

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

PRESENT:

The Hon'ble Justice Rajarshi Bharadwaj
And
The Hon'ble Justice Apurba Sinha Ray

GA 8 of 1985
State of West Bengal
-Vs-
Golam Murtuja & Ors.

For the State : Mr. Debasish Roy, Ld. PP
Mr. Partha Pratim Das
Ms. Manasi Roy

Heard on : 26.06.2025

Delivered on : 26.06.2025

Rajarshi Bharadwaj, J.:

1. The prosecution case, inter alia, is as follows:
2. On 04.06.1982 at about 4:00 p.m. there was some altercation between Abu Wasey (P.W.2) and one Sunu Sk. (acquitted) over plucking of mangoes from a mango tree. But the matter was settled by the villagers. After that incident Abu Wasey (P.W.2) along with informant (P.W.1) and some other villagers had gone to Nabagram and they were returning to their village at about 10:00 p.m. As they reached the Neem tree at the Dargatala of the village the six accused persons (the aforesaid two accused-respondents and other four acquitted) being armed with various weapons surrounded Abu Wasey (P.W.2) and accused Mongla @ Saidul Sk. (accused-respondent no.2) and Golam Murtuja (accused-

respondent no.1) brandished their pat-tangi aiming at the head of Abu Wasey (P.W.2) with the intention to kill him. Abu Wasey (P.W.2) had raised his two hands to prevent the strokes on his head and as a result the thumbs of his two hands were injured and his left thumb fell on the ground and the right thumb was almost separated from the palm. On hearing the shout of the informant and others many persons came there and the accused persons fled away. It was a moonlit night and in the light of the moon all the accused persons were clearly recognized. Abu Wasey (P.W.2), the victim was taken to Nabagram Hospital and therefrom he was referred to Berhampore Sadar Hospital. Wearing apparel of Abu Wasey (P.W.2) and his separated left thumb were handed over to the police at the time of lodging the F.I.R.

3. That the F.I.R. was lodged by Shermuj Sk. (P.W.1) who was accompanying Abu Wasey (P.W.2), the victim at the time of the occurrence and he lodged the F.I.R. on 04.06.1982 at about 11:35 p.m. (i.e. about 1 hour and a half after the occurrence) at Nabagram P.S. which is at a distance of about 3 kilometres from the place of occurrence. In the F.I.R. he narrated the occurrence in detail, specifically stating that both the aforesaid accused-respondents aimed at the head of Abu Wasey (P.W.2) with pat-tangi and Abu Wasey (P.W.2), in trying to ward off the attacks lost both of his thumbs. It may be mentioned herein that other 4 accused persons, namely Bakul Sk., Manu Sk., Sunu Sk. and Anwar Hossain have been acquitted by the learned Judge though all of them had been named in the F.I.R. and there is evidence by all the eye-witnesses that they also assaulted Abu Wasey (P.W.2) with lathis.

4. That on the basis of the said F.I.R. Nabagram P.S. Case No.2 dated 04.06.1982 was started and on completion of investigation Shri Kamallesh Chandra Paul (P.W.7), Investigating Officer, of the said case, submitted charge-sheet on 30.08.1982 against all the six accused persons named in the F.I.R. including the aforesaid accused-respondents for offences punishable under Sections 148/149/326/307 of the Indian Penal Code and the learned S.D.J.M,

Lalbagh, by order dated 21.11.1983 passed in G.R. Case No.405 of 1983, committed the case to the Court of the learned Sessions Judge, Murshidabad.

5. That the learned Sessions Judge, Murshidabad, by order no.5 dated 12.04.1984 passed in Sessions serial no.8 of 1984, transferred the case to the Court of the learned Additional Sessions Judge, 2nd Court, Berhampore, Murshidabad for disposal and ultimately the aforesaid accused-respondents along with the other 4 accused persons (who have been acquitted) were placed on trial before the aforesaid learned Judge on the charges punishable under Sections 148/326/34 and 307/34 of the Indian Penal Code.

6. That the prosecution examined 7 witnesses in support of the prosecution case amongst whom P.W.1 Shermuj Sk., P.W.2 Abu Wasey Mian, P.W.3 Md. Reja and P.W.4 Alauddin Sk. are the 4 eye-witnesses. P.W.5 Dr. Gopal Chandra Sarkar is the Medical Officer, Nabagram Primary Health Centre, who examined the victim on 04.06.1982 at about 11:20 p.m. (i.e. about 1 hour and a half after the occurrence). P.W.6 Subhas Adhikary was the Officer-in-Charge of Nabagram Police Station at the relevant time and he recorded the F.I.R. and endorsed the case for investigation to P.W.7 Kamalesh Chandra Paul, who is the Investigating Officer of the case.

7. That the defence did not adduce any evidence in support of the defence case though one Abdul Mahid was examined as D.W.1 at the time of consideration of the sentence on the aforesaid accused-respondents.

8. That the defence case, as can be gathered from the suggestions and the trend of cross-examinations is that the incident did not take place in the manner and at the place alleged by the prosecution and the accused persons have been falsely implicated out of political rivalry.

9. (a) P.W.1 Shermuj Sk. is the informant and an eye-witness to the occurrence. In his deposition he narrated the prosecution case in detail as stated above, specifically stating that the aforesaid accused-respondents namely Golam Murtuja and Saidul Sk. @ Mongla gave blow with their tangies

aiming at the head of Abu Wasey (P.W.2) and Abu Wasey (P.W.2) raised both of his hands to save himself and as a result, his left thumb was completely cut down and it fell on the ground and his right thumb was almost completely cut and it just hinged on his palm. He also deposed that the other 4 accused persons namely Bakul, Anwar, Manu and Sunu had also lathis in their hands and all of them assaulted Abu Wasey (P.W.2) with their lathis. He also proved the F.I.R. (Ext. 1) lodged by him and proved his signature on the F.I.R. which has been marked as Ext.1/1. He also identified all the six accused persons in Court and he also deposed that he was a witness to the seizure of the shirt, lungi and the left thumb of the victim under the seizure list prepared in his presence in which he put his signature. He also proved his signature in the seizure list which has been marked as Ext. 2/1. He also proved the cut thumb, punjabi, and the lungi of the victim Abu Wasey (P.W.2) which have been marked as material Exts. Nos. I, II and III respectively.

(b) P.W.2 Abu Wasey Mian is the victim who lost both of his thumbs in the aforesaid incident. He also stated that the accused Mongla and Murtuja aimed at his head with their pat-tangis and as he raised both of his hands to save himself the tangi blows came on his two hands and as a result his left thumb at once fell on the ground being cut by the blow of the pat-tangi and his right thumb was also cut and it just hinged at his palm. He also deposed that the other 4 accused persons placed on trial but acquitted also assaulted him by lathis. He also identified all the six accused persons including the aforesaid accused-respondents in Court. He denied the suggestion that they had attacked the house of the accused Anwar Hossain or that there was a fight. He also stated that he was in the Hospital for about 29 days.

(c) P.W.3 Md. Reja Mian was also accompanying the victim Abu Wasey at the time of occurrence and he is also an eye-witness. He corroborated the other eye-witnesses in all material particulars and he also identified all the accused

persons in Court and he also stated that the other 4 accused persons placed on trial but acquitted also assaulted Abu Wasey with their lathis in their hands.

(d) P.W.4 Alauddin Sk. was also accompanying the victim Abu Wasey at the time of the occurrence and he is also an eye-witness. He also corroborated the other three eye-witnesses in all material particulars and identified all the six accused persons including the aforesaid accused respondents in Court specifically stating that the other 4 accused persons (since acquitted) also assaulted the victim Abu Wasey with their lathis in their hands.

(e) P.W.5 Dr. Gopal Chandra Sarkar, was the Medical Officer, attached to Nabagram Public Health Centre at the relevant time. He deposed that on 04.06.1982 at about 11:20 p.m. he examined the victim Abu Wasey and found the following injuries:-

1) One cut wound on the right hand 5" x 4" x 1" cutting the muscles (thener and hypothener), cutting the thumb from palm. Only a portion was attached to the skin.

2) One cut wound on the left hand 5" x 4" x 1" cutting the thenar and hypothener muscles. The left thumb was completely detached from the hand.

He also deposed that the nature of the injury was grievous hurt by sharp-cutting hard weapon and the patient was referred to Berhampore New General Hospital for doing the needful. He also deposed that such injuries were possible by pat-tangi. He also tendered the injury report in the hand writing and signature of Dr. T. Sen, which has been marked as Ext.3 without objection.

(f) P.W.6 Subhas Adhikary was the Officer-in-Charge of Nabagram Police Station at the relevant time. He deposed that he recorded the F.I.R. lodged by P.W.1 Shermuj Sk. on 04.06.1982 at about 23:35 hours which has been marked as Ext. 1 and started Nabagram P.S. Case No.2 dated 04.06.1982. On the basis of the said F.I.R. and he endorsed the case to Sub-inspector, K. C. Paul (P.W.7) for investigation.

(g) P.W.7 Kamalesh Chandra Paul, is the Investigating Officer. He deposed that he seized one white terricot punjabi with blood-mark, one brown colour lungi with blood-mark and one cut thumb of left hand which was identified as that of the victim Abu Wasey under a seizure list in presence of witnesses which has been marked as Ext. 2. He also deposed that he seized some blood-smeared earth and some controlled earth from the place of occurrence under a seizure list on the Dargatala in presence of witnesses which has been marked as Ext. 5. He also stated that he examined the witnesses and recorded their statements under Section 161 of the Code of Criminal Procedure on the same day and on completion of Investigation submitted charge-sheet on 30.08.1982.

10. That in spite of the aforesaid facts, circumstances, materials and the evidence on record, the aforesaid learned Judge acquitted all the six accused persons placed on trial of all the charges framed against them though convicted the aforesaid accused-respondents on the charge punishable under Section 326/34 of the Indian Penal Code.

11. The judgment and order was passed by the learned Additional Sessions Judge, 2nd Court, Berhampore, Murshidabad, in Sessions Trial No.4 of September, 1984 (Sessions Serial No.8 of 1984) convicting the aforesaid accused-respondents on the charge punishable under Sections 326/34 of the Indian Penal Code and sentencing them to imprisonment till the rising of the Court and to pay a fine of Rs.1000/- (Rupees one thousand) each, in default to suffer rigorous imprisonment for 200 days each and further directing that the whole of the fine amount, if paid, be paid to Abu Wasey, the de facto complainant as compensation for the injury caused on him by the offence.

12. We have heard the learned Public Prosecutor who argues in favour of the appeal and points out some infirmities in the order of the learned Trial Judge.

13. We are, however, not convinced with the arguments advanced on behalf of the State by the learned Public Prosecutor and in view of the proposition laid

down by the Hon'ble Apex Court from time immemorial and recently in the case of Constable 907 Surendra Singh & Anr. Vs. State of Uttarakhand , reported in 2025 SCC Online, SC 176, we do not think there is any scope for interference by this Hon'ble Court as the impugned judgment and order seems to be justified and reasonable.

14. Accordingly, the appeal fails and is dismissed.

15. Copy of this judgment along with the trial court records, if any, shall be sent back to the trial court at once for necessary compliance.

16. Urgent Photostat certified copy of this order, if applied for, be supplied expeditiously after complying with all requisite legal formalities.

[Rajarshi Bharadwaj, J.]

I agree

[Apurba Sinha Ray, J]