

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

**Present:**

**The Hon'ble Justice Ananya Bandyopadhyay**

**C.R.A. 405 of 2003**

**Dilip Bayen & Ors.  
-Vs-  
The State of West Bengal**

For the Appellants : Mr. Soham Banerjee, (Amicus Curiae)  
Mr. Rajendra Banerjee

For the State : Mr. Avishek Sinha

Heard on : 04.12.2023, 09.02.2024, 21.03.2024,  
22.03.2024, 10.04.2024, 25.04.2024,  
23.08.2024

Judgment on : 13.11.2024

**Ananya Bandyopadhyay, J.:-**

1. This appeal is preferred against judgment and order of conviction dated 27.06.2003 passed by the Learned Additional Sessions Judge, Fast Track (First Court), Rampurhat, Birbhum in Sessions Case No.49 of 2002 (T.R. No.100 of 2002) arising out of F.R. Case No.358 of 2001 corresponding to Mayureswar Case No.61 of 2001 dated 04.07.2001 convicting thereby the appellants on the charge framed against them for commission of offence punishable under Sections 323/34 and 308/34 of the Indian Penal Code

and sentenced them to suffer simple imprisonment for six months for the offence under Section 323 read with Section 34 of the Indian Penal Code.

2. On 14.07.2001 a case being no.61 of 2001 under Sections 323, 325, 308/34 of the Indian Penal Code was registered for investigation against the accused persons. The First Information Report was drawn up by one Budhhadev Rajak. After completion of the investigation the investigating officer of the case submitted charge-sheet under Section 323, 325, 308/34 being charge-sheet no. 78 dated 18.08.2001 against the accused persons namely Dilip Bayen, Prasanta Bayen and Ranjit Bayen. After completion of all the formalities and appearance of the accused persons the Learned S.D.J.M. Rampurhat, Birbhum committed the case and sent it for trial and thereafter, the said case was transferred to Learned Additional Sessions Judge, Fast Track, 1<sup>st</sup> Court, Rampurhat, Birbhum and thereafter on consideration of F.I.R., Case Diary, Charge-sheet and other material of the records the charge was framed against the accused persons under Section 325/34 and Section 308/34 of the Indian Penal Code and which is within the cognizance of the Sessions Court to which the appellants pleaded not guilty and came to be tried.
3. Basudeb Rajak of village – Muhurhati under Mayureswar P.S. lodged a written complaint before O.C. Mayureswar P.S. on 04.07.2001 inter alia stating in the morning of 07.04.2001 at about 06:00 a.m. at Charel-math of Mouza Muhurhati, P.S. Mayureswar the accused persons named Dilip Bayen, Prasanta Bayen and Ranjit Bayen rushed to the place of occurrence and assaulted Budhhadev Rajak, the de facto complainant, son of Late

Senapati Rajak mercilessly with lathi, to which he raised alarm and shouted for help. On hearing such hue and cry, his son Palash Rajak rushed to the place of occurrence to save his father, who was assaulted by the the accused persons causing injury on his head and he fell down on the ground being unconscious. Bikash Rajak, Srikanta Mukherjee and Shankar Rajak rushed to the place of occurrence to save both the father and son. The three accused persons fled from the place of such occurrence at their arrival.

4. On the basis of the said complaint, the O.C. Mayureswar P.S. started a prosecution case being P.S. Case No.61 of 2001 dated 04.07.2001 and consequently after completion of investigation, the charge-sheet being charge-sheet no.78 dated 18.08.2001 was filed against all the accused persons to which they pleaded not guilty and claimed to be tried.
5. The prosecution examined 13 witnesses and exhibited certain documents.
6. Considered the rival contentions of the Learned Amicus Curiae as well as the Learned Advocate representing the State.
7. A circumspection of the prosecution witnesses revealed as follows:
  - i. PW-1 in his deposition stated that he was the de facto complainant of that case. He knew accused Dilip Bayen, Ranjit Bayen, Prasanta Bayen. Alleged incident took place on Wednesday about 1½ year back, in the month of Asar (a Bengali month). It was about 06:00 a.m., in a paddy field. He was ploughing his field at that time. The accused persons rushed to his field and began to beat him with lathi mercilessly. Then he shouted for help and hearing his cry, his son namely Palash (PW-9) rushed to the place of occurrence to save him.

Then all the three accused persons assaulted PW-9 causing injury on his head. All the accused persons hit him with lathi. PW-9 sustained injury on his head and fell down on the ground and lost his sense. His nephew namely Bikash, Srikant Mukherjee and Sankar Rajak also rushed to the place of occurrence to save them. The accused persons fled from the place of occurrence. He sustained serious injury in different parts of his body. He sustained fracture injury in the fingers of both the hands.

He lodged a written complaint at the local police station. Accused Prasanta Bayen took a sum of Rs.50/- from him as advance as he proposed to sell a cow to him but ultimately he did not do so and on his demand to refund that earnest money, accused Prasanta flatly refused to refund and asked him to do whatever he liked. Such incident took place on the previous day of the date of incident.

- ii. PW-1 in his cross-examination stated when Prasanta was passing Tetultala, he caught him and asked him to make payment then and there otherwise he would not spare him. Some of local people told him to leave the place with an undertaking to settle their dispute through discussion. Accused Prasanta sold out that cow on the scheduled date as he could not pay the balance consideration on the scheduled date. Accused Prasanta was a rickshaw puller by profession and he did not have any plot of land in that field. He could not give detailed description of injury, he sustained at that stage. His son sustained injury on his head. The ground was wet with blood and

he was lying on the ground for 4/5 minutes. He did not see who actually lifted his son from the ground. On reaching the P.S. he met the O.C. of the concerned P.S., and he narrated the incident and he put it down in black and white. Thereafter he collected his L.T.I.

- iii. PW-2 in his deposition stated that he knew Buddhadeb and Palash Rajak. He also knew all the accused persons. It was about 06:30 a.m., he was taking tea at his house. Suddenly he heard a hue and cry from the paddy field, came out his house and rushed to the place of occurrence where he saw three accused persons to cause assault upon Budhhadev Rajak with lathi. Before he reached the place of occurrence he saw Gopon Rajak, S/o – Budhhadev Rajak to rush to the place of occurrence to save his father. Gopon Rajak also knew Palash Rajak. All the three accused persons hit Palash Rajak @ Gopan with lathi causing injury on his head. Buddhadeb Rajak fell down on the ground being injured as he was assaulted by the accused persons.
- iv. PW-2 in his cross-examination stated that when he reached the place of occurrence he saw Palash (PW-9) lying on the ground. Palash (PW-9) lost his sense at the place of occurrence and the persons assembled later on came to the aid of the victim Palash (PW-9).
- v. PW-3 in his deposition stated that he knew Budhhadev Rajak and Palash Rajak of his village. All the accused persons were his co-villagers. Alleged incident of assault took place in the paddy field in the morning. He was ploughing his field beside the place of

occurrence intervened by two plots. Suddenly three accused persons came to the field and began to hit Budhhadev Rajak with lathi. All of them had lathi in their hands. Hearing hue and cry, Palash Rajak (PW-9) rushed to the place of occurrence to save his father. Then all the accused persons hit PW-9 with lathi, causing injury on his skull. PW-9 fell down on the ground in a senseless condition. Budhhadev Rajak also sustained injury on his hands and other parts of his body. When he reached the place of occurrence the accused persons fled away. Then they brought both the victim to their house and later on both of them were sent to hospital for treatment.

- vi. The evidence of PW-4 and PW-5 was based on hearsay.
- vii. PW-6 in his deposition stated that alleged incident of assault took place in month of Asar (Bengali month) about 1½ years back at a paddy field of his village at about 06:00 a.m. When PW-9 reached the place of occurrence to save his father, he was equally beaten by the accused persons mercilessly with lathi, causing injury in different parts of his body including head. When he and other local people rushed to the place of occurrence the accused persons fled leaving the victims at the spot. Both the injured persons were taken to Rampurhat S.D. Hospital by one Suresh Mukherjee and Dilip let and Bikash Rajak brought victim PW-9 to the hospital for his treatment.
- viii. PW-7 in his deposition stated that he knew all the accused persons. He could not recollect the date of occurrence. It occurred at a paddy field, in the morning. All of a sudden he heard a hue and cry at the

field and rushed to the place of occurrence and found PW-9 to fall down on the ground and the accused persons escaping. On the previous day there was a dispute and altercation between Prasanta and Buddhadev regarding recovery of Rs.50/-. In the morning of the alleged date of incident, he came to know that those three accused persons assaulted Buddhadev and Palash at the field. The written complaint drafted by him was marked as Exbt.-1.

- ix. PW-7 in his cross-examination stated that the written complaint was drafted at the house of the de facto complainant. He did not see the occurrence of assault when he reached the place of occurrence despite a gathering.
- x. PW-8 in his deposition stated that he knew victim and all the accused persons. Alleged incident took place about 1 year 8 months back. It occurred in the morning at a paddy field. He was at the Raghunath temple, near his house at that time. Hearing a hue and cry, he rushed to the place of occurrence at that field. He found Palash Rajak in injured condition. He sustained injury on his head and was senseless. He also came to know that Buddhadev Rajak was also beaten over the incident. While he reached the place of occurrence he found injured Palash in a senseless condition and brought him to his house with the help of one Suresh Mukherjee and subsequently he brought him Rampurhat S.D. Hospital for his treatment.
- xi. PW-8 in his cross-examination stated that there were huge gathering at the place of occurrence when he reached there. He did not find

Budhhadev, father of Palash Rajak, at the place of occurrence at that time. He did not know who assaulted Budhhadev and Palash Rajak. He did not see such occurrence of assault.

xii. PW-9 in his deposition stated that Budhhadev Rajak, de facto complainant was his father. He knew all the accused persons. Alleged incident took place on 04.07.01 about 06:30 a.m. at a paddy field. He was then at his house, at a distance of 1½ bigha land from the place of occurrence. He was taking his breakfast at that time. All on a sudden he heard shouting from the place of occurrence when his father was seeking for help. Hearing such hue and cry he rushed to the place of occurrence then and there he found those three accused persons beat his father with lathi. When he reached the accused persons left his father and began to cause assault upon his head with lathi. All the accused person beat him mercilessly with lathi. He sustained grievous injury on his head and fell down on the ground. His father was lying there on the ground in being assault but he could not give details of his injury, as he was injured that time. The land was cultivable having mud and water therein at that time. A few days before the date of incident, his father demanded a sum of Rs.50/- from the accused Prasanta Bayen, taken by him as advance but he declined to pay that amount. He was medically treated at Rampurhat S.D. Hospital.

xiii. PW-9 in his cross-examination stated that they, himself, his brother and mother were taking “muri and tea” at that time. He saw his

father, being assaulted over the incident. He was not interrogated by the I.O. He never met the police officer over the alleged incident.

xiv. PW-10 in his deposition stated that he was the M.O. of Rampurhat S.D. Hospital. On 04.07.01 he was posted as M.O. of Rampurhat S.D. Hospital. On that date Palash Rajak, aged 22/H/M, with history of injury with lathi. On examination the patient was found conscious. He found that following injuries on his person –

- a) One lacerated stitched wound, 2” in length over left fronto-parietal region of scalp with tenderness.
- b) Swelling with small abrasion on right forearm and right leg. X-ray of right leg and right forearm revealed no abnormality. Patient was discharged on 07.07.01. Injury was simple in nature. That was the injury report, his head ticket, medical report, discharge certificate which were marked as Exbt.-2 series (on formal proof).

The injury no.1 vital part of a body.

xv. PW-10 in his cross-examination stated that the patient was first admitted under Dr. Amitava Chakraborty, there was no history of stitch. He found the patient with stitch but he did not administer any stitch. Swelling could be caused by scuffling. The injury no.1 relates to the region, just above left ear. Such type of injury could be caused if one comes in contact of hard substance.

xvi. PW-11 in his deposition stated that he was the S.I. of Police and on 04.07.01 he was posted at O.C. of the said police station. On that date he received a written complaint from one Budhhadev Rajak,

S/o- Lt. Sanapati Rajak of Majurhati, P.S. Mayureswar. He endorsed the same and started Mayureswar P.S. 68/01 dated 04.07.01 under Sections 323/325/308/34 of the I.P.C. He filed up the formal F.I.R., which was marked as Exbt.-3. He took up the investigation, paid visit to the place of occurrence duly identified by the witnesses. He drew a rough sketch of the place of occurrence with index. The sketch map with index was prepared by him during his investigation. The sketch map with index was marked as Exbt.-4 series. He examined all the available witnesses and recorded their statements, collected medical report etc., arrested the accused persons and forwarded them to Court. On completion of investigation he submitted charge-sheet being CS.78 dated 18.08.01 under Sections 323, 325, 308/34 of the I.P.C.

xvii. PW-11 in his cross-examination stated that the written complaint did not disclose in clear language that the accused persons did not have intention to commit culpable homicide. He did not collect prognosis of the injured Palash Rajak, before starting the case. It is a fact that no fracture injury was defeated as per medical report of both injured persons. Folo Rajak, one witness of the occurrence never stated before him that he was ploughing in a nearby plot of the place of occurrence. Injured Palash Rajak stated before him that the accused Dilip Bayen assaulted his father, over the incident.

xviii. PW-12 in his deposition stated that he was M.O. Baswa B.P.H.C. On 04.07.01 he was posted at Tarapur P.H.C. on that date he could not

examined one Budhhadev Rajak of Village – Majurhati, P.S. – Mayureswar, as he was on leave on that date said Budhhadev Rajak was given first aid at the P.H.C. by the Pharmacist and sent the patient to S.D. Hospital, Rampurhat. On 12.07.01 the patient came to the P.H.C. once again and he examined him. He complained that he was assaulted by three persons on 04.07.01 at 06:00 a.m. in the paddy field of his own village alone, while he was cultivating the field. On examination, he found the following injuries –

- a) Three abrasion marks over the middle of left arm with scarification in process measuring 1" X  $\frac{3}{4}$ ", 1  $\frac{1}{2}$ ", 1  $\frac{1}{3}$ " X  $\frac{1}{4}$ ".
- b) There was an abrasion mark measuring 4" X 2" over the posterior aspect of right upper arm with scarification in process.
- c) There was an abrasion mark over the top of right shoulder measuring 2.5" X  $\frac{1}{4}$ " with scarification in process.
- d) There was an old cut mark with scarification over the middle interfalangeal joint of the left with marked tenderness.
- e) There was tenderness over proximal phalanges of left middle finger with marked swelling.
- f) There was swelling and tenderness over that occipital region.
- g) There was marked tenderness over the anterior and posterior aspects of chest wall.
- h) There was marked tenderness over arms, both forearms, both hands and abdomen.
- i) There was tenderness of both thigh and both legs.

j) There was tenderness over both testis.

The above injuries were probably inflicted with hard blunt object having rough surfaces and with kick and fists-blows. They appeared to be single in nature but to exclude any deep seated underlying injuries. He had referred the patient to the Dept. of Orthopedic Surgery at Rampurhat S.D. Hospital to detect through relevant investigations, any serious injury, if any. That was the report duly prepared and signed by him which was marked as Exbt.-5.

xix. PW-13 in his deposition stated that he was the Medical Officer of Rampurhat S.D. Hospital. On 04.07.01 he was attached to the said hospital as M.O. On that date he examined one Palash Rajak of Majerhati P.S. Mayureswar. On examination he found deep cut injury in the Prietto Occipital Region. The patient complained of injury in his back with tenderness. He gave stiches to the cut injuries and the patient was admitted to the hospital under a Surgeon. That was the injury report prepared and signed by him, which was marked as Exbt.-6.

xx. PW-13 in his cross-examination stated that the injury was upon the skin of the scalp.

8. The dispute between the parties was a consequence of a fallout regarding sell and purchase of a cow. On a previous night which was temporarily sorted out only to be blown out of proportion at a later stage. The incident of inflicting injury to the victims involving a "lathi" was obvious and proved through evidence on record. However, the intensity and the gravity of the

offence under Sections 325/308/34 of the Indian Penal Code could not be proved as rightly observed by the Learned Trial Court.

9. PW-2, PW-3 exaggerated the severity of blows inflicted upon the victim on their head negated and contradicted by the medical report.
10. PW-7, PW-8 and PW-9 the victims to lie on the ground but could not specifically indicate the role of the appellants in inflicting such injury.
11. PW-10 opined the injury on the victim Palash Rajak to be simple in nature with abrasions over right forearm, right leg and a stitched wound on the region just above left ear which according to him could also caused through contact of a hard substance.
12. The medical report of PW-12 to have examined the victim Budhhadev Rajak did not mention the same stating the names of the miscreants to have inflicted injury upon him. PW-12 too found abrasion marks which according to him could have been inflicted by *“hand blunt object having rough surfaces and kicks and fists blows”*.
13. PW-13 had examined the victim Palash Rajak with a injury upon the skin of the scalp. None of the injuries were grievous.
14. Since, the incident of assault without the involvement of the appellants was proved barring description of individual role in inflicting the injuries, they had a common intention to injure the victims out of grudge over a sell of cow and, therefore, the Learned Trial Court had rightly convicted them under Sections 323/34 of the Indian Penal Code.

15. However, considering the nature of injury sustained by the victims and lapse of time of 23 years from the date of occurrence of the incident, the sentence is modified to the extent of imprisonment undergone by the appellants.
16. Accordingly, the instant criminal appeal being CRA 405 of 2003 is dismissed.
17. There is no order as to costs.
18. I record my appreciation for the able assistance rendered by Mr. Soham Banerjee, Learned Advocate as Amicus Curiae in disposing of this appeal.
19. The Trial Court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.
20. 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.)**