

The Hon'ble **JUSTICE BIBEK CHAUDHURI**

Dipak Kumar Mondal & Ors.

The State of West Bengal

For the State: Mr. Swapan Banerjee, Adv.,
Ms. Purnima Ghosh, Adv.

Judgment on: 09 June, 2022.

BIBEK CHAUDHURI, J. : –

1. The convicts of Sessions Trial No.8(8) of 2014 arising out of Sessions Case No.22 of 2014 have filed the instant appeal assailing the order of conviction and sentence passed by the learned Additional Sessions Judge at Raghunathpur, Purulia for the offence punishable under Section 326/34 and 307/34 of the Indian Penal Code.
2. Raghunathpur P.S. Case No.75 of 2013 was registered on the basis of a written complaint submitted by one Anil Chandra Mondal stating, inter alia, that on the event date at about 8 am when he went to visit his

old homestead near Aguibari post office, the appellants namely, Dipak Mondal, Anirban Mondal, Tapas Mondal, Gayeswar Mondal and Thanda Mondal in furtherance of their common intention caused grievous hurt on his person and specifically Dipak Mondal assaulted him on his neck, back and hand with the help of a sharp cutting weapon, called, 'tangi'. After receiving bleeding injury, the defacto complainant was admitted to Raghunathpur Super Specialty Hospital.

3. The aforesaid complaint was written by one Chittaranjan Mondal and specific case was registered against the appellants at about 10:05 am.

4. After investigation police submitted charge-sheet against the accused/appellants. Since the offence under Section 307 of the IPC is exclusively triable by the court of sessions, the learned Sessions Judge after the case being committed, transferred the same to the court of learned Additional Sessions Judge at Raghunathpur for trial and disposal.

5. The learned Sessions Judge framed charge under Section 326/34 and Section 307/34 of the IPC when the charge-sheet was read over and explained to them, the accused persons pleaded not guilty. During trial prosecution examined as many as 10 witnesses.

6. Amongst the witnesses the injured defacto complainant was examined as PW1. PW2 is the daughter-in-law of PW1. PW3 is the daughter of PW1. PW4 Kanchan Mondal is the uncle of PW1. PW5 is the wife of the nephew of PW1. PW6 is the son of the defacto complainant. PW7 and PW8 are Medical Officers who treated the injured at different

point of time after he received injury. PW9 and PW10 are the Investigating Officers who deposed in the trial court. Some documents, viz original written complaint, seizure list, injury report, discharge certificate, formal FIR, sketch map with index of the place of occurrence were marked as exhibits on proof during trial of the case.

7. The accused persons were examined under Section 313 of the Cr. P.C. They denied the allegation labeled against them by the defacto complainant. From the trend of cross examination, it is further found that the accused persons took a specific plea to the effect that a long-standing dispute over possession of joint property was going on between Anil Ch. Mondal, the defacto complainant and Dipak Mondal. It was also pleaded by the accused persons while the witnesses on behalf of the prosecution were cross examined that the defacto complainant used to run an illegal business selling liquor from his old house. The villagers protested accused such illegal business of the defacto complainant. Over the said issue a village salishy was held and the terms of settlements were recorded by a general diary entry maintained in the local police station. At the date and time of occurrence the defacto complainant suffered injury after being assailed by his customers who were intoxicated under influence of liquor sold by the defacto complainant.

8. On due consideration of the evidence on record and settlement made by the learned Advocates on behalf of the prosecution and defence, the learned trial judge convicted the accused persons under Section 326/34 and Section 307/34 of the IPC. So far as the offence under

Section 326/34 of the IPC, the accused persons were sentenced to suffer rigorous imprisonment for seven years with fine and default clause. The appellants were further directed to suffer rigorous imprisonment for seven years for the offence punishable under Section 307/34 of the IPC with fine and default clause. It was also directed by the trial judge that the substantive sentence of imprisonment would run concurrently.

9. In the instant appeal the appellants have challenged the legality and correctness of the impugned judgment and order of conviction and sentence.

10. Mr. Milon Mukherjee, learned Senior Counsel on behalf of the appellants submits that in criminal trial it is the first and foremost duty of the prosecution to prove where, when and how the offence is committed. If the prosecution fails to prove the three basic requirements, the prosecution case will be held to be suspected. In other words, prosecution is under obligation to prove the place of occurrence, specific time when the alleged incident took place and the manner in which the offence was alleged to have been committed by the accused persons. In support of his contention Mr. Mukherjee refers to a well celebrated decision of this Court in the case of **Mamfru Chowdhury and Ors vs. King-Emperor** reported in **AIR 1924 (Cal) 323**. In the said decision, it was held by this Court that the evidence does not show that the instant alleged incident happened at the time, in the place and under the precise circumstances narrated on behalf of the prosecution. On such score, this Court was pleased to rely

upon the prosecution case and majority decision of jury and accordingly the accused was honourably acquitted.

11. Coming to the instant case, it is submitted by the learned Senior Counsel on behalf of the appellants that the defacto complainant clearly stated in the written complaint that the alleged incident took place at about 8 am. In the said complaint he also stated that at the time of lodging complaint he was admitted to Raghunathpur Super Specialty Hospital. Therefore, he had no occasion or rather it was impossible for him to reach Raghunathpur P.S at 10.05 am to lodge complaint against the accused persons. The learned trial judge failed to consider such important aspect of the matter that it was absurd for the defacto complainant to lodge a complaint when admittedly he was in hospital on 16th June, 2013. Next it is pointed out by Mr. Mukherjee that the defacto complainant could not specifically state the time when the alleged incident took place. In his written complaint as well as evidence he stated that the incident took place at about 8 am. From the formal FIR it is found that Raghunathpur is situated at a distance of about 8 km away from the village where the alleged incident took place. Therefore, the defacto complainant deposed falsely as to the time of occurrence. It was not possible for him to receive the injury and taking admission to hospital at the same time. It is further contended by Mr. Mukherjee that the genesis of the prosecution case is shrouded with mystery. The defacto complainant specifically stated that after receiving injury on being assaulted by appellant Dipak Mondal and others, he lost his sense he

regained his sense at Bankura Sanmiloni Medical College and Hospital. Therefore, it was impossible for the defacto complainant to narrate the incident to the scribe, one Chittaranjan Mondal after the occurrence. It is not the case of the prosecution that the defacto complainant narrated the incident to the scribe lying on hospital bed. In such event, there would of course have been a GD entry to the effect. It is also submitted by Mr. Mukherjee that PW2 Smt. Subarna Mondal and PW3 Smt. Ashima Mondal stated in their evidence that after the incident the defacto complainant was first taken to Raghunathpur Police Station by a tempo van. From the police station he was sent to Raghunathpur Super Specialty Hospital. Had it been the case as narrated by PW3 and PW4, there must have been some GD entry or recommendation from the P.S to the hospital requesting the Medical Officer-in-Charge to render proper medical treatment to the injured. However, there is no such documents forthcoming from the prosecution at the time of trial of the case. Mr. Mukherjee has criticized the learned trial judge saying that the learned trial judge did not consider the above lacuna in the prosecution case and recorded an order of conviction against the appellants.

12. On the fact of the case, it is submitted by Mr. Mukherjee that the defacto complainant himself admitted in his evidence that a long-standing dispute was going on between him and Dipak Mondal over a piece of land. Mother of the defacto complainant and mother of accused Dipak Mondal jointly purchased a piece of land. Over the respective possession of the said piece of land dispute cropped up between the defacto complainant

and the appellant No.1. Though it is not stated in the FIR that on 16th June, 2013 alleged incident took place when the defacto complainant asked appellant No.1 not to construct sunset of his under-construction house leaning on the land possessed by the defacto complainant. Therefore, when there is evidence of inimical relation between the parties, false implication of the accused persons by the defacto complainant cannot be ruled out. Under such circumstances, it was absolutely necessary for the prosecution to produce local independent witnesses who might give true and correct account of the incident. Mr. Mukherjee refers to the sketch map and index prepared by the Investigating Officer during investigation of the case. It is ascertained from the said sketch map that the place of occurrence was on the village road of Aguibari running from east to west in front of the house of one Ujjal Mondal. It is also found from the sketch map that there are houses of Narayan Mondal, Somnath Mondal, Ujjal Mondal, Dilip Mondal, Kamakkha Mondal, Dhananjay Monda, Sishir Ranjan Mondal and Fatik Mondal on both sides of the said village road where the defacto complainant was allegedly assaulted by the accused persons. None of the said witnesses were examined. All the witnesses are close relatives of the defacto complainant and they are obviously interested in the outcome of the incident. So, the learned trial court should have shown very cautious approach in deciding the case against the accused persons. It was very necessary when the accused persons specifically pleaded that the defacto complainant was assaulted by some persons other than the appellants on the date and time of

occurrence and the incident did not happen in the manner sought to be projected by the prosecution.

13. Learned Counsel for the defence next submits that the Investigating Officer could not recover the offending weapon. One vest allegedly stained with blood was seized from the defacto complainant on 30th August, 2013. The said vest was not sent to forensic Science Laboratory to ascertain as to whether stained by the human blood or not. The learned trial judge did not consider the above aspects and lacuna of the prosecution case. In view of such short comings in the evidence on record, it is submitted by Mr. Mukherjee that the judgment delivered by the learned trial judge and consequent order of conviction against the appellant are liable to be set aside.

14. Learned P.P-in-Charge appearing on behalf of the state respondent submits that the defacto complainant is the injured person. PW2, PW3 and PW5 are the eyewitnesses of the occurrence. From the evidence of defacto complainant it is found that on the date of occurrence at about 8 am he purchased some fish and handed them over to his daughter-in-law then he went towards his old house situated by the side of village Kaccha road intervene by the house of Sishir Mondal, Bhutnath Mondal, Fatik Mondal, Ujjal Mondal and the land of Dipak Mondal covered by a boundary wall in between the old house of Anil Mondal and Dipak Mondal. On the way he met Dipak and asked him as to why he was raising construction leaning towards the land of defacto complainant. At this he was assaulted by Dipak and other accused persons.

15. The defacto complainant on clear and unequivocal term deposed that when he was coming back to his house, accused Tapas Mondal, Anirban Mondal, Gayaswar Mondal and Thanda Mondal wrongfully restrained him. Suddenly Dipak came with a tangi in his hand and assaulted him with the tangi on his neck. While he was trying to save himself, he sustained injuries in his hand and back on being assaulted by Dipak with the help of tangi. He also stated that his daughter, daughter-in-law and the wife of his nephew saw the incident. They raised hue and cry but nobody appeared. After the accused persons left the place, PW2 Smt. Subarna Mondal, PW3 Ashima Mondal and PW5 Shampa Mondal rushed to the place of occurrence lifted injured Anil Mondal and being accompanied by PW4 Kanchan Mondal, they first took the injured to Raghunathpur Police Station and from the police station to the hospital. It is also submitted by the learned P.P-in-Charge that the learned Senior Counsel on behalf of the appellants tried to portray thick cloud of suspicion over the entire prosecution case on the basis of a singular statement made by the defacto complainant that from the place of occurrence he was taken to hospital. PW1 did not state that he visited the police station immediately after the occurrence and then PW2, PW3, PW4 and PW5 took him to Raghunathpur Hospital.

16. Apart from the definite of the witnesses stated that the defacto complainant was first taken to the P.S after being assaulted by the appellants. Therefore, there is no ambiguity on the question that the defacto complainant lodged FIR immediately after the occurrence.

Prosecution case cannot be thrown away on the basis of some discrepancies as to the time of occurrence and the time of reporting in the P.S in the formal FIR. It is further submitted by the learned P.P-in-Charge that from the evidence on record, it appears that the people belonging to Mondal community reside in the locality where the incident took place. The neighbouring people must have cordial relation with both the defacto complainant and the accused persons. It is also found from the cross examination of PW10, S.I Nonigopal Si who was the second Investigating Officer of the case that he tried to examine the local witnesses but nobody came forward to depose either in favour of or against the accused persons. Under such circumstances, insistent on independent corroboration would amount to provide the offenders with a safe jurisprudence. Under such circumstances, when the defacto complainant specifically stated as to how he was assaulted by the accused persons his evidence withstood the test of cross examination and he did not try to exaggerate the case implicating all the accused persons in grievous offence, there is no reason to disbelieve his evidence. Learned P.P-in-Charge submits further that it is not generally expected that the injured witnesses will depose falsely and implicate an innocent person due to some ulterior motive. So, in the instant case the evidence of injured person does not suffer from any infirmity and his evidence ought to be taken into consideration.

17. Having heard the learned Counsel for the parties and on careful perusal of the evidence on record, both oral and documentary it appears

to this Court that the written complaint submitted by PW1 before the police is bereft of minute details. In the FIR the defacto complainant stated that on 16th June, 2013 at about 8 am when he went to his residential house, the named accused persons/appellants attacked him and Dipak Mondal assaulted him with tangi on his neck, back and hand.

18. In his evidence PW1 stated that he was taken to hospital immediately after the incident. It is also recorded in the written complaint that at about 8 am he was admitted to hospital. Obviously, there is discrepancy as to the time when the incident took place. I am in agreement with the learned Senior Counsel for the appellants that had the incident been took place at about 8 am? Had village Abuibari there would not be any occasion for the defacto complainant to get himself admitted at Raghunathput Hospital at about 8 am. This part of statement in the FIR is undoubtedly miss statement. It is found from the medical examination/injury report of the defacto complainant that Dr. Anupam Gupta (PW8) medically examined him on 16th June, 2013 at about 9.03 am. It is not disputed that village Abuibari is situated at a distance of about 8 km away from Raghunathpur. If the incident took place at about 8 am, the injured could have been easily brought to Raghunathpur Hospital within one hour of the incident.

19. It is stated by PW2, PW3, PW4 and PW5 that they first brought the injured to Raghunathpur Police Station. From police station he was taken to hospital. The injured who suffered serious cut injuries on his person might not remember the place where he was taken from his village. The

court cannot throw away the entire prosecution case on the ground of such minor discrepancy as to the time when the defacto complainant/injured lodged the complaint or whether he was first taken to the police station or to the hospital. From the evidence of other eyewitnesses, it is abundantly clear that the victim was first taken to the police station. This may also be a fact that seeing the nature of injury received by the defacto complaint, the police attached to Raghunathpur P.S first sent the defacto complaint to hospital for medical treatment. Thereafter on receipt of a written complaint duly signed by the defacto complainant the FIR was registered at about 10.05 am. It is true that no written recommendation was filed by the prosecution during trial of the case made by the police attached to Raghunathpur P.S recommending medical treatment of the victim. It also appears that no GD entry is produced during trial to show that initial information about the occurrence was recorded by the police in the P.S GD Book. All these, however are the instances of the lapses on the part of the police attached to Raghunathpur P.S. For such discrepancies, the entire prosecution case cannot be held to be under suspicion touching to the root of final decision of the case as arrived at by the learned trial judge.

20. From the evidence of the defacto complainant as well as the other witnesses on behalf of the prosecution the court cannot raise any doubt that on 16th June, 2013 at about 8 am the victim was assaulted by accused Dipak Mondal with the help of a tangi on his neck, back and hand. At about 9.03 am the victim was medically examined by the Dr.

Anupam Gupta, Medical Officer attached to Raghunathpur Super Specialty Hospital. The Medical Officer (PW8) found the following injuries on the person of the defacto complainant: -

- (i) Clean cut wound measuring about 3" X 1" X 3/4".
- (ii) Clean cut wound measuring about 2 1/2" X 1/2" X 1/2" at scapula region.
- (iii) Clean cut wound at the waive of right thumb measuring about 1"X 1/2" X 1/2".
- (iv) Clean cut wound at left ring finger measuring about 3/3" X 1/2" X 1/4".

He stitched up the above mentioned wound and referred the patient to Bankura Sanmiloni Medical College and Hospital.

21. PW8 further opined that the injuries mentioned above were caused by a sharp cutting weapon from the evidence of PW7 Dr. Nilay Mondal who was posted as Assistant Professor of Bankura Sanmiloni Medical College and Hospital. It appears that the defacto complainant was admitted to the said Medical College and Hospital with a history of physical assault by Dipak Mondal. The accused persons in course of cross examination of PW1 took a specific alibi that on the date and time of occurrence the defacto complainant was assaulted by his customers who used to purchase liquor from him. The said fact, however was not even

admitted to be proved by the accused persons during trial on the principle of preponderance of probability.

22. Thus, in spite of some discrepancies in the written complaint and formal FIR as to the time of occurrence, time of medical examination of the defacto complainant and time of recording formal FIR, it is established beyond reasonable doubt that on 16th June, 2013 the defacto complainant received sharp cutting injury on his neck and different parts of his hands at village Abuibari. The defacto complainant and all the witnesses stated unequivocally that on the date and time of occurrence the defacto complainant was restrained by accused Anirban, Tapas, Gayeswar and Thanda Mondal and he was assaulted with the help of a tangi on his neck and different parts of hands by accused Dipak Kr. Mondal.

23. In this regard this court records that an FIR is not a catalogue nor does expect a just informant, it is oriented in mind and in distress after receiving such sharp cutting injuries to give graphic details. In such situation, the prosecution case cannot be doubted only because he stated in the FIR that at about 8 am he was admitted to Raghunathpur hospital for medical treatment. Such statement, I have already discussed is to be considered as a wrong statement made by the informant in acute distressed mind for such misstatement, entire prosecution case cannot be held to be suspected.

24. In **Balraje @ Trimbak vs. State of Maharastra** reported in **2010 CrLJ 3443 (SC)**, under the fact that the victim succumbed the knife blow

dealt with by the accused. Evidence revealed that both the families were inimical to each other. That by itself would ensure that just for putting the family – enemy in trouble falsely, the victim’s family members would not pardon the murderers of their near and dear ones. Injured witnesses proved the case and involvement of the accused. Evidence of independent witness carries weight, the Hon’ble Supreme Court confirmed the order of conviction passed by the trial court and confirmed by the High Court.

25. In the instant case the defacto complainant sustained serious injuries on being assaulted with the help of tangi by Dipak Mondal. Eyewitnesses who saw the incident, though related to the defacto complainant, corroborated the evidence of the defacto complainant. Their evidence and the injury report corroborate the prosecution case and there is nothing available on record to disbelieve the materials produced by the prosecution during trial before the trial court.

26. Thus, on independent appreciation of evidence on record it is found without any shadow of doubt that on 16th June, 2013, the defacto complaint was wrongfully restrained by the accused Anirban Mondal, Tapas Mondal, Gayaswar Mondal and Thanda Mondal on the village road near Abuibari Post Office. Then Dipak Mondal caused bleeding injury on the neck and hands of the defacto complainant.

27. The learned trial judge framed charge against all the accused persons under Section 326/34 IPC and 307/34 IPC. It is needless to say that Section 326 is the penal provision of causing grievous hurt.

“Grievous Hurt” is defined in Section 320 as hereunder: -

320. Grievous hurt.—The following kinds of hurt only are designated as “grievous”:—

(First) — Emasculation.

(Secondly) —Permanent privation of the sight of either eye.

(Thirdly) — Permanent privation of the hearing of either ear,

(Fourthly) —Privation of any member or joint.

(Fifthly) — Destruction or permanent impairing of the powers of any member or joint.

(Sixthly) — Permanent disfiguration of the head or face.

(Seventhly) —Fracture or dislocation of a bone or tooth.

(Eighthly) —Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits.

28. The court is not in a position to ascertain from the injury report as to whether the defacto complainant received injury with the kinds of hurt as described in Section 320 of the IPC. From the discharge report (Exhibit-4) it is found that the defacto complainant was released from Bankura Sanmiloni Medical College and Hospital on 20th June, 2013. Therefore, this Court does not find any material to record conviction against the appellants under Section 326 with the aid of Section 34 of the IPC. At the same time, I am not unmindful to note that the specific overt act of each of the accused persons do not inspire this Court to held that all the accused persons had common intention to cause sharp cutting injury to the defacto complainant. In order to attract the mischief of Section 34 of the IPC two fundamental facts, viz, common intention to commit offence and secondly, participation of the accused in commission of offence have to be established. If the above two ingredients have satisfied, even overt act on the part of some of the persons sharing the common intention was held to be not necessary. A finding that the

assailant concerned had a common intention with the other accused is necessary for taking resort to Section 34. To attract Section 34, it is not necessary that each one of the accused must assault the deceased. It is enough if it is shown that they shared a common intention to commit the offence and in furtherance thereof each one played his assigned role by doing separate acts, similar or diverse. The facts of this case are eloquent and the role played by accused Anirban, Tapas, Gayeswar and Thanda Mondal of wrongfully restraining the defacto complainant from proceeding towards his house to taking the offending weapon away by Tapas are the pieces and bits of evidence, if joined together, irresistibly lead the court to hold that all the accused persons have common intention to assault the defacto complainant. Therefore, this Court is inclined to modify the order of conviction and convicts the appellants for the offence punishable under Section 324/34 of the IPC.

29. To bring home the charge under Section 307 of the IPC, the prosecution is under obligation to prove (i) that death of a human being was admitted; (ii) that such death was admitted to be caused by or in consequence of the act of the accused; and (iii) that such act was done with the intention of causing death; or that death done with the intention of causing such bodily injury as (a) the accused knew to be likely to cause death; (b) was sufficient in ordinary course of nature to cause death, or that the accused attempted to cause death by doing an act known to him to be so inimical that it must in all probabilities cause (a) death, or (b) such bodily injury as is likely to cause death. In the instant case, the

evidence on record is not sufficient to show or prove that the above ingredients of offence falls under Section 307 of the IPC. As a result of long standing dispute between the defacto complainant and accused No.1 over landed property, the defacto complainant was assaulted. The accused persons had no premeditation or the evidence on record does not suggest that the accused persons had intention to cause such bodily injury to the defacto complainant that had it not been intervened, it would cause death of the defacto complainant. A person may be seriously assaulted, he may suffer deep cut injuries but this fact singularly does not prove a charge under Section 307 of the IPC. It will not be out of place to mention that during trial the prosecution failed to produce any evidence as to the nature of injury received by the defacto complainant. The injury report does not suggest if the injuries sustained by the defacto complainant were grievous or simple. As ingredients of Section 320 of the IPC were not proved, the nature of injury received by the defacto complainant must be held to be of simple in nature.

30. For the reasons stated above, this Court is not in a position to affirm the order of conviction passed against the appellants by the trial court under the charge of Section 307 of the IPC. The appellants are entitled to be acquitted from the charge under Section 307/34 of the IPC.

31. In view of the above discussion, the instant appeal is allowed in part.

32. The order of conviction passed by the learned trial judge for the offence punishable under Section 326/34 and Section 307/34 of the IPC is set aside.

33. However, the accused persons are convicted for committing offence under Section 324/34 of the IPC.

34. They are accordingly liable to be punished.

35. With regard to sentence, this Court is of the view that the accused persons have committed offence due to previous grudge and enmity on the heat of the moment. They are not seasoned and habitual offenders. Landed property dispute led them to take such extreme step against the defacto complainant. It is submitted by the learned Advocate for the appellant that the appellants are teachers by profession. If they are sentenced to imprisonment, they will be jobless. Therefore, he prays for taking a lenient approach on the question of sentence.

36. The appellants have facing trial for committing the offence since 2014. During these eight years, they have suffered much mental agony and trauma. Though it is urged by the leaned Advocate for the appellant that this is a fit case for an application of Section 3 and 4 of the Probation of Offenders Act, I am not inclined to apply the said provision considering the nature of offence committed by the accused persons.

37. Section 324 prescribes punishment with imprisonment of either description for a term which may extend to three years or with fine, or that both. Considering both aggravating and mitigating circumstances

this Court is of the opinion that imposition of sentence of fine shall be just and sufficient punishment under the facts and circumstances of the case.

38. Accordingly, the appellants are sentenced to pay fine of Rs.10,000/- each, in default to suffer the imprisonment for six months each for the offence punishable under Section 324/34 of the IPC.

39. Half of the fine amount, if realized shall be paid to the defacto complainant/injured.

40. The appellants are directed to surrender before the trial court within two weeks from the date of delivery of this judgment to deposit the fine amount.

41. Let a copy of this judgment be sent to the court below for information and necessary action.

42. Let a copy of this judgment, duly certified to be true copy by the ACO attached to this Court be supplied to the appellants free of cost forthwith.

43. Lower court record be sent down to the court below along with a copy of this judgment.

(Bibek Chaudhuri, J.)