

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 215 of 1987

**Madan Paul
-Vs-
The State of West Bengal**

For the Appellant : Mr. Tapan Dutta Gupta
Mr. Sanatan Hazra

For the State : Ms. Faria Hossain
Ms. Atulya Sinha

Heard on : 18.04.2024, 12.06.2024

Judgment on : 08.05.2025

Ananya Bandyopadhyay, J.:-

1. This appeal is preferred against the judgment and order dated 30.04.1987 passed by Learned Additional Sessions Judge, Midnapore in Sessions Trial No.XXVIII of June, 1986 convicting the appellant under Section 323 of the Indian Penal Code and sentencing him to suffer rigorous imprisonment for 1 year.
2. The prosecution case precisely stated that the unfortunate victim Surya Paul was the father the appellant. The victim was assaulted by his son on the head with a lathi on 19.06.85 at Daspur village within Daspur P.S. He was removed to Daspur Primary Health Centre and from there he was

referred to Ghatal Sub-divisional Hospital where he succumbed to the injuries on the following day. Thereafter, police was informed and first information was lodged on 25.06.85.

3. On completion of investigation police submitted charge-sheet against the appellant.
4. Charges were framed against the appellant to whom he pleaded not guilty and claimed to be tried.
5. In order to prove its case, the prosecution examined as many as 10 witnesses and exhibited certain documents.
6. Considered the rival submission of the Learned Advocate representing the appellant and the State.
7. The learned advocate representing the appellant submitted certain technical irregularities wherein the complaint did not reflect the LTI of the complainant. Thee evidence of PW-2 and PW-3 was not considered who has unequivocally deposed that the victim died due to the fall on the ground. The absence of eye witness to the alleged occurrence could not convict the victim under 323 of the IPC and the victim was acquitted of the charge under section 304 part 1 of the IPC. Moreover the doctor who conducted the post mortem over the dead body of the victim was not examined.
8. The learned advocate representing the State submitted that the learned trial court had passed the order of conviction after considering the authenticity and reliability of the prosecution case.
9. A circumspection of the prosecution witnesses revealed as follows:-

- i. In the present case concerning the unnatural death of the victim, the prosecution adduced the evidence of ten witnesses, including family members, neighbours, a medical officer, and investigating police officials. PW-1, the wife of the deceased, deposed that her husband had fallen face-forward on the courtyard, where there were slabs, sustaining injuries that eventually led to his death at Ghatal S.D. Hospital. She stated that she did not report the incident to the police, and the police were instead informed by villagers. Although her written complaint mentioned that her husband was injured from a fall, she denied knowledge of the First Information Report being lodged under her Left Thumb Impression and claimed she never spoke to the police. She maintained that her relationship with her son-in-law, Gour Paul, was cordial and that her son, the appellant, had not acted in a way prejudicial to her interests. In cross-examination, she reiterated that she did not lodge any complaint with the police, and confirmed the participation of her family members, including the appellant, in the funeral rites of her husband.
- ii. PW-2, the son-in-law of the deceased, stated that the victim was asthmatic and hypertensive and that he died of illness. He admitted to having attested the L.T.I. of his mother-in-law on the FIR at Ghatal S.D. Hospital but could not recall who handed him the written complaint. He confirmed that the attestation, marked Exhibit-1, was in his handwriting. PW-3 corroborated that the

victim had been taken to Daspur P.H.C. for asthmatic treatment and that he fell in the courtyard. However, during cross-examination, PW-3 stated that he had learned from Shyamali that a quarrel over a nursery ground had occurred, during which the appellant, on the cries of his wife, rushed out with a lathi and assaulted his father, causing head injuries. He also confirmed accompanying the injured to the hospital with others, including Gour Paul and Sital Pramanick.

- iii. PW-4 professed ignorance about the cause of death but in his statement to the police he stated that he was informed by certain persons that the appellant had assaulted the victim with a lathi, resulting in a fractured skull. He added that he found the victim lying unconscious in his room, bleeding, and was told that the appellant's wife had instigated the incident. PW-5, a local man who transported the victim in a rickshaw van to the P.H.C., claimed not to have noticed any visible injuries but stated during cross-examination that Sankar, the appellant's brother, had informed him of the assault and requested his help in taking the victim to hospital. He also stated to police that the appellant had inflicted the injuries with a lathi and that the victim was subsequently shifted to Ghatal S.D. Hospital in a grave condition.
- iv. PW-6, a constable at Ghatal P.S., deposed that a U.D. case (No. 71/85 dated 21.06.85) was initiated based on information received from Ghatal S.D. Hospital. This U.D. case was subsequently tagged

with the specific case started at Daspur P.S. PW-7, the medical officer at Daspur P.H.C., testified that the victim was brought to the emergency department on 19.06.85 at 5:00 p.m. in an unconscious state. He noted a lacerated injury near the left eye and a swelling on the left skull. He referred the patient to Ghatal S.D. Hospital due to the severity of the case and noted that it was reported to him that the injuries had been inflicted by the appellant using a stick at around 4:30 p.m. the same day. During cross-examination, he expressed that such injuries were unlikely to result merely from a fall onto slabs, as natural body mechanisms would tend to protect the head.

- v. PW-8, a Sub-Inspector at Daspur P.S., confirmed receiving the written complaint from Charubala Paul on 26.05.85 and registering the formal FIR (Exhibit-1) under his endorsement (Exhibit-1/3). The matter was then kept pending for directions from the O.C. PW-9, a Sub-Inspector at Ghatal P.S., conducted the inquest proceedings at the Ghatal S.D. Hospital morgue upon direction of the O.C. after receiving intimation from the ward master. PW-10, the Investigating Officer at Daspur P.S., took over investigation on 26.05.85 and prepared a sketch map of the scene (Exhibit-2). He examined several witnesses, including Gour Paul, Nema Dolui, and Sital Pramanick. A bamboo lathi, allegedly used in the assault, was recovered from the appellant's house and seized under a list (Exhibit-3). The Investigating Officer recorded

statements under Section 161 Cr.P.C. from various witnesses who described that the appellant's wife had instigated the assault, leading the appellant to beat his father with a lathi, causing severe injuries that ultimately led to his death. The appellant was absconding during the initial investigation. On completion of the investigation, he filed a charge-sheet against the appellant on 10.12.85.

9. The complainant being the mother of the appellant at a later stage was swayed by emotion and retracted from her earlier version that the appellant had assaulted the victim on his head with a *lathi* resulting in his death. PW-2 being the son in law of the deceased tried to protect the appellant stating the victim to have been asthmatic and hypertensive being the cause of his death. His evidence was corroborated by PW-3, PW-4 feigned ignorance. PW-5, the local person deposed not to have noticed visible injuries of the body of the victim while he was taken to a public health center.
10. However, the medical report as submitted by the medical officer being PW-7 stated lacerated injury to have been suffered by the victim near the left eye and a swelling on the left skull. The mother of the appellant at the first instance divulged the truth which she deliberately tried to veil over at the time of recording the evidence before the court. The initial reaction of PW-1 being the mother of the victim and the *de facto* complainant in the instant case prevailed over the deposition before the court which in the facts and circumstances of the case appeared to be unbelievable considering the

relationship between the mother and the son who eventually tried to protect her son from penal consequences.

11. The facts and circumstances of the penal case, the conviction is upheld however since the incident occurred in the year 1985 and 40 years have passed, the sentence is modified to the extent of imprisonment undergone by the appellant in custody.
12. In view of the above discussions, the sentence is modified to the extent of imprisonment undergone by the appellant in custody.
13. In view of the above discussions, the instant criminal appeal being CRA 215 of 1987 stands dismissed.
14. There is no order as to costs.
15. Trial Court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.
16. 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.)