

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

Present:

**The Hon'ble Justice Debangsu Basak
&
The Hon'ble Justice Prasenjit Biswas**

C.R.A.(DB) 20 of 2022

Dipankar Ghosh & Anr.

-Versus-

The State of West Bengal

For the Appellants : Mr. Arindam Jana, Adv.
Mr. Sumanta Ganguly, Adv.
Mr. Yuvraj Chatterjee, Adv.
Mr. Rahul Surtani, Adv.

For the State : Mr. Debasish Roy, Ld. A.P.P.
Mr. Partha Pratim Das, Adv.
Mrs. Manasi Roy, Adv.

Hearing concluded on : 10th July, 2025

Judgment On : 31st July, 2025

Prasenjit Biswas, J:-

1. The present appeal has been preferred by the accused appellants against judgment and order dated 19.01.2022 passed

by the learned Additional Sessions Judge, 4th Court, Krishnagar, Nadia, in connection with Sessions Case No. 09(11)10.

2. By passing the impugned judgment these appellants were found guilty for commission of offence punishable under Section 307 of the Indian Penal Code along with fine of Rs. 10,000/- each and in default of payment of fine to undergo further simple imprisonment for three months.

3. Being aggrieved with the said impugned judgment and order of conviction the present appeal is filed at the behest of the appellants.

4. Prosecution story in nutshell has unfolded by Ratan Ghosh (PW1) is that:

“On 19.07.2009 at 7 A.M. a conflict was started between the nephew of the de-facto complainant namely, Asit Ghosh (PW4) and the appellant no. 2 namely, Tarak Ghosh regarding their business. After five minutes all the accused persons namely, Meghnath Ghosh, Jaldhar Ghosh, Dipankar Ghosh, Tarak Ghosh, Sujit Ghosh, Prasanta Ghosh, Nemai Ghosh came to

the house of this de-facto complainant carried with sharp cutting weapons like “henso”, “chipda”, iron rod and stick and Megnath Ghosh assaulted Asit Ghosh at his head with iron rod subject to kill him but Asit managed to save himself by his left hand. Tentul Ghosh and Joydeb Ghosh tried to rescue Asit Ghosh. Then Dipankar Ghosh tried to murder Tentul Ghosh and hit him with ‘Chipda’ on his head and blow of dao struck on the right hand of Tentul Ghosh and Tarak Ghosh assaulted Joydeb Ghosh on his head by sharp cutting ‘Henso’ with an intention to murder him. As a result, Joydeb Ghosh and Tentul Ghosh suffered bleeding injury. Thereafter, the local people came and the accused persons fled away along with weapons. The victim was taken to Saktinagar Hospital by the said people.”

5. Over the complaint a case being Dhubulia P.S. Case No. 293/2009 dated 19.07.2009 under Section 448/325/326/307/34 of the Indian Penal Code was started against the accused persons.

6. Thus, the criminal law was set in motion. Police investigated the case and after completion of investigation charge-sheet was submitted under Section 147/148/149/448/323/326/307 of the Indian Penal Code against the seven accused persons namely, Meghnath Ghosh, Jaldhar Ghosh, Dipankar Ghosh, Tarak Ghosh, Sujit Ghosh, Prasanta Ghosh, Nemai Ghosh. Charge was framed by the learned Trial Court against the accused persons under Sections 148/448/307 read with Section 149 of the Indian Penal Code against the said seven accused persons.

7. In this case, 17 (seventeen) witnesses were cited on behalf of the prosecution and documents were marked exhibits on its behalf. Neither any oral, nor any documentary evidence was adduced on behalf of the defence.

8. Mr. Arindam Jana, learned Advocate for the appellants submitted that from the prosecution evidence offence under Section 307 Indian Penal code is not made out in the present matter. Findings of the learned Trial Court about conviction of sentence against the accused appellants under Section 307 of the Indian Penal Code are illegal. At this juncture, learned counsel for

the appellants referred to the entire evidences as well as the injury report prepared in respect of the injured persons and argued that injury said to have been caused by the appellants to the injured persons is not on vital part. If the entire prosecution case is taken into consideration, then also accused appellants could be convicted offences under Sections 323 and 324 of the Indian Penal Code. Since in this matter, these appellants have served out imprisonment in considerable period of time, it is submitted relying upon the law laid down by the Hon'ble Apex Court in the case of **Vasudev-vs-State of Madhya Pradesh** reported in **(2022) 4 SCC 735** that the present appeal may be decided extending leniency on the basis of imprisonment already undergone.

9. Beside the above submission it is further contended by the learned counsel for the appellants that the offending weapons as allegedly used by these appellants were not produced before the alleged eye-witnesses during trial for identification. It is said that in such score also the appellants are entitled to the benefit of doubt. At this juncture, learned Advocate made reliance upon the decision rendered by the Hon'ble Apex Court in case of **Mohd.**

Muslim- vs. State of U.P. reported in **(2023) 7 SCC 350**. It is further contended by the learned Advocate that the offending weapons were not seized during investigation. It is said that blood stained 'gamcha' collected from the place of occurrence was not produced during trial. Moreover, although blood stained 'sari' of PW6 was seized but not produced during trial. So, it is said by the learned Advocate that there are discrepancies and embellishments in the evidences of the eye-witnesses and post occurrence witnesses regarding role played by the appellants in the alleged incident. Medical evidence which was produced by the side of the prosecution does not inspire confidence. Attention of this Court is drawn to the evidences of PW13 and PW15 and it is said that the offending weapons ought to have been produced before the doctors who treated the injured persons after the alleged assault. It is further contended by the learned Advocate that the injury report of the victims was not marked as exhibits in this case. So, it is said that the evidences of the prosecution witnesses are highly unreliable in nature and ought not to form the basis of conviction in the instant case. So, it is said that the impugned judgment and

order of conviction passed by the learned Trial Court may be set aside, in the above stated reasons.

10. Per contra, Mr. Debasish Roy, learned Advocate for the State said that there is nothing material in the present case for which the impugned judgment and order of conviction passed by the learned Trial Court may be set aside. It is said that all the ingredients to constitute the offence under Section 307 of the Indian Penal Code have been proved by the prosecution from its evidence. Medical evidence fully supports the oral version. Findings of the Trial Court Record in the impugned judgment and order are based on correct appreciation of facts and evidence. Although, no minimum sentence has been provided for the offence under Section 307 of the Indian Penal Code yet sentence imposed by the Trial Court against the accused appellants vide impugned judgment and order is adequate and proper and no further leniency is warranted in this matter.

11. We have considered the rival submissions advanced by the learned counsels for the parties and have gone through the entire

record including the case laws relied upon the learned counsel for the appellants carefully.

12. In this case, PW2, Tentul Ghosh, PW3, Joydeb Ghosh and PW4, Asit Ghosh who are the injured eye-witnesses in this case stated in the same line that these appellants assaulted them with weapon and as a result they sustained severe injuries on their persons. PW2 stated in his evidence as Asit Ghosh was his nephew he tried to save him and, on that moment, one of the appellants Dipankar Ghosh assaulted him with 'Dao' with an intention to murder him and the accused tried to hit him on his head but he removed himself and the blow of 'Dao' hit him on his right hand. It is said by this witness that PW3, Joydeb Ghosh also rushed to the spot then appellant no. 2, Tarak Ghosh assaulted Joydeb Ghosh with 'Chhipda' and hit him on his head.

13. PW3, Joydeb Ghosh another injured/victim of this case has stated in his evidence that the accused persons namely, Megnath Ghosh, Nemai Ghosh, Sujit Ghosh and Prasanta Ghosh along with these two appellants came to the house of his elder brother Tentul Ghosh and Megnath Ghosh and tried to hit Asit Ghosh on his

head with iron rod and the same blow hit Asit Ghosh on his left hand. It is said by this PW3 that Tentul Ghosh tried to save Asit Ghosh and rushed to the spot and then appellant no. 1 Dipankar Ghosh tried to assault Tentul Ghosh with a 'chhipda' with an intention of murdering him, by hitting him on his head but the blow struck him on his right hand's shoulder portion. This witness rushed to the spot and tried to save Tentul Ghosh and then Tarak Ghosh came to the spot and hit on his head with the 'Chhipda'

14. PW4, Asit Ghosh, another victim stated in his evidence that these appellants along with other persons entered into the house of Tentul Ghosh with iron rod, 'chhipda' and lathi and at first Megnath Ghosh assaulted him with an iron rod with the intention of murdering him tried to hit him on his head but the blow struck on his left hand. It is said that his elder uncle Tentul Ghosh on seeing him being assaulted tried to rescue this witness and then appellant no. 1 tried to hit Tentul Ghosh with a 'chhipda' on his head with an intention of murdering him. However, as Tentul Ghosh could remove his head at the last moment, the blow of

‘chhipda’ hit him on the right hand’s shoulder portion. As a result, Tentul Ghosh on being seriously injured fell down on the ground with profuse bleeding condition. It is said by this witness that his father Joydeb Ghosh then rushed to the spot in order to save Tentul Ghosh and then Tentul Ghosh (appellant no.2) hit his father Joydeb Ghosh with a ‘chhipda’ on his head with intention of murdering him.

15. PW1, Ratan Ghosh, the de-facto complainant and eye-witness to the incident stated in the same line of PW2, PW3 and PW4. It is said by this witness that acquitted accused Megnath Ghosh with intent of murdering Asit, tried to hit him on his head, but Asit managed to save himself. It is further stated by this PW1 that when Tentul Ghosh tried to rescue him, the appellant no. 1 with an intention of murdering Tentul Ghosh hit him with a ‘Chhipda’ on his head but, however, he missed his head and the blow struck on the left hand of Tentul Ghosh. It is further said by this witness that Joydeb Ghosh (PW3) tried to save Tentul Ghosh (PW2) and in the process with intention of murdering Joydeb Ghosh, appellant no.2 Tarak Ghosh assaulted him on his head

with 'chhipda' and as a result PW2 and PW3 suffered bleeding injuries and they fell down on the ground.

16. PW5, Parthana Ghosh and PW6, Sumitra Ghosh also supported the statements made by injured persons i.e. PW2, PW3 and PW5.

17. PW8, Balika Ghosh, an independent witness to the incident has stated in her evidence that appellant no. 1, Dipankar Ghosh with a 'chhipda' tried to give a blow on the head of PW2 (Tentul Ghosh), but the said blow missed the head of PW2 and struck on his right hand shoulder, he fell down on the ground and thereafter, Joydeb Ghosh (PW3) another injured came to rescue PW2 and then Tarak Ghosh came to the spot and assaulted PW3 on his head by a 'chhipda' which was in his hand. It is said by this witness that after sustaining blow by 'chhipda', PW3 fell down on the ground and thereafter Megnath Ghosh being armed with an iron rod in his hand tried to assault PW4 (Asit Ghosh) on his head, but the said blow missed his head and struck on his left hand. The statement of this witness corroborates the statements made by the injured eye-witnesses i.e. PW2, PW3 and PW4.

18. PW13, Dr. Rahul Gupta who examined the injured Tentul Ghosh and Joydeb Ghosh stated in his evidence that the victim Tentul Ghosh complained before him that he was assaulted by the appellant no. 1, Dipankar Ghosh at 7 A.M. on 19.07.2009 by a 'Da'. It is said by the doctor that after exploring the wound of Tentul Ghosh at O/T it appears that he sustained about 8"/3"/3" bone cutting injury and there was sharp cut on the right shoulder of Tentul Ghosh which was a sharp bone cutting injury cutting the scapular spine and aerial and with drooping of the shoulder muscle cut all along. This witness further stated that another victim Joydeb Ghosh (PW3) was admitted in the hospital with the history of assault under his care and Joydeb Ghosh had complained of being assaulted by the appellant no. 2, Tentul Ghosh at 7 A.M. on 19.07.2009 with a 'Da' and on examining the victim he found injury on the person of Joydeb Ghosh, a scalp cut irregular lacerated on the midline parietal area.

19. PW 14, Dr. Susanta Kumar Biswas made his statement before the Trial Court that he examined the victim Tentul Ghosh

(PW2) and found injuries on his right shoulder along with fractured neck of right humerus.

20. PW15, Dr. Ajana Baral who medically examined PW2 and PW3 found sharp cutting injuries on the scalp of the patient. This witness opined that such type of injury can occur if a person is hit by a sharp edged weapon.

21. Trial Court after hearing the parties and appreciating the evidences was of the view that the prosecution was able to prove the guilt of the accused- appellants for the offence under Section 307 of the Indian Penal Code beyond reasonable shadow of doubt and convicted and sentenced the appellants for the aforesaid offence. It also appears that the Trial Court acquitted the accused persons namely, Nemai Ghosh, Megnath Ghosh, Joydeb Ghosh, Sumitra Ghosh, Parthana Ghosh for the offence under Section 148/307/149 of the Indian Penal Code. The Trial Court perused the entire record in the light of submissions raised by the learned counsel for the parties and found that on the relevant date and time all the appellants were involved in commission of the present offence. We have analysed the entire evidences adduced by the

prosecution as stated above and find no error. Therefore, findings recorded by the Trial Court in the impugned judgment and order for commission of the offence by the appellants need no interference.

22. Prosecution case is that that these appellants armed with deadly weapons assaulted the victims with intention to murder them. In this case, no injury report is marked as exhibits in this case but we have minutely have gone through the medical documents and the evidences of the doctors i.e. PW13, PW14 and PW15 and it emerges that the victims sustained injuries on their persons, no injury report regarding nature of injury was filed in this case. If such is the position then it is not possible to ascertain whether the injury sustained by the victims were grievous in nature or not. If the medical documents in respect of the victims are taken in light of submission raised by the learned counsel for the appellants it can be said that the injury sustained by the victims were not grievous in nature. The prosecution failed to produce the report to show that the injury sustained by the victims were grievous in nature. The attending circumstances

emerged from the prosecution evidences; it has indicated that the assault made upon the victims was not with intention to kill them. If such is the position, findings of the Trial Court that offence under Section 307 Indian Penal Code against the accused appellant has been proved by the prosecution, in our considered opinion, is not based on correct appreciation of facts and evidence. Perusal of the impugned judgment and order also reveals that no discussions at all have been made by the Trial Court in the impugned judgment and order about constitution of offence under Section 307 of the Indian Penal Code. We are of the opinion that the Trial Court erred in holding guilty to the appellants for committing the offence under Section 307 of the Indian Penal Code.

23. On close scrutiny of the entire evidences brought on record by the side of the prosecution it emerges that the appellants could only be held guilty for the offence under Sections 323 and 324 of the Indian Penal Code. So, it can be said on scrutiny of the evidences brought on record, the findings recorded by the Trial Court on this point can be termed to be illegal and perverse and

the same are not based on correct appreciation of evidences. Hence, the same required interference by this Court. In our opinion, the appellants are found guilty for the offence under Sections 323 and 324 of the Indian Penal Code and not for the offence under Section 307 of the Indian Penal Code. Hence, submission raised by the learned counsel for the appellants has some force and to that extent it is acceptable and the appeal to this extent is liable to be allowed.

24. It is trite law that appropriate sentence should be awarded after giving due consideration to the facts and circumstances of each case, nature of the offence and the manner in which it was executed or committed. Object of sentencing should be to protect society and to deter the criminal in achieving the avowed object of law. Further, it is expected that the Courts would operate the sentencing system so as to impose such sentence which reflects the conscience of the society and the sentencing process has to be stern where it should be. The Court will be failing in his duty if appropriate punishment is not awarded for a crime which has been committed not only against the individual victim but also

against the society to which the criminal and victim belong. The punishment to be awarded for a crime must not be irrelevant but it should conform to and be consistent with the atrocity and brutality which the crime has been perpetrated, the enormity of the crime warranting public abhorrence and it should respond to the society's cry for justice against the criminal. We have perused the record and found that the appellants remained in custody for sometime; the incident occurred in the year 2009 and as such, the appellants have faced rigours of trial for considerable years. Having regarded to the totality of the facts and circumstances of the case particularly the fact that no minimum sentence has been provided in the Indian Penal Code for the offences under Section 323 and 324 of the Indian Penal Code as also in this case, the appellant has served out considerable period of sentencing imposed upon them. We are of considered view that ends of justice would meet if the sentence of the appellants is reduced to the period already undergone.

25. In the light of the foregoing discussion, this appeal is liable to be allowed in part and the conviction of the appellants under

Section 307 is modified and altered to the offence under Sections 323 and 324 of the Indian Penal Code. The impugned judgment and order dated 19.01.2022 is liable to be modified to the extent as discussed above.

26. Accordingly, the instant appeal is **allowed in part.**

27. Conviction of the appellants for the offence under Section 307 of the Indian Penal Code is altered and modified into the offence under Sections 323 and 324 of the Indian Penal Code. The jail sentence imposed on the appellants will be reduced to what is already undergone by the appellants. In other words, this Court alter the jail sentence of the appellants and award "what is already undergone by them" and at the same time imposes fine of Rs. 20,000/- for the offence under Section 324 of the Indian Penal Code each and fine of Rs. 1000/- for the offence under Section 323 of the Indian Penal Code each. Fine amount imposed upon the accused appellants for the aforesaid offences shall be deposited by the appellants within two months from today. However, in case they fail to deposit the fine amount as stated above after adjusting the sum of Rs.10,000/-, if already paid by

the appellants, they will have to undergo simple imprisonment for a period of one month.

28. Accordingly, the instant appeal be and the same is hereby allowed in part and modified to the aforesaid extent.

29. In view of provision of Section 437A of Cr.P.C. the appellants shall have to execute bail bonds with sureties and such bail bonds shall be in force for six months.

30. Let a copy of this order along with the Trial Court Records be sent down to the Trial Court immediately for taking necessary steps in this regard.

31. Urgent Photostat certified copy of this order, if applied for, be given to the parties on payment of requisite fees.

[PRASENJIT BISWAS, J.]

32. I Agree

[DEBANGSU BASAK, J.]