

16. PW5 Surendra Nath Barman stated that he and other Congress supporters assembled at the residence of Tushar Babu and boarded a minibus approximately at about 1.30-2 pm.He stated that about 20 to 30 armed persons stopped the bus with boulders. He stated that they surrounded the bus and broke its windows. He described five assailants entering the bus and attacking Mahesh. He said that Manbhola cut Mahesh's neck after he requested for water. He stated that Goda assaulted Gorachand with a ballam. He himself sustained injuries to his head and forehead from a stone thrown by persons outside, but he could not identify the stone thrower. PW-5 was also traveling in the bus and had suffered injuries. He saw the deceased suffering fatal injuries. PW5 identified the accused

persons as having been inside and outside the bus and stated that he and Hemanta went to Mathabhanga Hospital, where he was treated for a week.

17. PW6 Makhan Chand Barman deposed about attending the gathering at the house Tushar babu, and all of them boarding the Poushali minibus at about 2pm to 2.15 pm on the fateful day. He deposed that armed persons stopped the bus, removed the driver, and compelled other passengers to leave the bus. He stated that the bus was damaged. He stated that Gorachand's throat was injured by Goda. He described six assailants entering the bus and attacking Mahesh, with Manbhola ultimately striking Mahesh's throat after Mahesh had asked for water. He stated that Manglu struck his head with a lati, Laltigiri struck the left side of his chest with a ballam, and Manbhola struck Brojendra near his rectum. He stated that other armed accused surrounded the bus and threatened the occupants. He identified the accused persons in court. He said that he subsequently lost consciousness and regained it at Cooch Behar Hospital. He stated that he remained under treatment for about one month and gave a statement bearing his thumb impression to an Executive Magistrate.

18. PW7 Sachindra Nath Roy stated that the incident happened at about 2pm to 2.30 pm on August 7, 1985. He deposed about the Congress supporters assembling at the house of Tushar Babu for proceeding to the meeting. He deposed that the accused person stopped the mini bus near Santa Babur Pakka Mor and asked the driver and other passengers to leave the bus. He deposed that the assailants then attacked the members of the group belonging to the Congress party. He attributed Gorachand's throat injury to Goda and stated that Manbhola, Saila, Sarat, Suresh, Sashi, and Manglu entered the bus. He described the assault on Mahesh, and that Manbhola injured Brojendra near the rectum, and Manbhola's final blow to Mahesh's throat. He attributed his own head injury to Suresh, alias Goda. He named other accused persons who surrounded the bus and shouted that no one should be spared. He identified the accused and stated that he travelled by

truck to Mekligunj Hospital and was thereafter transferred to Jalpaiguri Hospital.

19. PW8, PW11, and PW18 saw the bus and the surrounding events, although none of the said witnesses identified any particular accused as the person attacking the victims. PW8, Sudhir Kumar Barman deposed that he saw the mini bus stopped near Shantababur Pakka mor by several persons armed with lathes and ballams. He deposed that after observing the scene for some time he sought assistance from the BSF camp nearby, which refused to help without a formal order. He then deposed that he attempted to telephone the police from two post offices and ultimately communicated the information from Chanakata. He stated that he subsequently saw the injured at Cooch Behar Hospital, including his elder brother Makhan. PW11, Nagen Chandra Mandal, who was the bus cleaner, described how the bus was obstructed on the road by stones and the damaged. He deposed that he fled with the driver and some other passengers. He stated that upon subsequently returning with the driver, he saw two persons lying dead inside the bus. PW18, Banamali Sarkar, the driver stated that the bus was stopped at about 2.15 pm. He deposed that he was forcefully asked to get down from the bus and was assaulted. He said that he ran away from the scene. About 2 days subsequently, he saw blood, broken glass, and damaged seats of the bus at the police station. In cross-examination, PW11 and PW18 stated that they did not know what happened inside the bus after they fled away. PW18, described the locality as a busy road with shops, houses, and a market. Their evidence, read as a whole talks about the detention of the bus and the fatal assault that happened inside it.

20. PW9, Brojendra Nath Barman, is an injured witness. He was declared hostile. He deposed that after his wife's suicide his father-in-law made a G.D. entry. On 22nd Sravan, 1392, he and the other Congress supporters boarded the 'Poushali' minibus at Ichhaganjmor to attend the meeting at

Gopalpur. Some persons stopped the bus at Santababur mor. He said he was struck with a ballam on the back of his thigh and his back while inside the bus. He said Mahesh Basunia and Gorachand were assaulted inside the bus with khapar and ballam and died there. He was taken by police vehicle to Cooch Behar Hospital and later treated at North Bengal Medical College for about 9 to 10 months. He named Chhakbar @ Suktawala, Andaru Barman, Gojindra Barman, Harimohan Barman, Bista Barman, Fulendra Barman, Haridayal Barman and Sudin Barman as standing beside the bus with weapons. He attributed his own injury to Chhakbar @ Suktawala. None of these persons were facing trial. He denied that the I.O. ever examined him and denied giving a statement to an Executive Magistrate. He admitted that he had been with the Congress in 1985 and joined the CPI(M) some 7 to 8 years later. In cross-examination by the defence he nevertheless said he presently belonged to the Congress. He alleged that 7 to 8 days before the trial began, PW1 to PW7 and others met at the Congress party office at Mathabhanga. There, he said, Tushar Kanti Roy, Punam Chand Lakhani and Sachindra Nath Roy discussed which CPI(M) workers were to be implicated and tutored the witnesses on what to say. He named Sarat, Saila, Manbhola, Sashimohan @ Laltigri and Goda as CPI(M) leaders of those villages, and said it was decided that their names must be mentioned specifically.

21. PW 10 and PW 13 have deposed about the events preceding and following the occurrence of the offence. They admittedly did not witness the incident. PW 10, Anjali Roy Basunia, deposed that her husband, Mahesh Basunia, left home at about 9 am to 9.30 am to attend a meeting at Gopalpur. She deposed that about 4 pm to 5 pm, she received information of his death from Sachin Barman and others. She identified the spectacles of her husband, which were marked as material Exhibit I. PW 13, Poonam Chand Lakhani, deposed that at about 3 pm, Hari Mohan Talukdar informed him that a group of CPI(M) supporters had detained a mini-bus

with Congress supporters. Talukdar told him that 40 to 50 CPM supporters had stopped a minibus at Santababur More with Mahesh Basunia and other Congress supporters inside, and asked him to get police sent or they would be killed. PW13 went to Mathabhanga P.S., gave the information, and asked the police to go to the place of occurrence. Sometime later he saw injured Congress supporters arriving at the P.S. and learnt that Mahesh Basunia and Gorachand had been murdered in the bus. In cross-examination, he said that he had submitted written information at the P.S. but never went to the place of occurrence himself. He stated that he had given written information to Mathabhanga police station before the injured persons reached the police station. In cross-examination, he admitted he was president of Mathabhanga Block Congress and that he had not visited the place of occurrence.

22. PW14, Dr. Madan Mohan Saha, was the Medical Officer at M.J.N. Hospital, Cooch Behar.He conducted the post-mortem examinations on both deceased on 8.8.1985. Constable No. 285, Jatin Das, brought and identified the bodies. On Gorachand Barman, aged 24 to 25 years, he found four stab wounds. The fatal one was at the root of the neck, anteriorly and more on the right side, 1" × ½" × ½" deep, cutting the skin, subcutaneous tissue, trachea and vessels. The others were on the left side of the face, the front of the right leg and the back of the left leg. On Mahesh Basunia, aged 35 to 40 years, he found eleven stab wounds. They were over the left eyebrow, the right parietal region, the left side of the nose, the lower anterior neck at the midline (cutting skin, soft tissue, blood vessels and trachea), the right arm, the right elbow, the right forearm, the right axillary line at the 7th intercostal space, the right leg, the left foot and below the right scapula. In both cases he gave the opinion that death was due to shock and haemorrhage from ante-mortem, homicidal injuries that could be caused by a sharp cutting weapon. He proved the post-mortem reports as Exhibits 3 and 3/A.

23. PW15, Lakpa Doma Sarkar, WBCS (Executive), was the Executive Magistrate at Cooch Behar in 1985. She deposed that on 8.8.1985, on the requisition of the S.D.O., Cooch Behar Sadar, she recorded the statements of the injured Khitish Ch. Barman and Makhan Ch. Barman. She said she observed the legal formalities, read each statement over and explained it in Bengali, and the deponent put his L.T.I. in her presence and in the presence of witnesses. She proved the statements as Exhibits 4 and 4/A. In cross-examination she admitted several gaps. She no longer had the S.D.O.'s requisition, and the statements carry no endorsement that they were recorded on it. She did not record them as dying declarations. There is no endorsement identifying the L.T.I.s or the person who identified the injured, and none that the Hospital Superintendent's permission was obtained. She noted nothing about the physical condition of the deponents. There is no endorsement that the statements were read over and explained. She denied that the statements were not recorded on that date or were backdated.

24. PW12 and PW16 have proved the medical reports relating to the six injured eyewitnesses. PW16, Dr. P.S. Mahajan, deposed that he had examined PW1, PW 2.PW 3, PW 4 and PW5 from about 5. 30 pm on 7.8.1985. The said witness proved the injury reports collectively marked as Exhibit 5. Witness deposed that he found scalp and forehead lacerations on Tushar's body, scalp and supra-orbital lacerations with swelling near the right scapular region of Surendra, a combination of scalp injury, penetrating sharp cut wounds, bruises, and abrasions on Naresh, Pran Krishna had scalp and leg lacerations, sharp cut wounds on the forearm, and swelling, Deban had bruising and abrasions on the right arm and a facial hematoma. The doctor described the injuries as simple and approximately 2 to 4 hours old. He distinguished the injuries attributable to blunt weapon from those which were inflicted with sharp weapons. In the cross-examination, he deposed that none of the injured eyewitnesses

gave names of the persons who attacked them. PW12, Dr. Sankar Lal Saha, deposed that he examined Sachindra, PW7, at 5.30 pm and found three incised scalp wounds and a bone cut wound with abrasions, swelling, and tenderness over the back and limbs. He proved the injury report, which was marked as Exhibit 2. This report recorded a history naming several attackers and described that he was assaulted with a sword, lathi, and other weapons.

25. PW17, Dr. Pinaki Tarafdar, was the Medical Officer at M.J.N. Hospital, Cooch Behar, on 7.8.1985. He deposed that on that date he examined Agon Barman, , who was brought by one Bimal Ch. Roy. The patient told him he had been assaulted by Suresh Barman, Andaru Barman and others. He found incised-looking wounds in the webs of the fingers, a lacerated injury on the distal phalanx of a right finger and an incised-looking wound on the scalp. He proved his injury report as Exhibit 6.

26. PW19, PW20 deposed about submission of the charge sheet. PW19, Dev Narayan Basu took charge as officer in charge of Mathabhanga police station in February 1987, and he submitted the charge sheet in the matter. He stated that he had not personally investigated the case or worked with the persons who were involved. PW20, Biman Kumar Chanda stated that he was acquainted with both the officers who had investigated the case. Through the said witness, the prosecution has proved the handwriting on the formal FIR, complaint, sketch map, index, along with seizure list, inquest report, and dead body challan. The documents and signatures were marked as Exhibits 1/ 3, 1/ 4, and Exhibits 8, 9, 10, 11, 12, 13, 14, 15, 16, and 17.

27. The prosecution exhibited the de facto complainant's signature on the complaint as Exhibit 1 and the formal FIR as Exhibit 1/3. The injury report of Sachindra Nath Roy was marked as Exhibit 2, and the Postmortem reports of Gorachand and Mahesh were marked as Exhibits 3 and 3/A

respectively. The statements made by Shitish Chandra Barman, alias Brojendra, and Makhan Chandra Barman, recorded by the Executive Magistrate, were marked as Exhibit 4 and 4/A. The injury reports of 5 injured eyewitnesses were collectively marked as Exhibit 5. The injury report of Aagan Barman was marked as Exhibit 6, and the bed head ticket of Hemanta Barman was marked as Exhibit 7. The written portion of the sketch map and its Index were marked as Exhibits 8 and 8/1 respectively. Five seizure lists regarding seizure of the weapons and the damaged mini bus were marked as Exhibits 9, 10, 11, 12, and 13. The signatures of SI, K.B. Chhetri, two Inquest Reports, and the Dead Body challans were marked as Exhibits 14, 15, 16, 7, and 17. The only Material Exhibit was Mahesh's spectacles, which was marked as Exhibit I.

28. The accused persons were examined by the learned trial court under Section 313 of the Code of Criminal Procedure, 1973, and all material evidence that transpired against the accused persons in the course of the prosecution witnesses' deposition was explained to the accused persons in the form of questions. The accused persons were called upon to answer the same. It appears that the consistent case of the accused persons was that of denial of the prosecution case.

29. The learned trial court, after conclusion of trial and after considering the arguments advanced by the parties, was pleased to convict the appellants herein.

30. By the judgment dated 29.07.2010, the court acquitted Debnarayan Barman, Shiben Barman and Kaltu @ Kalachand Barman under Section 235(1) Cr.P.C. It acquitted all the accused of the charges under Section 307 read with Section 149 IPC and Section 427 IPC. It convicted Anil Basunia, Manindranath Barman, Sarat Barman, Amulya Barman, Saila Barman, Sashikanta Barman, Suresh Barman @ Goda, Sunil Basunia, Mahesh Barman, Suresh Barman, Manbhola Barman and Dhanbar Barman under

Section 302 read with Section 149 IPC and Section 324 read with Section 149 IPC. On 30.07.2010, after hearing the convicts on sentence, the court held that the Probation of Offenders Act had no application. It weighed the pre-planned and brutal nature of the political killing against the fact that the convicts were poor villagers, described as puppets in the hands of leaders, who had faced trial for twenty-five years. Holding that the case did not fall within the rarest of rare category, the court sentenced each convict under Section 302 read with Section 149 IPC to imprisonment for life and a fine of Rs. 5,000/-, in default six months' imprisonment. Under Section 324 read with Section 149 IPC it imposed two years imprisonment and a fine of Rs. 1,000/-, in default one month's imprisonment. The substantive sentences were to run concurrently.

ARGUMENTS OF THE APPELLANTS BEFORE THIS COURT.

31. While reiterating all the issues raised before the trial court, the Advocate for the appellants has argued that that the appellants must be acquitted on the following board arguments:

    a. The appellants have been falsely implicated in the instant case because of the political rivalry.

    b. The prosecution witnesses have failed to assign specific roles to the accused persons.

    c. Emphasis has been laid on the omission on the part of the prosecution witnesses to give specific evidence on the fatal blows and the identity of the assailants who entered the bus during the alleged occurrence. It has been argued that PW4 is a planted witness and was never examined by the police.

d. The discrepancies in the statements of the witnesses regarding the duration, exact time, and other details of the offencewere highlighted,

e. Through the evidence of PW-9, the appellants have sought to argue that naming of the accused persons and preparation of the witnesses' deposition was after a consultation at the office of the Congress party. The defense has also denied the presence of Goda at the place of occurrence.

f. It has been further argued that the earlier written information given by PW13 and the contradiction between the letter of complaint that resulted in registration of the FIR is of significance and shows that it is a case of afterthought.

g. Learned counsel for the appellants, by advancing the aforesaid arguments, has cited the following judgments to buttress his arguments.

h. **Vijay Shankar v. State of Madhya Pradesh, 1989 Cri LJ NOC 151 (M.P.**)has been relied upon to contend that PW13's earlier written communication, rather than PW1's subsequent complaint, ought to have been treated as the FIR.

i. Reliance has been placed on **Motilal versus State of Rajasthan, 2009 Cri. L.J. 3971** to question the chronology of reporting and investigation. According to the learned counsel for the appellants, the sequence of events as deposed by the prosecution witnesses casts doubt on the prosecution case.

j. On the reliability of eye-witnesses, **Mufiduddin Sheikh v The State West Bengal (2007) 1 Cr. L.R. 521** has been cited, wherein the discussion of omissions or material contradictions, Suresh Kamble has been referred to. It has been argued that the

particulars brought on record for the first time in court must be seen as significant omissions.

k. It has further been argued that the specific overt acts deposed to by the witnesses are consistently attributed to Monbhola and Suresh @ Goda, both of whom are now dead, and that the evidence against the surviving appellants is general and omnibus. PW-1 did not make any statement under Section 161 of the Code apart from his complaint, and the witnesses came to court about eighteen years after the occurrence and deposed in an identical, parrot-like manner after a joint discussion at the Congress party office.

l. It has also been argued that no offending weapon, wearing apparel or blood-stained earth was seized and sent for examination, that the weapons were not shown to the doctors, that the injured did not name their assailants to the doctors who examined them, that no independent witness was examined although the place of occurrence was a busy road, that the written information given by PW-13 was not exhibited, and that neither the FIR nor the inquest reports throw light on the exact manner of the incident.

m. In support of these contentions, learned counsel for the appellants has relied upon **Sadek Ali @ Md. Sadek Ali & Anr. v. State of Assam, (2026) 3 AICLR 288 (SC) (paragraphs 12 and 13)**, upon **Balakrushna Swain v. State of Orissa, (1971) 3 SCC 192 (paragraphs 5, 6 and 8)** and the decisions reported in **(1980) 1 SCC 674 (paragraph 2) and (2004) 10 SCC 583 (paragraph 4)**, to contend that delay in recording statements under Section 161 of the Code is fatal to the prosecution. They have also relied upon the decisions reported in **(2016) 4 SCC 96 (paragraph 20), (1976) 4 SCC 394 (paragraph 14), (2003)**

4 SCC 128 (paragraphs 11 and 12) and (1977) 4 SCC 420 (paragraph 18), on the failure to send blood-stained earth for examination and upon **Balaka Singh v. State of Punjab, (1975) 4 SCC 511 (paragraphs 5 and 7),** on the absence of the names of the accused in the inquest report. On these grounds, the appellants have also prayed for compensation.

32. All the issues raised by the lender appearing for the appellant, as narrated here above, are now dealt with in the following manner.

INDEPENDENT ANALYSIS OF EVIDENCE BY THIS COURT

33. Having considered the rival submissions, we now proceed to examine whether the evidence on record conclusively proves the murder of the victims by the appellants, in furtherance of a common object of the unlawful assembly, or whether the offences were not proved beyond reasonable doubt.

The attack on the bus and the death of the victims.

34. The fact that the mini bus was stopped and attacked has been conclusively proved. The attack upon the passengers and the death of Mahesh Basunia and Gorachand, inside the bus, is also established beyond any doubt by the prosecution evidence. The injured eyewitnesses have given a detailed description of the events that preceded the attack and the murder of the two deceased victims.

35. There are as many as seven injured eyewitnesses who have, with minor contradictions, proved by direct oral evidence that the minibus was intercepted by the appellants and others, and the manner in which they were assaulted.

36. PW-1, PW-2, PW-3, PW-4, PW-5, PW-6, and PW-7 have by direct evidence established the aforesaid. The evidence of PW-11, the helper, and PW-18, the bus driver, have independently supported the evidence of the bus being intercepted, stopped and attacked. They have also categorically proved that they were removed from the bus after which they fled the scene to save their lives.Similarly, PW-8 has also supported that the bus was intercepted by armed persons and the steps that he took to obtain help immediately after the attack began.

37. The evidence relating to the death of two persons inside the bus has been led by PW-14, Dr. Madan Mohan Saha, who conducted the Postmortem on 8.8.1985 and proved the reports. He deposed that Gorachand sustained four stab injuries, including one at his neck and on his face and legs. He further deposed that Mahesh sustained eleven stab injuries, including several parts of his body and the neck, where the wound involved soft tissues, blood vessels, and the trachea. The doctor has deposed that both the deaths occurred due to shock and hemorrhage. The above findings conclusively establish homicidal death and are in tune with the oral evidence of the other eyewitnesses.

38. While it is not in dispute that the driver and his helper did not witness the entire incident because they fled, their evidence, to the extent that the bus was stopped and attacked by the appellants, corroborates the evidence of PW-1 to PW-7 without any contradiction whatsoever.Considering the aforesaid evidence of PW-1, PW-2, PW-3, PW-4, PW-5, PW-6, PW-7, PW-11, PW-18, and PW-14, the attack on the bus by the appellants and the death of the victims, inside the bus, stand conclusively proved without any iota of doubt.

Evidence of injured eyewitnesses and the weight to be attached to such witnesses

39. PW1, PW2, PW3, PW4, PW5, PW6, and PW7 were members of the group who were traveling in the bus along with the two deceased. Their evidence about the occurrence of the offence must be attached with a high degree of credence. The evidence of an injured eyewitness is considered to be among the the most reliable pieces of evidence.

40. In this context, reference can be profitably had to the judgments reported in **Ramvilas v. State of M.P (2016) 16 SCC 316, Lakshman Singh v. State of Bihar(2021) 9 SCC 191**, and **Jarnail Singh v. State of Punjab, (2009) 9 SCC 719**where the Supreme Court has clearly laid down the principle that the injuries suffered by the victims in the course of the attack, but had survived the incident must be given substantial weight. The court has held that such a witness would ordinarily be unlikely to spare the actual persons who had attacked them and would falsely implicate others. The evidence of such an injured eyewitness, therefore, cannot be discarded lightly or because of minor discrepancies or infirmities. In **Balu Sudam Khalde v. State of Maharashtra(2023) 13 SCC 365**the above principles were reiterated, but with the qualification that the evidence of such injured eyewitnesses must be tested for inherent improbability or some material contradictions. In**Baljinder Singh v. State of Punjab2024 SCC OnLine SC 2622**the Apex Court further held that an otherwise reliable evidence of an injured eyewitness should not be rejected merely for want of other corroboration. Similarly, in **Adalat Yadav v. State of Bihar2026 SCC OnLine SC 660** the Supreme Court has reiterated that the evidence of an injured eyewitness must be weighed rather than counted, and the evidence of a single injured eyewitness is of sterling quality, if he has survived the cross-examination.

41. Apart from the fact that PW-1 to PW-7 had corroborated each other and that each of the witnesses withstood thorough cross-examination, what is

also relevant to note in this context is the evidence of PW-16 and PW 12. PW16 is the doctor who had examined PW1, PW2, PW3, PW4, and PW5 immediately after the assault, at about 5:30 pm onwards. The evidence of the doctor is that the injuries found on their body were approximately 2 to 4 hours old. PW-12 had examined PW-7 and had similar findings. The contemporaneous findings of the two doctors support the evidence of the seven injured eyewitnesses.

42. We have duly considered and examined the fact that the injured eyewitnesses had known the appellants because of their prior acquaintances. We have also considered that the witness belonged to a political faction which was opposed to that of the appellants. These facts call for careful scrutiny of the evidence instead of treating their injuries as conclusive proof of every allegation made against the appellants.

43. What weighs upon this court heavily is that merely because the injured eyewitnesses happen to be political opponents. That does not mean that consistent evidence of seven witnesses could be discarded on that ground. PW-1, PW-2, PW-3, PW-4, PW-5, PW-6, and PW-7 were traveling in the same bus and were therefore natural witnesses to the attack. In fact, the political hostility gives a motive for the attack, and not only a possible ground for false implication, as argued by the learned advocate for the appellants.

44. Because of the above reasons, the independent evidence of PW11, PW12, PW14, PW16, PW17 and PW18, (the driver, helper, and the two doctors) are of great significance, which supports the evidence of the seven injured eyewitnesses.

Medical corroboration and deficiencies in the investigation

45. The medical evidence fully corroborates the deposition of the eyewitnesses who were injured during the assault. The medical evidence clearly establishes that the attacks were by sharp and pointed weapons and with blunt force. The minor discrepancies in the witnesses' description of the weapons are of little consequence. The post-mortem findings further corroborate the merciless assault on the victim and further corroborate the deposition of the injured eyewitnesses.

46. Non-production of the weapons also does not lend much support to the argument of the defense. Non-production of the weapons does not dilute or contradict the positive evidence of assault and the nature of injury already placed on record through competent and reliable witnesses.

47. Non-examination of more local witnesses or passengers is also not of much significance in this matter. The evidence of 7 injured eyewitnesses are sufficient. It is the quality of evidence which must be looked into, and not the number of witnesses who have been examined by the prosecution. It is no one's case that any material witness who had special knowledge about the case was deliberately withheld by the prosecution.

48. The death of the officers who investigated the case, namely SI B.N. Bose and SI K.B. Chhetri, was the reason for their non-examination before the court. However, all relevant evidence was duly brought on record through PW19, who submitted the charge sheet, and PW20, who proved the handwriting and signatures of the deceased officers.

Common object and offence under Section 149 of the Indian Penal Code.

49. The evidence on record discussed above, which has been found by this court to be reliable shows a coordinated and armed attack on the bus rather than an accidental meeting at Santababur More. The evidence of

several witnesses is on record that the accused persons had put boulders on the way and had blocked the bus. The blocking of the bus, the removal of the persons not belonging to the targeted group of people, and the entry of the assailants armed with weapons conclusively establish that an unlawful assembly was formed with the common object of assaulting the victims and others belonging to the Congress party. The fact that the entry of the bus was guarded and people standing outside the bus were shouting that none must be spared, are other conclusive evidence that clearly establishes the common intention and the unlawful assembly.

50. **Haricharan and Another v State of Rajasthan (1997) 11 SCC 589 (See paragraphs 1, 4 and 5)** was a case of armed interception of a bus by assailants followed by targeted killing where five accused persons armed with weapons stopped the passenger bus. The bus driver was threatened and prevented from moving the vehicle, and the conductor was dragged out of the bus. One fired at him while the others assaulted him with weapons, resulting in his death. The accused subsequently fled together. The Supreme Court upheld the conviction under Section 302 read with Section 149 of the IPC, inferring common object, looking at the circumstances of armed interception, threats to the driver, and the attack on the victim and collective departure therefrom. In **Sitaram Kuchhbedia v Vimal Rana and Others reported at 2026 INSC 178 (See paragraphs: 58 to 66, 70 and 71)** there was a deliberate road obstruction and pre-arranged group assault on the victims. The deceased suffered 29 injuries, including severe injuries on the head. The Supreme Court, in that case, held the obstruction, prepared attack after forming an unlawful assembly with a common object, justified conviction under Section 302/149 of the Indian Penal Code. Similarly, in **Anneri Vipin v State of Kerala 2025:KER:30106 (See 3, 16, 18, 43 and 44) due**to a political rivalry and armed ambush and exhortations to kill, the Kerala High Court held that the prosecution had established an unlawful

assembly acting in furtherance of its common object. The Court upheld the convictions under Sections 143, 341, 307 and 302 read with Section 149 IPC, together with the rioting charges. In this case, as well persons outside the bus were shouting that nobody should be spared. Exhortations made during an organised attack form part of the evidence establishing the nature of the common object. In **State of Uttar Pradesh v Dan Singh and Others (1997) 3 SCC 747)**an attackby a group of people, exhortations to kill led to inference of a common object from the conduct of the assailants. Here, the Supreme Court found that an unlawful assembly had existed with the common object of killing members of the targeted group.

51. We hold that murders were committed in furtherance of a common object of the unlawful assembly. The aforesaid conclusion is based on the collective evidence of a series of witnesses who have withstood all the cross-examination.

Contradictions among witnesses

52. Much emphasis has been laid by the learned advocate appearing for the appellants on the omissions and discrepancies in the oral evidence of the witnesses. The variations in the approximate time of the offence, the order in which the acts were alleged, and/or the exact description of the weapon used for the assault must be examined in light of the fact that a considerable period of time had elapsed between the date of the incident and the date when the witnesses were examined in the court.The incident occurred in 1985, and the evidence of PW-1 to PW-20 was adduced before the court sometime from 2003 onwards**.** It would be impossible for any witness to vividly recall and depose with exact clarity and specification the details of every blow or the series and/or sequence of the acts. To the contrary, if the evidence had been identical and precise, the same would have raised grave suspicion in the mind of this court. Such minor

contradictions are only natural. The Apex Court took note of this in **State of U.P. v. Munesh, (2012) 9 SCC 742** and had expressed that there was bound to be variance when there was an interval between the statements made before the IO and the Court.

53. The contradictions and/or variations in the narration of events by PW-1 immediately after reaching the police station, soon after the incident had occurred, and the detailed account before the trial court is also fully understandable. PW-1 could not have been expected to give a meticulous account of every act at the time of making the complaint to the police station hours after the incident. In **Mekala Sivaiah v. State of A.P., (2022) 8 SCC 253**, the Apex Court noted that it was in fact, only, omissions which amounted to contradiction in material particulars which could be used to discredit the testimony by the witness.

54. The same distinction would also apply to the statements made by other witnesses.

55. We have considered the omissions admitted by PW-1 and PW-5. PW-1 has stated that his complaint did not describe Goda put blow on Gorachand's neck. He did not identify the specific individuals who entered the bus with weapons in order to narrate Monbhola's subsequent blow on the neck when Mahesh asked for water. Similarly, PW-5 admitted that several details, including the persons who entered the bus and the assault on Mahesh, have not been stated to the police in detail. All these aspects relate to participation and the result and cannot be dismissed as insignificant merely because of the lapse of time between the incident and the deposition before the court.

56. On careful examination of the above aspects, we find that the above discrepancies do not indicate that the appellants were absent or the acts described did not happen at all. The decisive question is whether the participation of the accused/appellants is otherwise established by cogent

evidence. In answering such a question, we have separately considered the evidence of PW2, PW3, PW6, and PW7, who had the opportunity to observe and identify the appellants and face cross-examination. The above witnesses identify Goda to have assaulted Gorachand and Manbhola, Sarat, Saira and Sashikant being the armed assailants who entered the bus and assaulted its occupants. PW6 specifically attributes the injury upon himself to Sashikant and also refers to Laltigiri.We accept the evidence on its own merits.

57. The admission made by PW-4 that the investigating officer of the case did not examine him and he was straightaway examined before the trial court for the first time is required to be assessed on its own merits. The evidence of PW-4 cannot be accepted or disregarded because of what the witness said. The evidence of PW-4 must be read with the evidence of other witnesses, who were contemporaneously examined by the investigating officer of the case within a few days after the incident.

58. We have considered the oral evidence of all the witnesses, including the injured eyewitnesses, who have given evidence in great detail about the assault. Their evidence is in tune with the evidence of PW-4. Failure of the investigating officer to examine PW-4 in the course of the investigation of the case in itself cannot lead to rejection of such evidence before the court, particularly in light of the fact that PW-4 had also faced cross-examination by the appellants and withstood such cross-examination. In Shyamal Ghosh v. State of W.B., (2012) 7 SCC 646, the Apex Court held that delay in examination of a witness by the investigating officer is a variable factor. Accordingly, it may not have any effect on the credibility of the prosecution evidence tendered by other witnesses.

Evidence of PW-9, injured witness, who turned hostile.

59. PW9, in course of his deposition, has deposed that he was traveling with the group and that the bus was detained. He also deposed about his own injuries and the death of Mahesh and Gorachand. The witness, however, proceeds to give favorable evidence to the defense and attributes Gorachand's assault to Andaru and asserts that Goda was absent. He also alleges consultation at the Congress office and tutoring of the witnesses. The said witness was declared hostile.

60. These are material aspects of his examination/evidence that require careful consideration. The fact that he was declared a hostile witness, does not discredit his evidence. In**Hari v. State of U.P., (2021) 17 SCC 111**, by the Apex Court, held that the evidence of a hostile witness can be accepted to the extent their version is found to be dependable. Accordingly, the evidence of PW9 cannot be rejected or held untrustworthy merely because he subsequently changed his political affiliation or became hostile to the prosecution case.The versions, the statements given to the police, and the statement at the hospital were confronted to PW9. PW9 flatly deniedhis earlier statements.

61. However, having compared the evidence of PW9 with the accepted evidence of the seven injured witnesses who have clearly identified Goda and had categorically described the entry of the accused persons and the assault, we are unable to accept the assertion of PW9 that Goda was absent. In any event, Suresh @ Goda has since died and his appeal has abated.

62. We accept the evidence of the seven injured witnesses and give more weightage to their testimony than to the one witness who subsequently turned hostile. The evidence of seven eye witnesses on their quality and unimpeachability way heavily over the solitary hostile witness. Further,

the account given by PW9 is also vague and never contemporaneously made by PW9.

Drawing of formal FIR subsequent to holding of inquest

63. The appellants have vehemently argued, relying upon PW-13's earlier written complaint to the local police station and the conduct of the Inquest before the actual registration of the FIR on the basis of the complaint made by PW-1. We do not think that the exercise of conducting the inquest before the actual registration of a formal FIR makes any difference. The fact that police reached the place of occurrence and held the inquest before drawing the formal FIR does not by itself show or indicate that there was any fabrication of evidence. Further, apart from highlighting the above discrepancy, the appellants have not alleged or demonstrated any prejudice caused to the accused persons by such chronology. In the considered view of this court, subsequent lodging of the formal FIR is inconsequential in light of the compelling evidence brought on record against the appellants.

64. It is pertinent to note the scope and purpose of holding an inquest under Section 174 of the Code of Criminal Procedure, 1973. The holding of an inquest is an inquiry into the apparent cause of death and the injuries found on the body immediately after the dead body is found by the Police. This inquiry is based on the injuries apparent to the naked eye. This inquiry is not held to identify the offender. The purpose of holding an inquest was reiterated in**Pedda Narayana v. State of Andhra Pradesh, (1975) 4 SCC 153, paragraph 11,** where the Supreme Court explained the limited purpose holding inquest.

65. An identical objection that has been raised in the present case is found to have been considered in **Sambhu Das alias Bijoy Das v. State of**

Assam, (2010) 10 SCC 374, (see paragraphs 20, 21 and 22), where the inquest was conducted at about 9:30 pm, whereas the formal FIR was drawn a couple of hours later, at 11:30 pm. The Supreme Court rejected the argument of sequence. The Supreme Court held that weather the chronology raises a doubt in the prosecution case, it must be inferred from the facts and circumstances of each case. In the present case, the statement of PW13's prior complaint does not indicate any contradiction in the prosecution case. The prior complaint only corroborates the subsequent complaint, which led to registration of the formal FIR.

66. The above conclusion does not dilute or compromise the obligation of the police authorities to immediately register an FIR upon receipt of information which discloses a cognizable offence, as explained in as explained in **Lalita Kumari v. Government of Uttar Pradesh, (2014) 2 SCC 1, (see paragraph 120)**. Such statutory mandate casts an obligation on the police. What is further important to note are two aspects. Firstly, the existence of such an obligation of the police to register an FIR immediately upon receipt of information of the commission of a cognizable offence and secondly, the resultant effect on the prosecution case by reason of any departure from the obligation by the police authorities. These are distinct questions, and inquiry on the factual aspects of the matter must be made to examine if the accused has suffered any prejudice because of such procedural irregularity on the part of the police. An inquest cannot be treated as a substitute for registration of an FIR for investigation into an offence. Also see **Amit Kumar v. Union of India, 2025 INSC 384, paragraphs 24 and 28.**

67. Upon analysis of evidence adduced before the trial court, this court does not find that the appellants have demonstrated that any circumstance of the prosecution version was fabricated or that the evidence adduced before the court below is unreliable. No prejudice is said to have been caused to the accused because of such irregularity. In the absence of any

prejudice shown before this court, the other compelling evidence on record cannot be ignored. In view of the aforesaid discussion, the objection of holding of the Inquest prior to the registration of the formal FIR, is found to be a technical objection only, and is accordingly, considered and rejected.

68. Learned advocate for the appellants has argued that there are two sets of accused persons/appellants in these appeals. The first set of appellants are those who allegedly boarded the mini bus and assaulted the occupants of the bus. The second set of appellants/accused persons are those who stood outside the bus and did not board the bus at all. Learned advocate further argued that, in the absence of any evidence that the second set of appellants did not set foot inside the bus or assault the two deceased, their conviction for murder under Section 302 read with Section 149 of the Indian Penal Code cannot be sustained.

69. We are not impressed by such an argument. The aforesaid argument is contrary to the settled principles governing vicarious criminal liability engrafted under Section 149 of the Indian Penal Code. Such statutory provision of the Penal Code does not require that every participant in the crime must be personally present to deliver the fatal blow. The law fastens liability on each member of an unlawful assembly for acts done in furtherance of their common shared purpose or for consequences which every member knew were likely to follow because of such unlawful act.

Governing principles of Section 149 IPC

70. The law is no longer *res integra* that the proof of an overt physical assault is not a condition precedent for a conviction under Section 149 of the IPC. In Masalti v. State of Uttar Pradesh, reported in 1964 SCC Online SC 30 a

Constitution Bench of the Supreme Court, speaking through Justice P. B. Gajendragadkar CJ, held as follows:

> *17. "... the said observation cannot be read as laying down a general proposition of law that unless an overt act is proved against a person who is alleged to be a member of an unlawful assembly, it cannot be said that he is a member of such an unlawful assembly. In appreciating the effect of the relevant observation on which Mr Sawhney has built his argument, we must bear in mind the facts which were found in that case. It appears that in the case of Baladin the members of the family of the appellants and other residents of the village had assembled together; some of them shared the common object of the unlawful assembly, while others were merely passive witnesses. Dealing with such an assembly, this Court observed that the presence of a person in an assembly of that kind would not necessarily show that he was a member of an unlawful assembly. What has to be proved against a person who is alleged to be a member of an unlawful assembly is that he was one of the persons constituting the assembly and he entertained along with the other members of the assembly the common object as defined by Section 141 IPC Section 142 provides that however, being aware of facts which render any assembly an unlawful assembly intentionally joins that assembly, or continue in it, is said to be a member of an unlawful assembly. In other words, an assembly of five or more persons actuated by, and entertaining one or more of the common objects specified by the five clauses of Section 141, is an unlawful assembly. The crucial question to determine in such a case is whether the assembly consisted of five or more persons and whether the said persons entertained one or more of the common objects as specified by Section 141. While determining this question, it becomes relevant to consider whether the assembly consisted of some persons who were merely passive witnesses and had joined the assembly as a matter of idle curiosity without intending to entertain the common object of the assembly. It is in that context that the observations made by this Court in the case of Baladin assume significance; otherwise, in law, it would not be correct to say that before a person is held to be a member of an unlawful assembly, it must be shown that he had committed some illegal overt act or had been guilty of some illegal omission in pursuance of the common object of the assembly. In fact, Section 149 makes it clear that if an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence; and that emphatically brings out the principle that the punishment prescribed by Section 149 is in a sense vicarious and does not always proceed on the basis that the offence has been actually committed by every member of the unlawful assembly..."*

71. The above principle was reaffirmed in **Yunis *alias* Kariya v. State of M.P., reported in 2003 (1) SCC 425, see para 9,** where the Supreme Court held that even if no overt act is imputed to an accused, when the

charge under Section 149 of the Indian Penal Code is established by leading cogent evidence, it would be sufficient to hold him guilty for the principal offence, with the aid of Section 149 IPC. The mere fact that the member did not inflict a wound does not absolve him from the constructive liability that fastens upon every member of the assembly. Relevant portion of the judgement is reproduced below:

> *9. "... Even if no overt act is imputed to a particular person, when the charge is under Section 149 IPC, the presence of the accused as part of an unlawful assembly is sufficient for conviction."*

72. Further, in **Lalji and Others vs. State of U.P., 1989 1 SCC 437**, **see para 8-9** the Supreme Court held that if the common object of an unlawful assembly can be traced from the evidence and the conduct of the unlawful assembly read with the surrounding circumstances, every member of the unlawful assembly must be held guilty of the offence.

73. In the present case, it is proved that the appellants, duly armed, intercepted the bus with a view to execute the crime. The roles of the two sets of accused were divided. The first set of accused were to enter the bus and inflict the blow, while the second set of accused were to block the exit from the bus and give support to those who had boarded the bus to commit the assault. The passenger bus had only two narrow exits. One through the passenger door and the other through the driver's gate. While the second set of appellants had surrounded the bus and had stopped the bus with boulders, all the passengers were trapped inside. The armed accused person standing outside the bus ensured that none of the victims could jump out of the bus through windows to save their lives. They also prevented possible members of the public from helping the passengers trapped inside the bus. This armed preparation and execution of the offence demonstrates a common object. In considered view of this court

this cannot be treated as passive presence of the second set of appellants, as sought to be argued by the learned advocate for the appellant.

74. An identical situation was considered by the Supreme Court in **HariCharan and another v. State of Rajasthan, 1997 11 SCC 589**, (see para 1, 4 and 5) where the armed accused persons stopped a passenger bus and prevented the driver from moving. They dragged the conductor out of the bus. While some assaulted him, causing death, the others stood outside, armed with weapons. The Supreme Court, in such a case, upheld the conviction of all the accused under Section 302 read with Section 149 of the IPC. Relevant portion of the judgement is reproduced below:

> *"1. The two appellants, along with two others have been convicted for committing murder of Ram Babu. What has been proved against them is that they formed an unlawful assembly and in prosecution of the common object of the unlawful assembly, on 27-2-1981 at about 1.00 p.m., they armed with weapons, stopped the bus going from Dholpur to Khuthiyana Ghat, asked the passengers to get down, attempted to drag out Ram Babu, conductor of the bus, and then appellant Rammo by firing two shots from his gun and others by their weapons injured and thereby killed Ram Babu.*
> ***5.** Once we accept the evidence of Kedarnath it becomes clear that all the five accused were acting in prosecution of their common object. As stated earlier they had gone to the place of the incident armed with weapons, stopped the bus, put the gun on the chest of the driver Satpal and threatened to shoot him if he drove the bus ahead. They had caught hold of Ram Babu and tried to drag him out. Rammo had fired two shots at him and the other accused had assaulted him with other weapons. They had run away together. Therefore, we are of the opinion that the appellants were rightly convicted under Section 302 IPC read with Section 149. The appeal is, therefore, dismissed."*

75. Similarly, in **State of U.P. v. Dan Singh and others, 1997 (3) SCC 747**, see paras 28 to 30, the Supreme Court reversed an acquittal and convicted the members of the unlawful assembly who surrounded the victims and shouted exhortations that none should be spared.

76. More recently, in **Sita Ram Kuchhbedia v. Vimal Rana and others, 2026 INSC 178**, the Supreme Court restored a conviction under Section

302/149 of the Indian Penal Code in a case involving a pre-arranged road obstruction and group assault.

Appraisal of evidence against each appellant

77. In Criminal Appeal No. 560 of 2010, the surviving appellants are Sarat Barman @ Sarat Chandra Barman and Sashi Kanta Barman @ Laltigiri. The deceased appellants, namely Suresh Barman @ Goda, Monbhola Barman and Saila Barman, have died during the pendency of the appeal, as reflected in the orders of this Court dated 14.07.2026 and 13.08.2026.

78. In Criminal Appeal No. 511 of 2010, the surviving appellants are Sunil Basunia, Mahesh Barman, Dhanbar Barman, Manindra Nath Barman @ Mani and Amulya Barman. The deceased appellants in that appeal are Anil Basunia, who died during incarceration, and Suresh Barman @ Jhunu, son of Sakalu Barman. Both died while the appeal was pending. The appeals of the deceased appellants have abated.

79. In this view of the matter, it is necessary to examine whether the evidence on record establishes the participation of each of the surviving appellants on its own. We are conscious that the most specific overt acts deposed to by the witnesses, namely the blow on the neck of Gorachand and the final blow on the throat of Mahesh Basunia, are attributed to the deceased appellants Suresh @ Goda and Monbhola respectively. The liability of the surviving appellants therefore rests on their membership of the unlawful assembly and, wherever deposed to, on their individual acts.

80. The case was initiated by awritten complaint of PW-1 (Exhibit 1), lodged within about three hours of the occurrence. It names, among the 20 to 25 armed members and supporters of the CPI(M) who attacked the Poushali

bus, every one of the surviving appellants. They were thus named at the earliest opportunity, before there was any time for deliberation.

Surviving appellants in Criminal Appeal No. 560 of 2010

81. Sarat Barman @ Sarat Chandra Barman was identified by PW-1, PW-2, PW-3, PW-5, PW-6 and PW-7 as one of the armed assailants who entered the bus. He entered together with the deceased appellants Suresh @ Goda, Monbhola and Saila, and each of these witnesses identified him in the dock. According to these witnesses, the assailants who entered the bus assaulted its occupants, including Mahesh Basunia, while Chhakbar @ Suktawala guarded the door so that none could escape. PW-4 does not name Sarat. That omission does not detract from the consistent evidence of six injured witnesses that he entered the bus as an armed member of the assembly.

82. Sashi Kanta Barman @ Laltigiri/Naltigiri was likewise identified by PW-1, PW-2, PW-3, PW-5, PW-6 and PW-7 as having entered the bus armed. PW-3 named him among those who entered the bus and attacked Mahesh Basunia. PW-2 specifically deposed that Sashi, along with the deceased appellants Goda and Monbhola, assaulted him with khapar on his head, legs and hands. PW-16 found on PW-2 a sharp cut penetrating injury caused by a weapon having a pointed end and sharp edges like a spear. PW-6, Makhan Chandra Barman, specifically deposed that Laltigiri struck him with a ballam on the left side of his chest. The injury report of PW-7 (Exhibit 2), prepared on the evening of the occurrence, also records Shashikanta Barman among the assailants named by the injured. PW-4 places Laltigiri among the persons outside the bus rather than inside it. At the highest, this bears on where he stood during the attack, which is immaterial to his liability under Section 149 of the Indian Penal Code.

Surviving appellants in Criminal Appeal No. 511 of 2010

83. We now turn to the surviving appellants who remained outside the bus on the road. The case against them is that they formed the armed group which surrounded the bus and prevented the occupants from escaping and shouted slogans that no one would be spared. PW-4 and PW-5 deposed that the assailants surrounded the bus and broke its glass panes, and that those outside raised slogans to kill all of them. Stones were thrown from outside the bus. One stone injured PW-5 on his head and forehead, and PW-4 attributed the stone that injured him to the deceased appellant Suresh @ Jhunu, son of Sakalu.

84. Sunil Basunia was named by PW-1, PW-2, PW-3, PW-4, PW-5, PW-6 and PW-7 as one of the armed persons surrounding the bus. He was identified in the dock as having been present outside the bus throughout the attack.

85. Mahesh Barman and Dhanbar Barman were likewise named by each of PW-1 to PW-7 as members of the armed group surrounding the bus, and were identified in the dock.

86. Manindra Nath Barman @ Mani was named in the same role by PW-1, PW-2, PW-3, PW-4, PW-6 and PW-7, and was identified in the dock.

87. Amulya Barman's armed presence outside the bus is proved by the evidence of PW-2, PW-3, PW-5, PW-6 and PW-7. PW-1 identified him in the dock. The testimony of the aforesaid six eyewitnesses remained unblemished even in the course of the cross-examination.

88. The group outside the bus acted in concert with those inside it throughout. PW-1 deposed that on seeing the death of Mahesh Basunia, the assailants

got down from the bus and all went away together. The blocking of the road, the removal of the driver and the other passengers, the confinement of the targeted group inside the bus, the exhortations not to spare anyone and the collective departure all show one assembly acting with one object.

89. We have not overlooked certain omissions. PW-1 admitted that he did not state in his complaint which of the assailants surrounded the bus. PW-4 was never examined by the police. PW-7 admitted that he had given the names of all the assailants to the investigating officer without specifying who entered the bus and who remained outside. These omissions go to the role of the individual assailants, inside or outside the bus, and not to their presence. The presence of each of the surviving appellants as part of the armed group that blocked the road and attacked the bus is recorded in Exhibit 1 itself. The absence of an overt act on the part of some of them does not take them outside Section 149 of the Indian Penal Code.

90. In their examination under Section 313 of the Code, the surviving appellants' defence was one of bare denial. No plea of alibi was raised, and the suggestions put to the injured witnesses in cross-examination were general denials. We are therefore satisfied that the participation of each of the surviving appellants as a member of the unlawful assembly has been proved beyond reasonable doubt.

91. Upon independent analysis of all the evidence as discussed above, we are satisfied that the prosecution has established beyond all reasonable doubt that the surviving appellants participated in an unlawful assembly, and that the murders of Mahesh Basunia and Gorachand were committed in furtherance of its common object. The injuries were inflicted by dangerous weapons. All these aspects of the matter have been conclusively proved by the surviving injured witnesses.

92. The learned advocate for the appellants has argued that there are two sets of appellants in these appeals. The first set allegedly boarded the mini bus and assaulted its occupants. The second set stood outside the bus and did not board it at all. It was further argued that there is no evidence that the second set of appellants set foot inside the bus or assaulted the two deceased, and so their conviction for murder under Section 302 read with Section 149 of the Indian Penal Code cannot be sustained.

93. On the aforesaid evidence, the conclusion is clear. Sunil Basunia, Amullya Barman, Mahesh Barman, Maninder Nath Barman, and Dhanbar Barman were not curious onlookers or innocent passive participants. They blocked the road with boulders, broke the windows, threw stones, raised slogans, and guarded the exit with weapons so that the victims could not escape or receive help from others.

94. As held by the Supreme Court in Rajendran v. State of Tamil Nadu, 2004 (10) SCC 689, see para6 member of an unlawful assembly who stands to guard and prevent victims from escaping cannot claim that he did not personally take part in the offence**.** Relevant portion of the judgement is reproduced below:

> ***"6.*** *The submission urged on behalf of the appellants must be rejected. The concurrent finding of fact of the courts below is that the appellants along with three others, namely, A-2 (since deceased), A-5 and A-8 formed themselves into an unlawful assembly, the common object of which was to commit the murder of Babu, the deceased. Once it is held that they were members of the unlawful assembly and in pursuance of the common object of such an assembly, Babu was murdered, the appellants cannot escape their liability because every member of the unlawful assembly is guilty of the offence committed by any member of such unlawful assembly, if in prosecution of the common object of that assembly an offence is committed. The appellants cannot argue that they were not members of the unlawful assembly because their participation in the assault has been proved beyond reasonable doubt. Once their participation is established, they cannot escape their liability by pleading that they did not cause any serious injury but merely assaulted the deceased with fists. The mere fact that they were members of the unlawful assembly at the time when the offence was committed, makes them guilty of the offence committed by any*

member of the unlawful assembly in prosecution of the common object of that assembly. Section 149 IPC enunciates a principle of vicarious liability and, therefore, every member of the unlawful assembly is guilty of the offence committed by any member of such assembly. Learned counsel for the appellants relied upon the decision of this Court in Rajendra Shantaram Todankar v. State of Maharashtra [(2003) 2 SCC 257 : 2003 SCC (Cri) 506 : JT (2003) 2 SC 95] and submitted that the principles enunciated therein may be applied to the facts of this case. We are afraid the aforesaid decision renders no help to the appellants because in that case some of the appellants were acquitted on a finding that they did not share any common object with those who indulged in an assault on another person, assault on whom was not pre-planned, nor shared as common object by them, and the evidence did not disclose that an unlawful assembly came into existence on the spur of the moment. This is not a case of that nature because in the instant case, the very object of the unlawful assembly was to commit the murder of Babu and, in fact, Babu was murdered in pursuance of the common object of the unlawful assembly. The participation of the appellants not being in doubt, their conviction with the aid of Section 149 cannot be assailed."

95. In view of the aforesaid, this Court holds that the trial court was therefore right in holding that all the appellants shared the common object to commit the murder and to cause hurt with a dangerous weapon, and in convicting all of them for the offence u/s 302 of IPC.

96. The conviction for voluntarily causing hurt with a dangerous weapon is now considered. PW16 proved the injuries of PW1, PW2, PW3, PW4, and PW5. Injuries were sharp cut injuries upon Naresh and sharp cut wounds on Pran Krishna. Lacerations, bruises, and abrasions were also sustained by the injured. PW12 has proved the bone cut injuries sustained by PW7. The evidence relating to assault by khapar, ballams, and sharp weapons is also duly corroborated. Based on the above evidence, it is clearly established that the charges under Section 324 IPC are proved.

97. The above evidence establishes that the injury was inflicted during the attack. The aforesaid act of causing hurt was in furtherance of the common object of the assembly. The appellants were part of the unlawful assembly is also clearly established and as such, a liable under Section 149 of the Indian Penal Code. We find that separate attribution of every injury to

each appellant is not a necessary requirement of the law. Therefore, the conviction under Section 324/149 IPC is upheld.

98. The fact that same accused were acquitted under Section 307/149 IPC does not affect the aforesaid conclusion.

99. Accordingly, the convictions of the appellants under Sections 302 read with 149 and 324 read with 149 IPC are affirmed. Having considered the nature of the offences and the circumstances of the occurrence, we find no ground to interfere with the sentences imposed by the learned trial court.

100. For the reasons recorded in the judgment, Criminal Appeal No. 560 of 2010 and Criminal Appeal No. 511 of 2010 are dismissed insofar as the surviving appellants are concerned. Their convictions under Sections 302 and 324, each read with Section 149 of the Indian Penal Code, and the sentences imposed by the learned trial court are affirmed. The substantive sentences shall run concurrently, as directed by the learned trial court.

101. In view of the aforesaid, all pending interlocutory applications in both appeals being CRAN/2/2013 (Old No: CRAN/758/2013), CRAN/8/2020 (Old No: CRAN/2954/2020), CRAN/9/2020 (Old No: CRAN/2955/2020), CRAN/2/2013 (Old No: CRAN/758/2013), CRAN/8/2020 (Old No: CRAN/2954/2020), CRAN/9/2020 (Old No: CRAN/2955/2020) also stands disposed of.

102. The period of detention, if any, already undergone by the appellants during investigation, inquiry and trial shall be set off against the sentence of imprisonment in terms of Section 428 of the Code of Criminal Procedure, 1973.

103. Let a copy of this judgment, together with the lower court records, be transmitted forthwith to the learned trial court for information and necessary action.

104. Urgent photostat certified copy of this judgment, if applied for, shall be supplied upon compliance with the requisite formalities.

I agree.

(Rajasekhar Mantha, J.) **(Anuj Singh, J.)**