

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

**Present:**

**The Hon'ble Justice Ananya Bandyopadhyay**

**C.R.A. 78 of 2001**

**Hamid Mia @ Abdul Hamid Mia  
-Vs-**

**The State of West Bengal & Anr.**

For the Appellant : Mr. Sinjan Ghosh  
(Amicus Curiae)

For the State : Mr. Avishek Sinha

Heard on : 06.02.2024, 04.04.2024, 20.08.2024

Judgment on : 05.12.2024

**Ananya Bandyopadhyay, J.:-**

1. This appeal is preferred against the judgment and order of conviction dated 18.01.2001 and 19.01.2001 passed by the Learned Additional Sessions Judge, Dakshin Dinajpur, Balurghat, in Sessions Trial No. 16 of 1999 arising out of Sessions Case No. 81 of 1998 convicting the appellant under Section 325 of the Indian Penal Code and sentencing him to suffer rigorous imprisonment for three years and to pay a fine of Rs.1,000/- with a further direction the fine amount, if realized 50% of the said amount to be paid to the respondent no. 2., failing of which, suffer further period of rigorous imprisonment for six months.

2. The prosecution case precisely stated that on 10.08.1996, the complainant Subrata Roy lodged a written complaint against the appellant at the Banshihari Police Station, inter alia, alleging around 8.30 hrs. while his elder brother Goutam Roy was standing on the “*ail*” of their land and supervising the cultivation work of the same by the labourers, the appellant suddenly appeared with an iron-rod and assaulted Goutam Roy on his head from behind in order to kill him. When the victim, Goutam Roy fell on the ground bleeding profusely, the appellant assaulted him on other parts of the body as well, causing injuries. The neighbours rushed to the spot when the appellant fled. After primary medical aid at Rasidpur Primary Health Centre, the injured victim was transferred to Malda Hospital for better treatment.
3. On the basis of the aforesaid written complaint, Banshihari P.S. Case No. 74 dated 10.08.1996 under Sections 447/326/307 of the Indian Penal Code was initiated against the appellant.
4. On completion of investigation, the Investigating Officer submitted charge-sheet against the appellant under Sections 447/326/307 of the Indian penal Code. Charge was framed against the appellant under Section 307 of the Indian Penal Code, to which the appellant pleaded not guilty and claimed to be tried.
5. In order to prove its case, the prosecution cited 9 witnesses and exhibited certain documents.
6. The evidence of PW-1, PW-2, PW-4 and PW-5 corroborated the complaint case fortified by the evidence of PW-3, the victim himself of being assaulted by the appellant and consequent hospitalization.

7. The evidence of the doctors being PW-7 and PW-8 indicated the injuries to have been sustained by the injured victim PW-3 as a result of the assault on him.
8. PW-9 the Investigating Officer failed to produce offending weapon in the Court though claimed to have seized one iron-file through preparation of a seizure list marked Exbt-19. PW-9, who submitted the charge-sheet on completion of the investigation, failed to collect any blood stained earth from the place of occurrence. PW-9 did not examine PW-3, PW-4 and PW-5.
9. In the case of ***Mathai v. State of Kerala***<sup>1</sup>, the Hon'ble Supreme Court held the following:

*“15. Some hurts which are not like those hurts which are mentioned in the first seven clauses, are obviously distinguished from a slight hurt, may nevertheless be more serious. Thus a wound may cause intense pain, prolonged disease or lasting injury to the victim, although it does not fall within any of the first seven clauses. Before a conviction for the sentence of grievous hurt can be passed, one of the injuries defined in Section 320 must be strictly proved, and the eighth clause is no exception to the general rule of law that a penal statute must be construed strictly.”*

10. The Hon'ble Apex Court in ***Prabhu v. State of M.P***<sup>2</sup> held the following :

*“8. ...*

*10. Section 325 deals with punishment for voluntarily causing grievous hurt.*

*12. Section 326 provides that whoever, except in the case provided for by Section 335, voluntarily causes grievous hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which,*

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<sup>1</sup>(2005) 3 SCC 260

<sup>2</sup>(2008) 17 SCC 381

*used as a weapon of offence, is likely to cause death, or by means of fire or any corrosive substance, or by means of any explosive substance, or by means of any substance which is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment for life or with imprisonment of either description for a term which may extend to ten years, and also with a liability to pay a fine.*

*13. Sections 325 and 326, like the two sections immediately preceding, provide the ordinary punishment and punishment under certain aggravating circumstances of the offences mentioned thereunder. The two latter sections apply to the case of causing 'grievous hurt' and the immediately preceding two sections to the case of 'hurt'.*

*15. Some hurts which are not like those hurts which are mentioned in the first seven clauses, are obviously distinguished from a slight hurt, may nevertheless be more serious. Thus a wound may cause intense pain, prolonged disease or lasting injury to the victim, although it does not fall within any of the first seven clauses. Before a conviction for the sentence of grievous hurt can be passed, one of the injuries defined in Section 320 must be strictly proved, and the eighth clause is no exception to the general rule of law that a penal statute must be construed strictly.*

11. In the case of **Shri Kishan v. State of U.P.**<sup>3</sup> the Hon'ble Supreme Court held the following: -

*"6. ....Apart from the one injury on the head, which proved fatal, the other injuries were not of a very serious nature.... As such, none of the accused can be held to be personally liable for the fatal injury....*

*The above finding as well as the broad circumstances of the case go to show that the common intention of the accused was to cause grievous injury to the victim. The fact that one of them exceeded the bound and*

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<sup>3</sup>(1972) 2 SCC 537

*gave a fatal blow on the head of the deceased would make him personally liable for the fatal injury, but so far as the other three are concerned, they can be held liable only for the injuries which were caused in furtherance of the common intention and not for the fatal injury. As it is not possible on the material on record to find out as to which one of the accused gave the fatal blow, there is no escape from the conclusion that each one of the four accused can only be guilty of the offence under Section 325, read with Section 34, Penal Code, 1860....”*

12. In **Sakharam v. State of M.P.**<sup>4</sup>, the Hon’ble Supreme Court observed the following:-

*“10. “Grievous hurt” is defined in Section 320 IPC. To make out the offence of voluntarily causing grievous hurt, there must be a specific hurt voluntarily inflicted and coming within the eight kinds of hurt enumerated in Section 320 IPC. By perusal of x-ray report (Ext. P-23), it is evident that PW 2 sustained fracture or dislocation of the bone which clearly falls in the category of grievous hurt as expressly mentioned in clause Seventhly of Section 320 IPC. The fracture or dislocation of bone is considered grievous hurt because it causes great pain and suffering to the injured person. Even though Dr Moitra (PW 15) was not questioned about the nature of the injuries, fracture of the frontal bone would bring the offence within the definition of “grievous hurt”. Having regard to the nature of injuries and the x-ray report, in our view, the High Court rightly convicted the appellant under Section 325 IPC and the same cannot be modified.”*

13. The Hon’ble Apex Court in the case of **State of Rajasthan v. Major Singh**<sup>5</sup> observed the following:-

*“4. ...In our view, considering the medical evidence which corroborates the prosecution version, particularly, of the injured*

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<sup>4</sup> (2015) 10 SCC 557

<sup>5</sup>(1999) 9 SCC 106

witness, PW 1 Jeet Kaur, there is no reason to disbelieve the evidence of the aforesaid two witnesses....”

14. The Hon’ble Supreme Court in the case of **Malkiat Singh v. State of Punjab**<sup>6</sup> held the following:-

“6. ...On the contrary, we find that the evidence of Mit Singh gets ample corroboration from the fact that within almost an hour of the incident he lodged the FIR wherein he not only detailed the prosecution case as to how Darbara Singh and Uttam Singh were assaulted by the appellant but also stated that the appellant had sustained minor injuries at the hands of Uttam Singh when he tried to rescue Darbara Singh. The medical evidence corroborates the ocular version of PWs 4 and 5 and the recovery of the kassi pursuant to the statement of the appellant which was found to contain human blood, when examined by the Forensic Science Laboratory, also lends credence to the prosecution story.”

15. The Hon’ble Apex Court in **Jai Karan v. State of U.P.**<sup>7</sup> held the following:-

“12. Great emphasis was led on the approximate time of injury. That in no way affects the credibility of PW 2’s evidence. Though the evidence of PW 1 does not specifically indicate the injury on PW 2, that is but natural. Before a young person two murders were committed and it is quite natural to create a sense of shock and minor variations in his evidence do not affect his testimony which is otherwise credible. Unless the medical evidence in its turn goes so far that it completely rules out all possibilities whatsoever of injuries taking place in the manner alleged by eyewitnesses, the testimony of the eyewitnesses cannot be thrown out on the ground of alleged inconsistency between it and the medical evidence. (See Solanki Chimanbhai Ukabhai v. State of Gujarat [(1983) 2 SCC 174 : 1983 SCC (Cri) 379 : AIR 1983 SC 484] .) To similar effect is the decision

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<sup>6</sup> (1996) 10 SCC 274

<sup>7</sup>(2003) 12 SCC 655

*in State of U.P. v. Krishna Gopal [(1988) 4 SCC 302 : 1988 SCC (Cri) 928 : AIR 1988 SC 2154].”*

16. In **Balu Sudam Khalde v. State of Maharashtra**<sup>8</sup>, the Hon’ble Supreme Court held the following:-

**“26.** *When the evidence of an injured eye-witness is to be appreciated, the under-noted legal principles enunciated by the Courts are required to be kept in mind:*

*(a) The presence of an injured eye-witness at the time and place of the occurrence cannot be doubted unless there are material contradictions in his deposition.*

*(b) Unless, it is otherwise established by the evidence, it must be believed that an injured witness would not allow the real culprits to escape and falsely implicate the accused.*

*(c) The evidence of injured witness has greater evidentiary value and unless compelling reasons exist, their statements are not to be discarded lightly.*

*(d) The evidence of injured witness cannot be doubted on account of some embellishment in natural conduct or minor contradictions.*

*(e) If there be any exaggeration or immaterial embellishments in the evidence of an injured witness, then such contradiction, exaggeration or embellishment should be discarded from the evidence of injured, but not the whole evidence.*

*(f) The broad substratum of the prosecution version must be taken into consideration and discrepancies which normally creep due to loss of memory with passage of time should be discarded.*

**27.** *In assessing the value of the evidence of the eyewitnesses, two principal considerations are whether, in the circumstances of the case, it is possible to believe their presence at the scene of occurrence or in such situations as would make it possible for them to witness the facts deposed to by them and secondly, whether there is anything inherently improbable or unreliable in their evidence. In*

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<sup>8</sup>2023 SCC OnLine SC 355

*respect of both these considerations, circumstances either elicited from those witnesses themselves or established by other evidence tending to improbabilise their presence or to discredit the veracity of their statements, will have a bearing upon the value which a Court would attach to their evidence. Although in cases where the plea of the accused is a mere denial, the evidence of the prosecution witnesses has to be examined on its own merits, where the accused raise a definite plea or put forward a positive case which is inconsistent with that of the prosecution, the nature of such plea or case and the probabilities in respect of it will also have to be taken into account while assessing the value of the prosecution evidence.”*

17. The Hon’ble Supreme Court held the following in **Thathanna v. State of A.P.**<sup>9</sup>:-

*“10. ...The evidence of A-3, A-8 and A-9 though is not accepted in respect of their own assailants but the fact that the occurrence has taken place is accepted and that in respect of these appellants the other witnesses have also consistently spoken regarding the parts played by the three appellants. The nature of the injuries inflicted by these three accused to that extent is corroborated by medical evidence and also spoken to by the other eyewitnesses consistently and the same has been accepted. For all these reasons we see no ground to interfere.”*

18. The Hon’ble Supreme Court in the case of **Leela Ram v. State of Haryana**<sup>10</sup> held the following:-

*“9. Be it noted that the High Court is within its jurisdiction being the first appellate court to reappraise the evidence, but the discrepancies found in the ocular account of two witnesses unless they are so vital, cannot affect the credibility of the evidence of the witnesses. There are bound to be some discrepancies between the narrations of*

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<sup>9</sup>1994 Cri LJ 632

<sup>10</sup>(1999) 9 SCC 525

*different witnesses when they speak on details, and unless the contradictions are of a material dimension, the same should not be used to jettison the evidence in its entirety. Incidentally, corroboration of evidence with mathematical niceties cannot be expected in criminal cases. Minor embellishment, there may be, but variations by reason therefor should not render the evidence of eyewitnesses unbelievable. Trivial discrepancies ought not to obliterate an otherwise acceptable evidence. In this context, reference may be made to the decision of this Court in State of U.P. v. M.K. Anthony [(1985) 1 SCC 505 : 1985 SCC (Cri) 105 : AIR 1985 SC 48] . In para 10 of the Report, this Court observed: (SCC pp. 514-15)*

*“10. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the court to scrutinise the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case, hypertechnical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole. If the court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of evidence given by the witness, the appellate court which had not this benefit will have to attach due weight to the appreciation of evidence by the trial court and unless there are reasons weighty and formidable it would not be proper to reject the evidence on the ground of minor variations or infirmities in the matter of trivial details. Even honest*

*and truthful witnesses may differ in some details unrelated to the main incident because power of observation, retention and reproduction differ with individuals.”*

19. In the case of **Shio Shankar Dubey v. State of Bihar**<sup>11</sup>, the Hon’ble Supreme Court held the following:-

*“21. The prosecution case in the present case being fully proved against the accused, the eyewitness account of PW 11, who was accompanying the deceased has given the eyewitness account of the entire incident. The names of all the five accused and role attributed to them have been promptly recorded by the police officials within half-an-hour of the incident on the spot. The medical evidence corroborates the ocular evidence. Both the courts below have not committed any error in convicting the appellants and sentencing them. We do not find any error in the judgment of the courts below. There is no merit in the appeal. The appeal is dismissed.”*

20. The injury report and the medical papers of the victim were not seized under a seizure list. The physician of Rasidpur Hospital was not cited as a witness in the charge-sheet. The wearing apparels of the victim were not seized.
21. Despite the lapses on the part of the investigating agency, the corroborative evidence of the injured victim and the eye-witnesses which was strengthened by the medical evidence in the backdrop of animosity between the parties the impugned judgment and order is set aside.
22. In view of the above discussions, the prosecution cannot be said to prove its case beyond reasonable doubt and as such the instant criminal appeal being CRA 78 of 2001 is allowed.
23. There is no order as to costs.

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<sup>11</sup>(2019) 6 SCC 501

24. I record my appreciation for the able assistance rendered by Learned Advocate Mr. Sinjan Ghosh as Amicus Curiae representing the appellant in disposing of this appeal.
25. Trial court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.
26. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

**(Ananya Bandyopadhyay, J.)**