

IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

RESERVED ON: 11.04.2025

DELIVERED ON: 07.05.2025

PRESENT:

THE HON'BLE MR. JUSTICE RAJARSHI BHARADWAJ

&

THE HON'BLE MR. JUSTICE REETOBROTO KUMAR MITRA

C.R.A. NO. 85 OF 1996

SANU KHAN

- VERSUS -

THE STATE

WITH

C.R.A. NO. 86 OF 1996

SAIDA KHATUN @ BIBI & ORS.

- VERSUS -

THE STATE

Appearance:

Ms. Pronoti Goswami, Adv.

..... for the Applicant

Mr. Debashis Roy, Ld. APP.

Ms. Zareen N Khatun , Adv.

Mr. Partha P. Das, Adv.

..... for the State



Reetobroto Kumar Mitra, J.:

1. Sanu Khan, Asgar Ali Khan, Saira Khatoon @Bibi, and Saida Khatoon @Bibi have been found guilty of the charges and sentenced by the learned Assistant Sessions Judge by an order of 14th March, 1996.
2. The accused persons, the appellant herein, Asgar Ali, Saida Khatun, Saira Khatun were charged under Sections 323 read with Section 34 of the Indian Penal Code (hereinafter IPC) while the other accused persons were charged under Sections 148/ 149(1)/ 448/149, 304 Part I/149, and 342 of the IPC. The accused persons had pleaded not guilty and claimed to be tried.
3. Sanu Khan hereinafter (Sanu) has been found guilty and convicted on the charge under Section 304 Part 1 IPC and has been sentenced to rigorous imprisonment for 10 years. Asgar Ali, Saira Bibi, and Saida Bibi have been found guilty and convicted on the charges under Sections 323 and 334 IPC. While Asgar Ali has been sentenced to simple imprisonment for one year and to pay a fine of Rs. 500/- in default , further simple imprisonment for three months, Saira Khatun and Saida Khatun have been sentenced to pay Rs. 500 each in default whereof they would serve simple imprisonment for three months each.
4. It is from the aforestated order of 14th March, 1996 that two appeals have been preferred, one by Sanu Khan and the other by Saida Khatun, Saira Khan, and Asgar Ali Khan. Both appeals have been taken up and heard together. The



facts giving rise to the crime said to have been committed by the accused are fairly simple.

5. On 16.08.1983 one Sattar Ali Khan, son of Abdul Khan, was tending to the paddy growing in his land when some goats proceeded to damage the crops. As a result, Sattar Ali Khan, who is also the de facto complainant, proceeded to impound the goats. The goats belonged to the accused Asgar Ali Khan, who immediately, along with his mother, sister-in-law, and wife, assaulted Sattar Ali Khan with fists and blows. This incident was cut short by the intervention of Sisir Kumar Hazari and Swapan Hazari, brothers, who are neighbours of Sattar as well as tillers of the adjacent land.
6. Sattar Ali Khan proceeded to leave the paddy field for his home when he was attacked a second time by Asgar, his mother, sister, and sister-in-law with lathi on his back, shoulders, and upper portion of his chest. On raising an alarm, Sisir and Swapan once again came to his rescue. Thereafter, Sattar left for his home.
7. Upon reaching home, at about 5 PM Asgar along with some other persons including Sanu rushed into Sattar's home. Sattar and his father objected to and opposed such intrusion, whereupon the accused Sanu and Asgar began to assault Abdul, kicking him on his belly and chest. Thereafter, Sattar rushed to the first floor of his house and took out his gun and fired a blank shot. On hearing the blank shot, the entire group led by Asgar left the house of Sattar. The inmates of the house of Sattar thereafter bolted the doors of the



house from inside. Asgar and the other persons accompanying him remained outside the house, threatening that they would murder Sattar and set fire to the house. As the situation was tense, Sattar could not reach out for any medical help required for his father, thereafter leading to the death of his father sometime between 7 PM and 7.30 PM caused due to the assault perpetrated on him by Asgar and Sanu.

8. It was only the following morning, i.e., on 17th August, 1983, Sattar was able to report the incident to the local police station (Ghatal) in writing.
9. The inquest was made by a Sub-Inspector of Police, Anil Krishna Guha, on 17th August, 1983. A post-mortem report of Abdul Khan was made on 17th August, 1983. Charges were framed against the accused under Sections 148/149(1)/448/149/304 Part I/ 149, and 342 of the Indian Penal Code on 9th November, 1995.
10. Shorn of details, the prosecution case may be summarised as under:-
 - a. On 16th August, 1983, at about 4 PM, some goats were damaging the paddy growing on the land of Sattar Ali Khan. The said Sattar Ali Khan caught those goats and was about to put them away from the boundary;
 - b. Asgar Ali, the owner of the said goats, along with his mother Saida Khatun, sister Saira Khatun, and sister-in-law Jaheda Bibi, attempted to take the goats away from the possession of Sattar Ali Kha and, in the



process, Asgar Ali assaulted Sattar. This assault was stopped on the intervention of Swapan and Sisir, who rescued Sattar from Asgar.

- c. According to Sattar, he was en route to his house, which could be accessed through the house of Asgar, and it is at this time while passing through their house that all (Asgar, Saida, Saira and Jaheda) assaulted Sattar with sticks on his shoulders and chest. Again, Sisir and Swapan came to the rescue of Sattar;
- d. At about 5 PM, Asgar along with certain other persons, including Sanu Khan, raided the house of Sattar, which, when opposed by Sattar and his father Abdul, drew severe assault from Sanu and Asgar particularly on Abdul. Feeling threatened and out of fear, Sattar rushed to the first floor of his house and took out his gun to fire a blank shot, which scared the assailants away outside the house of Sattar. Immediately, the inmates of the house bolted the doors of the house from inside;
- e. However, Asgar and the other accused continued to surround the house of Sattar, threatening severe consequences, including murder of Sattar and setting fire to the dwelling house. In view thereof, Sattar was unable to take his father to any medical establishment, resulting in his death between 7 PM and 7.30 PM on 16th August, 1983;



- f. It was only on 17th August, 1983, at about 6 AM, that Sattar was able to make a written complaint with Ghatal Police Station.
11. It is in these aforesaid facts and circumstances that the prosecution has led oral evidence of 10 witnesses: PW1 being Sattar Ali Khan, PW2 Sisir Hazari, PW3 Swapan Hazari, PW4 Pair Mahamad Khan, PW5 Afzal Ali Khan, PW6 Prafulla Bangal, PW7 Aslema Khatun, PW8 Surma Khatun, PW9 Swapan Das, and PW10 Dr. Tapan Das. All such witnesses were cross examined by the defence.
12. The defence examined all the accused but did not lead evidence of any other witness.
13. The entire string of events may be collated into three incidents: First, the incident at the paddy field resulting in Asgar and some of his family members seeking to take back the goats from Sattar and Asgar assaulting Sattar.
- Second, is the assault by Asgar, Saida Khatun, Saira Khatun, and Jaheda Bibi on Sattar.
- Third, is the assault by Samu, Asgar and other accused at the residence of Sattar at about 5 PM.
14. We have heard the counsel for both parties and considered the evidence on record in great detail. The examination of the 10 witnesses, tendered by the prosecution is clear and unequivocal on the following issues:-



A - Three incidents had taken place on 16th of August, 1983 which may be summarized as under.

- I - A scuffle broke out at about 4 PM when de facto complainant was in the process of hounding some goats, which were damaging the paddy crops on his land. These goats belonged to Asgar, one of the accused. Asgar Ali, Saida Khatun, Saira Khatun and Jaheda Bibi (since deceased) attempted to save the goats and in the process ended up assaulting the de facto complainant, Sattar. The scuffle was broken by the timely intervention of Swapan Hazari and Sisir Hazari, neighbours of Sattar.
- II - After the first incident as aforesated, the de facto complainant (Sattar) was approaching his house, the route whereof, passes through the residence of Asgar. While he was approaching his house, he was again assaulted by the accused Asgar, Saida Khatun, Saira Khatun and Jaheda Bibi with lathis, from which he sustained injuries on both sides of his shoulders and upper portion of his chest. This assault was also stopped due to the intervention of Swapan and Sisir.
- III - The 3rd incident occurred inside the house of Sattar at about 5 PM when the accused led by Asgar Ali and Sanu Khan assaulted the father of Sattar, who succumbed to his injuries between 7 PM and 7.30 PM.



15. PW1 Sattar is the only eye witness of all three incidents as aforesaid. Sattar has clearly, in his evidence, showcased the three separate incidents of assault by Asgar and Sanu.
16. PW2 Sisir Hazari is an eye witness to the first instance at the paddy field as well as the second incident while Sattar was going back home. He is not an eye witness to the third incident, which occurred in the house of Sattar, but has clearly deposed that he had heard the sound of a gunshot from his house, whereupon he had raised the alarm. He has also deposed, quite clearly, that he had found Sanu, Asgar, Ansar, Saida, Sahad, Jaheda, Sahid, and Saira in front of the house of Sattar. He has also stated that around 8 PM, he heard that the father of Sattar had expired due to the assault by the accused persons.
17. PW3 Swapan Hazari, again, an eye witness of the first and second incident, has unequivocally deposed to the same. In fact, he has also stated that upon hearing the gunshot from the house of Sattar, he had rushed to the house and found that the house of Sattar had been gharaoed by about 15 to 16 people threatening to set the house on fire. It was on the next morning at about 4 AM that he had heard cries from the house of Sattar. He has also categorically stated that he had seen persons surrounding (gharaoing) the house of Sattar. He positively stated that he had heard of the assault by the accused on Abdul from Sattar. He also stated that he heard from Sattar that Sanu had severely assaulted his father, as a result injured his (Sattar's) father expired between 7 PM and 7.30 PM.



18. PW4 is the brother-in-law of Sattar. Though he was not present during any of the incidents, he deposed that the police authorities had gone to the residence of Sattar on 17th August, 1983, at about 9.30 AM and inquested the body of his father-in-law. He is also a signatory to the inquest report, which has been marked as an exhibit. The seizure list, Exhibit 2A, has also been signed by him as a witness, showing that the rifle of Sattar had been seized by the police authorities.
19. PW5, Afzal Ali Khan, is the nephew of Sattar, and deceased Abdul Khan is his maternal grandfather. He is not an eye witness to any of the incidents but is a signatory to the inquest report.
20. PW6 Prafulla Bangal was declared a hostile witness, having made certain incorrect statements about the time of death of Abdul Khan.
21. PW7 Aslema Khatun is the wife of Sattar. She is an eye witness to the 3rd incident. She has unequivocally deposed that Sanu Khan assaulted Abdul Khan, her father-in-law, on his chest and belly with force and that her husband Sattar had rushed to the first floor and fired a blank shot. She has also stated that none of the villagers came to their house on the night of the incident and that no relatives had come to their rescue, and any narration in respect thereto is incorrect.
22. PW8 Surma Khatun is the daughter of Sattar. She is also an eye witness to the 3rd incident. She has also clearly deposed that Sanu had assaulted Abdul Khan



with kicks on his belly and chest , and that her father had rushed to the first floor to retrieve his gun, from which he had fired a blank shot. She has reiterated that she had made the same statement regarding the assault by Sanu Khan on Abdul Khan to the police authorities. She has also stated that none of the neighbours had come to their rescue till dawn.

23. PW9, Swapan Das, the investigating officer, Inspector of Police attached to DIB, Bankura, on the date of evidence, was the Inspector at the material point of time and had been posted at Ghatal Police Station. He has corroborated that Sattar had come on 17th August, 1983, at 6 AM and filed a complaint with him of the death of his father due to the assault made by the accused. He has also deposed that he had instructed and directed Sub-Inspector AK Guha to hold the inquest of the dead body, who had also seized one double-barrel gun and one fired cartridge. The seizure list and the inquest report had been prepared by AK Guha under the direction of PW9, as deposed by him. He has, however, stated that none of the persons (PW3, PW4, PW5) stated before him that Sanu had assaulted the deceased, Abdul Khan.

24. PW10 is an Assistant Professor of Medicine attached to Medical College, Calcutta, Dr. Tapas Das. The said witness has deposed that he had examined Sattar Ali on 17th August, 1983, and upon examination, he found multiple abrasions noted behind his left shoulder, and also on his right shoulder and right side of the back of the chest.



25. The accused Sanu Khan, Asgar Ali Khan, Saira Bibi, and Saida Bibi had all been examined, and except for stating that all incidents as alleged in the charge sheet were false, none of them adduced any further evidence nor produced any other witness to corroborate their stand or to negate the stand of the witnesses presented by the prosecution.
26. These three incidents have not been denied by any of the accused while deposing in the course of their oral evidence. The accused have merely stated in one line, upon being asked that these incidents are false or that they have no knowledge. None of the accused have given any version of what was the actual incident, if at all.
27. The examination by the counsel for the accused persons and examination of the accused persons under Section 313 of the Code of Criminal Procedure of 1973 (hereinafter CrPC), was on a simple defence that they were all innocent and they were not part of the assault of the father of the de facto complainant and have been falsely implicated in the case. However, no alternatives were provided in the examination of the accused as to their whereabouts at the material time, when the incident and particularly the 3rd incident in which, the father of the de facto complainant expired.
28. The accused in their examination have also stated that these incidents are false. They have not however accounted as to what was the true incident.



29. The evidence of the accused is bare, evasive and cannot in any way raise any doubt on the ocular evidence led PW1, PW2 and PW3 of the 1st incident, PW1, PW2 and PW3 of the 2nd incident and PW1, PW7 and PW8 of the 3rd incident of the prosecution.
30. The evidence of PW 9 Swapan Das, Sub-Inspector of Police, corroborates the fact that the incident had occurred and indeed Sattar had received multiple abrasion injuries on both his left and right shoulders as well as on the right side of the chest. The injury report had been duly exhibited as Exhibit 5 as well as in FIR as Exhibit 1/a. The inquest report and seizure list had also been duly exhibited as Exhibit 3 C and 2 C respectively. The evidence of PW 9 regarding the injury on Sattar has also been corroborated by the evidence of PW10 Dr. Tapas Das who had examined Sattar on 17th August, 1983, clearly stating that he had been assaulted with a bamboo stick which had resulted in his injuries.
31. The prosecution has without an iota of doubt and beyond all reasonable doubt clearly established that the accused persons, Asgar, Saida Khatun, Saira Khatun and Jaheda Bibi have been involved in the second incident causing severe injuries to Sattar.
32. In so far as the 3rd incident is concerned, the prosecution has again proved beyond all reasonable doubt that all accused persons had forcefully entered into the residence of Sattar, with the common object of committing unlawful assembly and to commit culpable homicide not amounting to murder, which is evidenced from the deposition of PWs 1, 7 and 8. The assault on Abdul Khan,

Sattar's father, was witnessed by PWs 1 and 8 and the tenor of the injury will appear from the post-mortem report which was exhibited and marked as Exhibit-4. The post-mortem report clearly stated that there was hemorrhage in the left side of the chest and fresh blood was coming from both sides of the chest. The left lung was ruptured in the middle with free blood in the area. The hemorrhage was also discernible all over the surface of the left kidney, and the left side rib was also fractured.

33. Counsel for the appellant on this issue had raised an arguable case that the doctor, who had conducted the post-mortem had not been examined and therefore the post-mortem report could not be relied upon.
34. This issue has been duly addressed by the learned Trial Judge, inasmuch as the post-mortem report had already been marked as Exhibit (Exhibit 4) under Section 294 of the CrPC which clearly states that when a document is filed before the Court by the prosecution or the accused, the particulars of such document shall be included in a list and the other party shall be called upon to admit or deny the content of such document. The document was exhibited without any objection, and has been marked as an exhibit. The question of the genuineness of such document cannot be disputed now in appeal, particularly when the same had not been disputed at the time of admission and denial of such document. Indeed, the document had been admitted on consent of parties and rightly treated as a part of the evidence as an exhibit.



35. Appellant relied on a decision of the Hon'ble Supreme Court reported in **1997 SCC CRI 857**, paragraph 19 in which the post-mortem was held to be entertained as a piece of documentary evidence. The said decision dissuade the reliance on of the post-mortem report, since it was exhibited on the basis of the testimony of a clerk, in spite of the legitimate objection raised by the defence. In the present case, the post-mortem report has been exhibited on consent. The appellant (accused) have themselves given such consent relied on the same was exhibited. Thus, the said decision of the Hon'ble Apex Court is of no assistance to the appellants to further their case.
36. The presence of the accused in the place of occurrence (P.O.), of the incidents could really not have been disputed and the incidents have been admitted by the accused themselves. This will appear from the Exhibit 7, which is a written complaint, made by the accused Asgar on the self same cause of action relating to the first and the second incident. Interestingly, it transpires from Exhibit 7 that one of the accused Saira had appeared during the first incident at 4 PM, as stated by the prosecution. The presence of Sisir has also been admitted in the written complaint of Asgar, Exhibit 7. The presence of at least Sisir is thereby admitted by Asgar in his complaint.
37. Sisir and Swapan in their evidence have unequivocally admitted that they had both seen the accused persons Asgar, Saida Khatun, Saira Khatun and Jaheda Bibi assaulting Sattar in the first and the second incident. The evidence of PWs 2 and 3, Sisir and Swapan are also extremely material as they can be considered



as independent witnesses, neither involved nor related in this case. Merely because they share the source of water with Sattar cannot in any manner belie or deprecate the probative value of their evidence. The evidence of PWs 9 and 10 regarding the second incident, in which Sattar had suffered injuries is also extremely important, they can also be construed as independent witnesses. Exhibit 5 along with these two witnesses are a clear indication that the prosecution has been able to establish their case of injury inflicted on Sattar by persons Asgar, Saida Khatun, Saira Khatun and Jaheda Bibi with lathis on the chest and shoulders of Sattar. The 3rd incident which resulted in the death of Abdul Khan between 7 to 7.30 PM has been related clearly by PWs 1, 7 and 8, all of whom are witnesses, which started at about 5 PM in the residential house of the de facto complainant of Sattar. The evidence of the aforesaid prosecution witnesses clearly established the fact that the accused persons and especially Sanu Khan had assaulted Abdul with his fists, and kicks on the chest and belly. It was pursuant to such assault that Abdul Khan finally succumbed to his injuries between 7 to 7.30 PM.

38. The Apex Court in *Makhan Singh v. State of Haryana* reported in (2015) 12 SCC 247, specifically observed that the testimony of independent witnesses cannot be overlooked even if the testimony of the official witnesses inspires confidence. Therefore, applying the law laid down by the Supreme Court to the instant case, this Court is of the considered view that the prosecution's case was significantly bolstered by the testimonies of independent witnesses, notably PWs

2 and 3, who were neither related to the victim nor had any apparent motive to falsely implicate the accused.

39. The medical evidence furnished by PW10 Dr. Tapas Das, who examined Sattar on the 17th of August, 1983, is clear and unambiguous. The doctor noted that the injuries were caused by a blunt object, specifically a bamboo stick, and that the nature of the injuries indicated a deliberate and forceful assault. His medical opinion, coupled with the injuries recorded, aligns with the accounts of the prosecution witnesses and leaves little room for speculation. The Court places significant reliance on medical evidence in criminal trials as it provides an objective corroboration to the oral testimonies.
40. This Court further finds that the second incident, wherein severe injuries were inflicted on Sattar, has been proved beyond reasonable doubt. The prosecution has clearly established the involvement of Asgar Ali Khan, Saida Khatun, Saira Khatun and Jahed Bibi in the said incident. Their participation in the attack is corroborated not just by ocular witness accounts but also by the chain of documentary and medical evidence. The injuries inflicted were not superficial but severe, and the use of weapons such as bamboo sticks demonstrates a premeditated intention to cause bodily harm.
41. In relation to the third incident, which led to the demise of one Abdul Khan, the father of the de facto complainant, this Court finds that the prosecution has also succeeded in proving the involvement of the accused beyond all reasonable doubt. The evidence shows that the accused persons unlawfully entered into the

residence of Sattar with a common object of constituting an unlawful assembly to commit culpable homicide not amounting to murder. The intention and common object of the accused can be inferred from the violent nature of the assault and the fact that multiple persons acted in concert.

42. The post-mortem report of Abdul Khan, which has been marked as Exhibit 4, reveals the gravity of the injuries sustained. It details haemorrhage on the left side, among other critical injuries, which were consistent with those caused by repeated blows with a blunt weapon. The deposition of PWS 1 and 8, who witnessed the assault, provides a clear picture of the events that transpired on that fateful day. The consistency between the oral evidence, documentary exhibits and medical findings create a chain of evidence that is complete and credible.
43. In criminal jurisprudence, it is well established that the prosecution must prove its case beyond reasonable doubt. However, this does not mean that the prosecution must prove its case with absolute certainty or eliminate every possibility of innocence. The standard is that of a prudent man, and in this case, all evidence such as oral, documentary and medical point unerringly toward the guilt of the accused. The defence has failed to dislodge this presumption or create any dent in the prosecution's narrative.
44. The conduct of the accused post-incident, their silence during examination, their evasive denials and the lack of an alternate theory or evidence all contribute to the inference of guilt. The cumulative effect of the testimonies, the

injuries documented and the post-mortem findings is that the accused were indeed part of a series of criminal acts, culminating in a fatal assault.

45. In ***Munna Kumar Upadhyay @ Munna Upadhyaya v. State of Andhra Pradesh*** reported in ***(2012) 6 SCC 174*** it was held by the Supreme Court that if the accused gave incorrect or false answers during the course of his statement Under Section 313 Code of Criminal Procedure, the Court can draw an adverse inference against him. In para 76 of the report, the Supreme Court observed as under:

"76. If the Accused gave incorrect or false answers during the course of his statement Under Section 313 Code of Criminal Procedure, the court can draw an adverse inference against him. In the present case, we are of the considered opinion that the Accused has not only failed to explain his conduct, in the manner in which every person of normal prudence would be expected to explain...the Court not only draws an adverse inference, but such conduct of the Accused would also tilt the case in favour of the prosecution."

46. The Hon'ble Supreme Court recently in ***Indrakunwar v. State of Chhattisgarh*** reported in ***2023 SCC Online SC 1364*** on consideration of various judgments summarized the principles in paragraph 35 with regard to the evidentiary value of a statement under Section 313 of CrPC as under:

"35. A perusal of various judgments rendered by this Court reveals the following principles, as evolved over time when considering such statements."

35.1 The object, evident from the Section itself, is to enable the accused to themselves explain any circumstances appearing in the evidence against them....

...35.7 This statement cannot form the sole basis of conviction and is neither a substantive nor a substitute piece of evidence. It does not discharge but reduces the prosecution's burden of leading evidence to prove its case. They are to be used to examine the veracity of the prosecution's case...

...35.9 Such a statement, as not on oath, does not qualify as a piece of evidence under Section 3 of the Indian Evidence Act, 1872; however, the inculpatory aspect as may be borne from the statement may be used to lend credence to the case of the prosecution."

47. In view of the aforesaid findings and having regard to the settled principles of criminal law, this Court holds the accused persons herein the appellants, guilty of the offences charged. The prosecution has not only discharged the burden cast upon it but has done so in a manner that satisfies judicial scrutiny on all fronts. The evidence adduced has been found to be coherent and reliable. The defence, on the other hand, has been speculative and unsubstantiated.

48. For the foregoing reasons, the criminal appeals stand dismissed. The convictions and sentences awarded by the Court of the Assistant Sessions Judge, Midnapore are upheld. The convicts are directed to surrender before the Trial Court forthwith for serving the remainder of their sentence, if on bail.



49. Copy of the judgement along with Lower Court Records shall be sent back to the trial court at once for necessary compliance.
50. Urgent Photostat certified copy of this order, if applied for, be supplied expeditiously after complying with all requisite legal formalities.

(Rajarshi Bharadwaj, J.)

(Reetobroto Kumar Mitra, J.)