

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 704 of 2008

**Sk. Soleman @ Chore Soleman
-Vs-
The State of West Bengal**

For the Appellant : Mr. Arindam Jana
Mr. Arhan Sengupta
Mr. Md. Shabbir Biswas
Mr. Atreyee Halder
Mr. P. P. Sinha

For the State : Ms. Faria Hossain
Ms. Baisali Basu
Mr. Anand Keshari

Heard on : 04.08.2023, 18.09.2023, 12.12.2023, 13.12.2023

Judgment on : 08.03.2024

Ananya Bandyopadhyay, J.:-

1. This appeal is preferred against judgment and order dated 22.09.2008 passed by the Learned Additional Sessions Judge, Fast Track, 2nd Court, Tamluk, Purba Medinipur in Sessions Case No. 44(05)05/ S.T. Case No. 2(01) 06 arising out of G.R.N. 683/1998 corresponding to Tamluk Police Station Case No. 192 dated 07.11.1998 under Sections 353/325 of the Indian Penal Code thereby convicting the appellant for commission of offence punishable under Section 353 and sentencing him to suffer rigorous

imprisonment for 1 year and to pay a fine of Rs. 2000/- in default to undergo further rigorous imprisonment for 6 months the appellant is further directed to undergo rigorous imprisonment for 3 years and to pay a fine of Rs. 2000/- in default to suffer rigorous imprisonment for 6 months for the commission of offence punishable under Section 325 of the Indian Penal Code, the Learned Judge was further pleased to direct both the sentences shall run concurrently and the period of detention already undergone to be set off from the said sentences.

2. The prosecution case in brief was to the effect that A.S.I. A.K. Manna lodged a written complaint with the Tamluk Police Station on 07.11.1998 alleging inter alia that on 06.11.1998 during mid-night when he along with other police personnel under the instruction of the Officer-in-Charge, Tamluk Police Station went on raid at Village – Chandserpur for arresting the appellant who was wanted in another case, knowing the presence of the police the appellant fled from his house upon removing tiles of the roof and when one of the constables Radha Binod Mondal tried to apprehend him, the appellant assaulted the said constable on his head and fled.

In pursuance to the aforesaid complaint Tamluk Police Station Case No. 192 dated 07.11.1998 under Sections 353/325/307 of the Indian Penal Code was registered for investigation.

It was pertinent to mention here was this connection that few days before lodging the aforesaid complaint the appellant detained a private bus being no. WB-19/1402 which used to ply from Nandigram to Midnapur via Panskura Station in the middle of Chandserpur and Haridaspur at about

7:30-7:45 a.m. along with other accomplice and demanded “Chanda” and on failure to pay the appellant with others assaulted the driver with a small Neem Stick a separate proceeding was initiated against the appellant and others.

3. After completion of the purported investigation the investigating agency submitted charge-sheet being charge-sheet no. 7 dated 22.11.1999 under Section 353/324/307 of the Indian Penal Code against the appellant and in the said charge-sheet the appellant was shown absconding but subsequently arrested and was enlarged on bail. The case was committed to the Court of Sessions and subsequently transferred to the Court of the Learned Trial Judge for disposal where the said case was registered as S.T. Case No. 2(01)06.
4. In order to prove its case the prosecution examined as may a 10 witnesses when the defence adduced none and the specific case of the defence was one of innocence and false implication.
5. Learned Advocate for the appellant submitted that –
 - i. There were differences in the hand-writing in the statement under Section 161 of the Code of Criminal Procedure which at least proved that the prosecution has initiated the present proceeding against the appellant with an ulterior motive.
 - ii. A vital fact that the assaulting weapon was never seized by the investigating agency and was not produced before the Trial Court.
 - iii. The victim and other witnesses failed to produce any common certificate which instructed them to take part in the raid.

- iv. The evidence of the medical officer which reflected that injury may be caused by reasons of other than assault and in the absence of any assaulting weapon this evidence was very vital.
 - v. The medical report did not bear the signature of the injured neither the age of injury was noted.
 - vi. The victim did not disclose the name of the assailant during treatment and also there are contradictory statements regarding treatment of the victim as PW-9 stated in his evidence that the victim was first taken to police station then to the hospital whereas none of the witnesses corroborated his statement.
 - vii. The investigating officer did not examine Mani-Ur-Mallick, Sk. Samjed and Golam Mustafa of Chandserpur who are the close residents of the place of occurrence and this action on the part of the investigating agency at least proved the ulterior motive.
 - viii. The Learned Judge which convicting the appellant despite the absence of any authentic proof has caused miscarriage of justice and the judgment was liable to be set aside.
6. The Learned Advocate for the State submitted that the witnesses deposed after eight years of the incident and therefore mentioned different times and different places which was natural. The evidence of the prosecution witnesses along with the raiding party were corroborative in nature. The act of the appellant to flee from the spot established his involvement in the commission of the offence.
7. A circumspection of evidence of the prosecution witnesses states as follows:-

- i. PW-1 deposed in his evidence that he worked as a helper in a bus W.B.-29/1701. At the relevant time he used to work in bus being No. W.B-19/1402. The incident took place about 5/7 years ago. The said bus being No. W.B 19/1402 used to run from Nandigram to Midnapur via Panskura Station. He could not recall the exact date but so far he could recall on one day in between 7-30 to 7-45 a.m. and in middle of Chansarpur and Haridaspur at Tamluk Panskura Pitch Road one person namely Soleman suddenly came in front of the bus by raising his hand stopped the bus and when the bus stopped he came up by the window of driver's cabin and demanded money at that time someone was along with him who was also standing on the road by his side. He could not recollect as to what for he demanded, money though they did not pay the money. Then the accused Soleman assaulted the driver by a small branch of a Nim tree (Nim-Lathi/stick). They could not raise any voice in protest as there was none for them and the passengers of the bus also silent. Ultimately the accused Soleman and his company left the place after assaulting them being not satisfied with any money. Thereafter himself and his said driver and other conductor of the bus came back on foot to Chansarpur crossing and from one S.T. D. Booth of said crossing made a telephone call to Tamluk P.S. alleging about the said incident. About one hour thereafter Police went to the said place along with force and

finding our bus standing there met the passengers and others assembled there and heard about the incident and clear the road and then their vehicle started running. At that time on enquiry by the Police they also told that Soleman actually stopped the bus and demanded money and being not satisfied with the money assaulted the driver. PW-1 made the said telephone call. At the relevant time Soleman was known to them previously. They actually came to learn about the name of Soleman from the local people of the said area. He did not know anything else. Soleman was present in Court that day (identified).

- ii. During cross-examination PW-1 deposed that he had talked with Police only on that day when they were detained in the road due to the stopping of the bus by accused Soleman and no other occasion he was talking with Police over the incident. On no other occasion he had a meeting with Police. He could not say from whom or from which of that local people of the area he came to learn the name of Soleman. He also had no knowledge about demand of money by Soleman from any other person. There was no serious injury of the said bus driver due to assault by Soleman and as such there was no need for treatment by Doctor. There was no serious injury. They could not know the name of the said person who was accompanied by Soleman on that day in spite of their best endeavour. He also

could not say whether Police started any case against Soleman for the offence by stopping their bus and for demanding money illegally. There were actually 4 bus stoppages in-between Chansarpur and Haridaspur namely Chansarpur Khirish-Tala, Chansarpur Bazar, Boarding and Haridaspur for general buses but not for them. It was a fact that the people of Chansarpur area used to try to stop their bus by raising hand for boarding their bus though our bus was an Express bus having limited stoppages. It was a fact that there was several incident over the said matter of stopping the bus at those stoppages stopping the Express bus by the local people. He could not say the name of the Booth or the telephone number of the booth wherefrom he made a telephone call to Tamluk P.S. on that day.

- iii. PW-2 deposed that at the relevant time, he was a conductor of bus being No. WB-19/1402. He knew the accused Soleman. The incident took place about 7 years ago at about 07:40 a.m. Musiyar Rahaman (PW-1) was also another conductor of the said bus. The said bus used to run from Nandigram to Paschim Medinipur via Panskura Station. On the relevant date and time they were going with that bus when the bus reached in between Chansarpur and Haridaspur. The accused Soleman stopped the bus by raising his hands in which there was a small Lathi. 3 other persons were with Soleman at that time. Thereafter Soleman asked for some money as Chanda from Musiyar

Rahaman who was working as a conductor at the front gate of the bus. But being refused Soleman then went to the cabin of the bus and started assaulting the driver of the bus. Thereafter himself and Musiyar Rahaman got down from the bus and went some distance in the back side and from Chansorpur S.T.D. booth they made a telephone call to the Tamluk P.S. Thereafter they again came to the bus. Sometime thereafter police also came by a zip. But at that time Soleman was not there. But at that time Soleman and his associates were not there and they fled away. On the following day when they were again coming with the said bus then while they reached at Chansarpur – Haridashpur stoppage, then PW-2 heard from police that on the previous day Soleman also assaulted a police officer.

- iv. During cross-examination, PW-2 could not say the name of the police officer from whom he heard that Soleman had assaulted a police also on the date of incident. About more than $\frac{1}{2}$ an hour later, police reached the place of occurrence on the date of incident. He could not say for what occasion Soleman and his associates asked for money as Chanda. He did not disclose about the incident to anybody else on any later day excepting on the following day of the incident when he disclosed the matter to the police. He could not say the telephone number or the name of the booth wherefrom they made telephone call to Tamluk P.S on the date of incident. He could not say about the

injury of the driver being assaulted by Soleman on the day of incident. He could not restrain Soleman from assaulting their driver on that date as he was engaged in conducting the bus and collective fare. Their bus was standing there for about 45 minutes till police reached thereon the day. No arrangement for medical treatment for the driver was made. Over the said incident of forcibly stopping the bus and asking for money as Chanda or assaulting the driver, himself or the driver or the owner of the bus did not lodge any complaint to the police.

- v. PW-3 deposed that on 07.11.98 he was posted at Tamluk P.S as Reserve Force. The incident took place about 8 years ago. About 8 years ago, he was a member of raiding party in which there were other constables namely Radhabinod Mondal, Kalachand, Sarup and Dhananjoy under the leadership of A.S.I A. K. Manna and they went to village Chansorpur, P.S.- Tamluk for arresting the accused Sk. Soleman. He did not know Sk. Soleman and he could not identify him. There was allegation that said Sk. Soleman made an attack on a bus of Nandigram-Medinipur route at Chansorpur market and also assaulted the conductor of the said bus and tried to snatch away his money bag. They went to the house of said Sk. Soleman and surrounded the house but Sk. Soleman actually fled away through the roof of the house while running away Sk. Soleman came in front of constable Radhabinod and then he by an iron

rod assaulted on the head of said constable and fled away. Witness then said that the said person who assaulted Radhabinod was actually Sk. Soleman and he was present in court that day. He narrated the incident to the I.O. of this case while he was examined.

- vi. During cross-examination PW-3 could not produce the command certificate showing that he was a member of the raiding party on the relevant date. He produced the command certificate to the I.O. while he was examined. He had actually conducted several raids as a member of the raiding party but he could not give any details of those raids. Chansorpur village was situated about 13/14 k.m. away from Tamluk. He did not find any iron rod that day before the Court which he told used by Sk. Soleman for assaulting Radhabinod.
- vii. PW-4 in his examination-in-chief stated that on 27.11.98 he was posted at Tamluk P.S as Constable No. 2716. He deposed that the incident took place in the year 1998 i.e. 8 years ago. On one night in the year, 1998, he was a member of a raiding party and they went to Chansorpur village at the house of one Sk. Soleman. Himself, Snehasis Mondal, Radhabinod, Sarup and Dhananjoy were in the raiding party under leadership of A.S.I. Mr. Manna. There was allegation that said Sk. Soleman actually assaulted the conductor of a Nandigram-Medinipur bus and also snatched away the money bag from the conductor.

Initially they surrounded the house of Sk. Soleman at about 1 p.m. and knocked the door of Sk. Soleman but Soleman ran away through the tiles roof of the said house. At the time of running away Sk. Soleman came close to Radhabinod and by assaulting Radhabinod on his head by a rod he fled away. Said Sk. Soleman was present in Court that day who assaulted Radhabinod on that night. He narrated the incident to the I.O. of this case while he was examined by him.

- viii. During cross-examination PW-4 stated that he conducted several raids being member of the raiding party but he could not say or give any particular details about those raids. On the very day of raid, he saw Sk. Soleman for the first time and since that date he had no occasion to see Soleman and he only saw Soleman on the day of his deposition. He could not produce any commands certificate showing that he was a member of the raiding party on that day. No iron rod which Radhabinod was assaulted by Soleman was produced before the Court that day. He could not identify him if there was more than one person in the dock.
- ix. PW-5 deposed in his evidence that on 06.11.98 he was posted at Tamluk P.S in the Reserve Force. The incident took place about 8 years ago. On that relevant date, they went to village Chansorpur for conducting a raiding in which raiding party he was a member. A.S.I. Sri Manna, Radhabinod Mondal, Snehasis

Mondal, Sarup Bouri, Kalachand Das were the other members of the raiding team. They went there to apprehend one Sk. Soleman. As per identification by Sri Manna, they actually gheraoed one house in which Soleman used to live in. Thereafter Soleman was called out but he actually fled away after opening the tiles of the roof of the said house. They tried to apprehend him suddenly found someone jumped from the roof in the said house in front of Radhabinod who embraced the said person but the said person (Soleman) assaulted Radhabinod by iron rod and then fled away. Manna Babu told him that said Soleman snatched money from one conductor of a Nandigram-Midnapur bus. The witness identified the said person as Soleman standing on the dock by saying that he had seen the person about 8 years ago only.

- x. During cross-examination PW-5 could not say how many raids he conducted or anything details about such raid during his service life in last 12 years. They surrounded the house of Sk. Soleman. PW-5 was within 5 cubic away from Radhabinod. He did not try to apprehend said Sk. Soleman personally. He could identify the accused by seeing the face of the accused. He could not produce any certificate showing that he was a member of the raiding party. The incident took place about 5 minutes after 1:30 p.m. of their reaching there. From the said place of occurrence, they went to the Tamluk Hospital within one hour.

He did not give any statement to the doctor of the hospital. There are several other houses surrounding the house of said Sk. Soleman. He had not personally taken any initiative to identify the house of said Sk. Soleman by local people.

- xi. PW-6 deposed in his examination-in-chief that on 07.11.98 he was posted as Medical Officer at Tamluk S. D. Hospital. On that day he examined one Radhabinod Mondal (28 years) at the Emergency Department of Tamluk S.D. Hospital at about 1:30 a.m. He found that following injury:-

- a. One incised looking wound about 3" long over the left eyebrow.

PW-6 identified the injury report written and signed by him which bore his signature marked as Exhibit-1. The injury note in his report might be caused by assault by any blunt and hard substance.

- xii. During cross-examination PW-6 stated that all incised looking injury there should be dimension of length, breadth and depth. Signature of the patient was not on the injury report. Age of injury was not noted. The injury noted on the injury report might be caused by reasons of other than assault.
- xiii. PW-7 deposed in his evidence that on 07.11.98 he was posted at Tamluk. About 10 years ago he along with constable Radhabinod Mondal, constable Kalachand Das, constable Snehasis Mondal and constable Dhananjoy Mondal led by A.S.I.

Sri Manna for a raid at village Chansorpur for a raid to apprehend one accused. It was alleged that the accused snatched money from the driver and conductor of a bus. Going there they surrounded the house of accused Soleman but the accused fled away through the roof of the house while running away the accused assaulted on the head of a constable namely Radhabinod Mondal by an iron rod and he fell down.

- xiv. During cross-examination PW-7 stated that he had no document to show on that day he was in the raiding party. They conducted the raid at about 1/1:30 a.m. in the midnight. He did not see Soleman prior to the raiding day. He heard from their officer that Soleman was extracting money from the driver and conductor of the bus. He was a member of different raids in the said period but he could not say particulars of those raids. He left Tamluk being transferred in the year 1998.
- xv. PW-8 deposed in this examination-in-chief that on 07.11.98 he was posted at Tamluk P.S. and on that day he accompanied A.S.I. Manna Babu, constable Saruf, constable Dayamoy, constable Kalachand and constable Snehasis in a raid at village Chansorpur for arresting one accused Sk. Soleman. They reached at about 1:30 a.m. in the night. They surrounded the house of Sk. Soleman for arresting him. But Sk. Soleman fled away after removing the tiles of the said room but somehow he apprehended Sk. Soleman there while he was running away.

Soleman had an iron rod by which he struck PW-8 on his left forehead near the left eyebrow. PW-8 became unconscious and in the meantime Sk. Soleman fled away. PW-8 stated that he was examined by I.O. of this case.

xvi. During cross-examination, PW-8 could not say the good name of said A.S.I. Manna Babu. He could not produce any commands certificate showing that he was a member of the said raid on the relevant date. He did not show any command certificate to the I.O. of this case separately. That was the 2nd time since that day of incident he saw the accused in Court. It was not possible for him to identify all the persons whom he arrested during raid during the last 8 years. He got back his sense while he was on his way to the hospital. He did not say to the doctor that he became senseless being assaulted by the accused by rod. He did not state to the doctor the name of the person by whom he was assaulted. He stated to the doctor that he was assaulted by an iron rod. He stated to the doctor that he was hurt during raid and he also stated to the I.O. that he was hurt on his left eyebrow. He could not say the person who identified the house of Sk. Soleman.

xvii. PW-9 stated in his evidence that on 07.11.98 he was posted at Tamluk P.S as A.S.I and on that day he conducted one raid along with constable Radhabinod Mondal, constable Kalachand, constable Sarup and any other went to a raid at village

Chansorpur and reached there at about 1:30 a.m. in the night as per order of the then O.C. Tamluk P.S for arresting one accused Sk. Soleman. Going there they surrounded the house of Sk. Soleman for arresting him but the accused tried to flee away by dewing tiles of the roof of said room. But while he was running away constable Radhabinod Mondal apprehended him (Sk. Soleman) but Sk. Soleman assaulted Radhabinod by an iron rod on his head and then fled away. Constable Radhabinod became senseless. They brought him to the Tamluk Thana and thereafter they took him to Tamluk Hospital for his treatment. Thereafter he filed written complaint to the then O.C. Tamluk P.S. PW-9 identified the said complaint over the incident filed which was signed by him. The complaint was written by one of the stuffs of the P.S. He knew his handwriting (marked as Exhibit-2). The complaint was written as per his instruction marked as Exhibit-2.

- xviii. During cross-examination PW-9 stated that there was no mention in the body of the complaint as to who wrote the complaint. It was also not noted that the complaint was written as per his instruction. He could not produce any document showing that he conducted raid as per instruction of the O.C., Tamluk P.S. He could not say who identified the house of Sk. Soleman. Approximately at about 3 p.m. they returned to the P.S. after raid and thereafter he took the injured Radhabinod

Mondal to the Tamluk Hospital. He could not produce any document showing that he took Radhabinod to the Hostpial at 3 p.m. He saw Soleman on the very relevant date of raid and thereafter that day in the Court for the 2nd time. It was not possible for him to identify all the accused persons regarding whom he conducted raid even after 8 years.

- xix. PW-10 deposed in his examination-in-chief that on 07.11.98 he was posted at Tamluk P.S as S.I. of Police. On that day as per endorsement of the then O.C., S.I. Ashok Bose, he took up the investigation of this case being Tamluk P.S. Case No. 192/98, dated 07.11.98 under Sections 353/325/307 of I.P.C. On receipt of the case, he visited the place of occurrence and drew up a rough sketch map along with index. The rough sketch map along with index was prepared by him which bore his handwriting and signature. The rough sketch map along with index was marked as Exhibit-3. The formal FIR was written by S.I. Ashok Bose. PW-10 identified the endorsement. He knew the handwriting of S.I. Ashok Bose and signature. The formal FIR was marked as Exhibit-4. The endorsement over the written complaint was made by S.I. Ashok Bose and it bore the signature of S.I. Ashok Bose. The endorsement of S.I. Ashok Bose was marked as Exhibit-2/1. PW-10 held raid in order to arrest the accused but in vain. He had recorded the statement of the witness under Section 161 of Cr.P.C. and he also

collected injury report of the injured constable of this case. After completion of the investigation and after consulting his superiors, he submitted charge-sheet in this case being C.S. No. 7 dated 22.01.99 under Sections 353/324/307, I.P.C. against the FIR-named accused persons. After showing him absconder, he submitted charge-sheet in this case.

- xx. During cross-examination, PW-10 stated that he had not endorsed in the case diary or in the charge-sheet that after consultation with his superiors he submitted charge-sheet in this case. He had not examined the person named Mani-Ur-Mallik, Sk. Samjed, Ghulam Mustafa of Chamsarpur during his investigation. As per the rough sketch map those persons were the nearest persons of the place of occurrence. (When referred to the statement of Gobardhan Bhuiya under Section 161, Cr.P.C.) – Gobardhan Bhuiya stated to PW-10 that while he was taking vehicle no. WB-19/1402 after taking passenger from Nandigram to Medinipur side and while it reached at Anantapur, Sk. Suleman and 3 others detained the bus at that place. He also stated to PW-10 that from him he came to know that some police officials were injured in that case. (When referred to statement of Mashi-Ur-Rahman under Section 161 Cr.P.C.) - Mashi-Ur-Rahman stated to PW-10 that he came to know from him at the time of investigation that some police officials injured in that incident. He did not state to PW-10 that

he informed the matter to Tamluk P.S. over telephone and police officials had been to the place of Anantapur where the bus was detained and police officials rescued the bus from those persons. According to the witness, the incident occurred on 27.10.98 and subsequently he heard from him that police officials were injured. PW-10 did not record the statement of the doctor under Section 161 Cr.P.C. during his investigation. He had collected command certificate to show that they were engaged in a law and order duty at that relevant time. The command certificate was issued on 06.11.98 night. The time was mentioned 22:35 hrs. The command certificate was marked as Exhibit-5. He did not collect the document showing the ownership of the house wherefrom the accused fled away by jumping from the roof. (When referred to three 161 Cr.P.C. statement of the witness of the CD) – PW-10 stated that he dictated and some police official wrote the statement on his behalf and after going through it, he put his signature over it. Those statements were of Snehasish Mondal, Kalachand Das, Swarup Barui. He had not endorsed on those three statements under Section 161 Cr.P.C. that it was written as per his instruction and dictation.

8. Section 353 of the Indian Penal Code states as follows:-

“353. Assault or criminal force to deter public servant from discharge of his duty.- Whoever assaults or uses criminal force to any

person being a public servant in the execution of his duty as such public servant, or with intent to prevent or deter that person from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by such person to the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.”

9. Section 325 of the Indian Penal Code states as follows:-

“325. Punishment for voluntarily causing grievous hurt.- *Whoever, except in the case provided for by section 335, voluntarily causes grievous hurt, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”*

10. PW-1 could not recollect the exact date on which the incident of assault occurred. He had to recollect the name of the appellant. He could not recollect as to why the appellant demanded money which was refused. Subsequently appellant and his associates left the place after assaulting them. The incident was reported to Tamluk P.S. on telephone stating that the appellant intercepted the bus and demanded money. The local people had informed the name of the appellant. PW-1 did not incur serious injury.

11. PW-2 the conductor of the bus corroborated that the evidence of PW-1 who was the helper of the bus having registration No. Wb-19/1402. PW-2 deposed to have heard from police that on the previous day appellant had assaulted a police officer. Moreover, PW-2 did not lodge a complaint either by himself or through the helper or the driver of the bus to have been assaulted.

12. PW-8 during his cross-examination deposed that he did not state to the doctor the name of the person by whom he was assaulted. He stated to the

doctor that he was assaulted by an iron rod. He stated to the I.O. that he was hurt on his left eyebrow.

13. PW-9 could not mention the name of the person who wrote the complaint though it was written at his instruction. He failed to identify the accused persons against whom a raid was conducted. The formal FIR written by S.I. Ashok Bose was not examined. The immediate neighbour of the appellant were not examined.
14. There are contradictions in the evidence of the prosecution witnesses. The prosecution witnesses deposed after eight years of the incident and most of them could not identify the appellant. The evidence of PW-6 was that he examined the victim at about 01:30 a.m. and found one 3" long incised wound over the left eyebrow contrary to the deposition of the victim to have been hit by an iron rod over his head. The PW-6 further stated that the injury report did not bear the signature of the patient who did not mention the name of the assailant and opined that the injury might have been caused by reasons other than assault.
15. The doctor did not mention the injury to be grievous. There has been inconsistent versions of the prosecution witnesses regarding the role of the appellant in intercepting a bus for collecting "chanda" moreover to have been apprehended by the raiding party in connection with a criminal case for execution of warrant whereby the appellant jumped over through the roof of tiles. The appellant to have acted in such a manner would sustain injuries and the same was not mentioned either in the complaint or in the deposition.

16. The ingredients to constitute the offence under Section 353 and 325 of the Indian Penal Code could not be proved.
17. Under the facts and circumstances, the prosecution has failed to establish its case beyond reasonable and accordingly the instant appeal is allowed.
18. Accordingly, the criminal appeal being CRA 704 of 2008 stands disposed of.
19. There is no order as to costs.
20. Lower court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.
21. 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.)