

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

Present:

The Hon'ble **Justice Prasenjit Biswas**

CRA 76 Of 2016

Sukumar Das @ Felu & Ors.

-Versus-

The State of West Bengal

For the Appellant : **Mr. Avijeet Adhya,
Mr. Biksah Chowdhury.**

For the State : **Mr. P.K. Datta, Ld. A.P.P.,
Mr. Santanu Deb Roy.**

Hearing concluded on : **19.06.2025**

Delivered on : **21.08.2025**

Prasenjit Biswas, J:-

1. This appeal is filed at the behest of the appellants/convicts challenging the impugned judgment and order of conviction passed

by the learned Additional Sessions Judge, Fast Track Court III, Howrah in connection with S.T. Case No. 147/12 (Salimar G.R.P.S. Case No. 24/10 dated 27.10.2010)

2. By passing the impugned judgment and order these appellants were found guilty by the learned Trial Court under Section 324/34 of IPC and they were sentenced to suffer imprisonment for a term of 2 years and each of the convicts to pay a fine of Rs. 5,000/-, in default to suffer further R.I. for 3 months.

3. Being aggrieved and dissatisfied with the said impugned judgment and order of conviction the present appeal is filed by the appellants/ convicts.

4. In short campus, the story of the prosecution is narrated herein below:-

“A complaint was lodged by Kartick Bhattacharjee, de-facto complainant stating interalia that on 27.07.2010 at about 14:15 Hours the accused persons namely Sukumar Das @ Felu, Sk Sanjoy, Sk Israil, Sumit Das and 2-3 other persons entered into the office of the complainant in New Composite Grid and pulled out pipes guns from waist and pointed on the

head of the complainant and threatened him to murder. The de-facto complainant resisted the acts of the accused persons and as a result scuffle took place. The accused Sukumar Das hit on the head of the defacto complainant with another pipe gun and as a result he sustained bleeding injury. Thereafter the accused persons fled away from the spot. It is stated in the written complaint that one of the accused persons, namely Sukumar Das was dismissed from service of Ureka Fobes for creating nuisance at site one year back and thereafter the relatives and associates of the said Sukumar Das had given threats to this defacto complainant. The victim/defacto complainant was taken to hospital for treatment. Over the complaint lodged by this P.S. this criminal case was started”.

- 5.** After completion of the investigation police submitted charge sheet against the accused persons under Section 325/307 of IPC and 25/27/35 of the Arms Act.
- 6.** Charge was framed by the Trial Court under Section 307/325/34 of IPC against all the accused persons which were

read over and explained to them and the accused persons pleaded not guilty and claimed to be tried.

7. In this case 8 witnesses were cited by the side of the prosecution and documents were marked as exhibits in this case. Neither any oral nor any documentary evidence was adduced by the side of the defence.

8. Mr. Avijeet Adhya, learned Advocate appeared on behalf of the appellant said that there are contradictions and omissions in the statement of the witnesses of the prosecution and no case was made under the Section for which these appellants were convicted by the Trial Court. Mr. Adhya, learned Advocate further said that the place of occurrence is under protected area of railway police and there were constant vigils and as such it is quite impossible for a person to enter into that protected area armed with weapons but the said fact has not been considered by the Trial Court. It is said that it would be revealed from the evidences of the witnesses in respect of rivalry/enmity between the appellants and the complainant and one of the appellants was working under the complainant and he was dismissed from service. So, it is said by

the learned Advocate that the seizure of bullets/cartridges as stated by the witnesses is totally false. Moreover, this bullet does not bear any signature. It is said that PW5 did not find any bullet. Moreover, that PW5 did not give the names of the accused persons and only said that some of the labours assaulted the victim and he signed the document on instruction of police.

9. Mr. Adhya further said the seized blood stained cloth was not produced before the Trial Court in connection with this case. The attention of this Court is drawn by Mr. Adhya to the contradiction of the statements of the witnesses no. PW2 and PW8. It is said by the defacto complainant that the accused Sukumar Das hit on his head with another pipe gun but the said pipe gun was not seized by the investigating officer and not produced before the Court. So, it is said that the prosecution has hopelessly failed to bring home the charge framed against these accused persons under Section 324/34 of IPC and as such the impugned judgment and order of conviction passed by the learned Trial Court may be set aside.

10. Mr. P.K. Datta, Ld. A.P.P. appearing for the State submits that there is nothing in the record for which the impugned

judgment and order passed by the learned Trial Court may be interfered with. It is said by the ld. A.P.P. that all the witnesses cited by the prosecution corroborated the statements made in the written complaint as well as the statements made by PW1/defacto complainant. As per submission of the learned Advocate that it would appear from the evidences of PW4 and PW6, the doctors who treated the victim and issued injury report indicated that this victim sustained injuries on his person and definitely it was caused by the hit by the appellant/convict Sukumar Das.

11. It is contended by the learned Advocate that other accused persons were also present at the place of occurrence and caught hold the victim. So, the conviction passed by the learned Trial Court under Sections 324/34 of IPC is proper and justified. The attention of this Court is further drawn by the learned Advocate to the evidence of PW4, Dr. Ashim Kr. Chowdhury wherein he stated that on examination of the victim he found cut mark on left parital region measuring about one and half inch. It is said by the learned Advocate that PW6 Dr. Gautam Kumar Kundu, another doctor who provided medical treatment to the victim for his injury and advised

him for C.T. Scan of brain. It is stated that all the evidences made by the witnesses to the prosecution proved that these appellants/convicts assaulted the victim and as a result he sustained injury on his person and were admitted in the hospital for treatment. As per submission of the learned Advocate there is nothing on the record for which the evidence of the prosecution can be disbelieved. So, it is said that the present appeal challenging the impugned judgment and order of conviction passed by the learned Trial Court is devoid of any merit and may be dismissed and the impugned judgment and order of conviction passed by the learned Trial Court may be affirmed.

12. I have considered the rival submissions advanced by both the parties. Perused all the materials on record.

13. The instant case was started on the strength of a complaint lodged by the defacto complainant that on the relevant date and time all the accused persons entered into his office and pulled out one pipe gun from waist and pointed on his head and threatened him for dire consequence. The appellant/convict Sukumar Das hit on the head of the defacto complainant by another pipe gun for

which he sustained bleeding injury and admitted in the hospital for treatment. The charge was framed by the Trial Court under Section 307/325/34 of IPC but after appreciation of evidences brought on record and after going through the exhibited documents, the Trial Court held that these accused persons are guilty for committing of the offence punishable under Section 324/34 IPC and accordingly they were sentenced to suffer imprisonment for a term of 2 years along with a fine.

14. PW1 Kartik Bhattacharyya, defacto complainant has stated in his evidence that the accused Sukumar Das pointed a pistol on his head and when he caught his hand with his hand then the victim took out another pistol from waist and started assaulting him with the butt of the pistol on his head. But in the written complaint it is said that the accused persons pulled out pipe guns from waist and he was hit by the accused Sukumar Das on his head by another pipe gun butt. So as per statement of PW1 that the accused Sukumar Das hit on his head with a butt of a pistol but not on a pipe gun. In cross examination this PW1 stated that the cartridges which were produced before the Court did not contain attached

label on it. This PW1 further said on cross examination that the accused Sukumar Das had voluntarily resigned from the service but in written complaint this defacto complainant stated that Sukumar Das was dismissed from service from Ureka Fobes for creating severe nuisance at site almost one year back. As per statement of PW1 there were no security guards in their office but the said office is situated in the railway complex within the protected area. It is said by this witness that he did not find any blood stain cloth as well as the pipe gun by which as per his statement the accused Sukumar Das allegedly hit on his head. This witness has stated that his office is situated in the protected area and no one can enter into the protected area with the arms in their hands. The complaint was lodged after causing delay of 3 hours when the police station is located within a few fit away from the place of occurrence and moreover within the same complex but the delay in lodging the complaint has not been explained by the defacto complainant. This statement gets corroboration from the evidence of PW7 Subhas Jana who stated that Santragachi GRPP is situated on the platform No. 1 at the Santragachi railway station

besides booking counter. PW4 and PW6 who treated the victim (PW1) did not state the names before those doctors that who assaulted/hit him.

15. PW2 Swapan Dey, an employee of the defacto complainant has stated in his evidence that the accused persons came to their office and started abusing the victim in filthy language and also threatened for dire consequence for taking laborers in his company. It is said by this witness that the police came and seized those two bullets and blood stained cloths from their office by preparing seizure list in presence of him and other witnesses. This PW2 stated that he was not examined by the police. So, it is for the first time he made this statement before the Court. In cross examination this PW2 said that he did not hand over any document to the investigating officer to show that at the relevant point of time he was working in railway under the Ureka Fobes Company. It is further said by this witness that about 200 workers used to work in the railway at the relevant time. So, it is quite natural that if any hue and cry was started that some of the persons from about 200 workers must reach to the spot. This witness failed to say that how

many persons were gathered out of their office room at the time of alleged incident. It is said by this witness that on asking by the police he signed on a paper.

16. PW5 Subhankar Dey is another employee of the defacto complainant. This PW5 stated that he saw the victim (PW1) in injured condition with stain of blood and PW1 told him that some labourers caused assault to PW1 but PW1 did not supply the names of the labourers to him. So, this witness is not the witness to the incident whatever he heard it is told by PW1 to him. PW5 further said that he signed on a document i.e. seizure list at the instruction of the police. In cross examination PW 5 stated that police asked him to sign on that document at hospital. This PW1 said that he was unable to say how the victim (PW1) sustained injury as he did not witness the incident by his own.

17. PW4 Dr. Ashim Kr. Chowdhury, the doctor who treated the victim at first has stated in his evidence that the victim did not state before him about the history of assault and if it had been stated by the victim he would have certainly recorded such fact in

the injury report. It is said by PW4 that this type of injury may cause if someone knocked with hard substance with his head.

18. PW6 Dr. Gautam Kr. Kundu before whom PW1/victim was visited after going to his residence and he treated the victim for two days consecutively. This PW6 also stated in the same line of PW4, the other doctor that the history of injury was not mentioned in the prescription as the patient himself did not state about such injury. It is opined by PW6 that scalp injury may cause if someone confronted with some hard substance by head.

19. PW7 Subhas Jana, S.I. of police has stated that on the relevant date at about 4:45 pm he received a written complaint from PW1/victim and after receiving the said complaint he sent the same to the Shalimar GRPS making endorsement on it. This witness only said that Shalimar GRPS is situated on the platform no. 1 of the Santragachi Railway Station beside booking counter.

20. PW8 Ranjit Ghosh S.I. of police and I.O. of the case stated that he seized two empty cartridge of bullet and one blood stained white shirt from the place of occurrence under the seizure list. On cross-examination this witness said that there is no special mark of

identification on the seized empty cartridge and there is no label on the seized shirt.

21. PW8 further said that there was dispute between the accused persons and the management of Ureka Fobes Company. Although, it is said by the witness that the police seized cartridge in connection with this case but there is no identification mark on the seized cartridge but in fact that every cartridge bears number. The investigating officer said that he seized one white piece of cloth stained with blood under seizure list but he did not mention in his seizure list that said piece of cloth was a portion of a shirt and any wearing apparel of the victim.

22. PW4, first doctor who examined and treated the victim found that there was cut injury on left parital region measuring about one and half inch but in cross examination this doctor said that such type of injury may be sustained if he knocked with hard substance. PW1 defacto complainant stated that the place of occurrence is within the protected area under the railways inside the Santragachi Railway Police Station. So, entry of any person in the protected area with arms is highly suspicious. Moreover, when the police station is

located within the same complex then how the delay of 3 hours of lodging FIR was occurred. PW7 stated that the police station was within platform no 1. PW5 stated that PW1/victim did not supply the names of the laborers who assaulted him (victim). In fact this PW5 was not present on the spot and it is candidly admitted by the witness that he could not say how the victim sustained injury. Either pipe gun or pistol was not seized by the investigating officer. There is no statement by any of the witnesses that how the cartridges were found at the place of occurrence because it is not the case that there was an incident of firing which took place.

23. In view of above facts and circumstances and discussion made above I am of the opinion that the impugned judgment and order passed by the learned Trial Court is on the basis of surmise and conjecture which is not sustainable under the provision of law.

24. Accordingly, the instant appeal be and the same is hereby **allowed.**

25. The impugned judgment and order of conviction passed by the learned Additional Sessions Judge, Fast Track Court III,

Howrah in connection with S.T. Case No. 147/12 (Salimar G.R.P.S. Case No. 24/10 dated 27.10.2010) is hereby set aside.

26. The appellants are on bail. He is to be discharged from their respective bail bonds and be set at liberty if he is not wanted in connection with any other case.

27. 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.

28. Let a copy of this order along with TCR be sent down to the Trial Court immediately.

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

(Prasenjit Biswas, J.)