

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

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

CRA (DB) 78 of 2022

**The State of West Bengal through the Learned Public Prosecutor, High
Court, Calcutta.**

vs.

Bhatu Sk & Ors.

For the Appellant : Mr. Rana Mukherjee, Ld. A.P.P.
Ms. Suveni Banerjee, Advocate

For the
Accused Respondents : Mr. Prabir Majumder, Advocate
Mr. Snehanshu Majumder, Advocate
Mr. Debraj Shil, Advocate

Heard on : 08.04.2025

Judgment on : 08.04.2025

Md. Shabbar Rashidi, J.:-

1. Appeal is at the behest of the State of West Bengal seeking enhancement of sentence directed against judgment and order of conviction dated June 17, 2019.
2. By the impugned judgment, the learned trial Court convicted the accused Bhatu Sk and Motor Sk. @ Motar Sk under Sections 448/324

of the Indian Penal Code. Learned trial Court, however, did not proceed to sentence the convict and release them on probation of good conduct in terms of Section 4(1) and (3) of the Probation of Offenders Act read with Section 360 of the Criminal Procedure Code.

3. There was an altercation between the family members of the complaining party as well as the accused on February 26, 2016 over breaking of fencing. Later on, the accused persons being armed with sharp cutting weapons attacked the house of the complainant and assaulted the complainant and others causing bleeding injuries. It has also been stated in the written complaint that, the injured persons fell unconscious and were taken to hospital for medical treatment.
4. Defacto complainant Manju Khatun lodged a written complaint with regard to the incident of February 26, 2016. On the basis of such written complaint Kaliganj Police Station Case No. 133 of 2016 dated February 26, 2016 was started against the eight accused persons. Police took up investigation and on completion of investigation submitted charge sheet.
5. On the basis of the materials in the Case Diary, learned trial Court proceeded to frame charges against seven accused persons on May 20, 2017 under Sections 448/326/307/34 of the Indian Penal Code.

6. In order to bring home charge leveled against the accused persons, prosecution examined 12 witnesses. In addition the prosecution also relied upon certain documentary evidences.
7. The de facto complainant herself, deposed as P.W.1. She stated her case as made out in the written complaint. She stated that, on February 26, 2016 at about 1 p.m. an altercation took place concerning parental property situated by the bank of the pond, where she cultivated vegetables. On the said date, accused persons started breaking the fencing of the said land. The de facto complainant raised a protest where upon accused persons fled away. Later on, the accused persons being armed with sharp cutting weapons attacked the house of the de facto complainant. They assaulted the de facto complainant and her sister. They also tried to take away her sister of the de facto complainant. They also attacked the brothers of the de facto complainant. The injured persons fell unconscious and were moved to Primary Health Centre for medical treatment. She proved her signature on the written complaint which was scribed at her instruction.
8. One brother of the de facto complainant deposed as P.W.2. He has supported the deposition of the P.W.1. He also stated that, on February 26, 2016 at about 1 p.m. a quarrel took place in between his family and the accused persons over breaking of a fence in their land. Thereafter, the accused persons came back to the house of the de facto complainant

being armed with sharp cutting weapons and assaulted them. He further stated that, three of the complainant party were assaulted on heads and had to be removed to Debagram Primary Health Centre for medical treatment.

9. Another brother of the de facto complainant deposed as P.W.3. He has also testified the statement of P.W.1. He also stated that, on February 26, 2016 at 1 p.m., there was quarrel between his family and the accused persons over removing of fencing on their land. Thereafter, the accused persons being armed with sharp cutting weapons attacked the house of the de facto complainant and assaulted the de facto complainant, P.W.2 and P.W.3. They were taken into the hospital for medical treatment being injured.
10. Sister of the de facto complainant deposed as P.W.4. She has stated that, the accused persons were breaking fence of her land situated by the side of the pond. Her elder sister raised protest, whereupon she was assaulted. She, however, managed to flee away. After sometimes, the accused persons being armed with sharp cutting weapons came to her house and assaulted her brother Sahabuddin over his head. Her another brother Rukubuddin was also assaulted. P.W.4 was assaulted. All of them had to be taken to hospital for medical treatment having bleeding injuries.

11. The mother of the de facto complainant deposed as P.W.5. She stated that, the incident occurred over Sahabuddin, Rukubuddin. Her two sons came back to the house, at that time, the accused persons inflicted sharp cutting injury being instigated by the Dolu. She further stated that, her two sons and daughters sustained bleeding injuries and fell down. They were taken to hospital wherefrom they were referred to Krishnagar Hospital.
12. A co-villager deposed as P.W.6. He stated that, at about 1 p.m. he heard hue and cry and went to the house of the de facto complainant, where he found Rukubuddin Sk., Sahabuddin Sk., and Dali Bibi lying with bleeding injuries. He, however, hearsay evidence with regard to the assault.
13. Another co-villager deposed as P.W.7. He stated that while returning to the house from the market, he saw the brothers and sister of P.W.1 lying on the ground with bleeding injuries on their heads. He also claimed to have heard about the incident. The witness was declared hostile by the prosecution and he denied having stated before police that he took the injured persons to the hospital.
14. The scribe deposed as P.W.8. He stated that, he scribed the written complaint as per instruction of P.W.1. He proved the written complaint.

15. P.W.9 is another co-villager. He stated that, P.W.1, her brothers and sister were taken to hospital. However, he could not say anything about the injury sustained by them.
16. A medical officer, deposed as P.W.10. He stated that, on February 26, 2016, he examined Sahabuddin Sk and found cut injury over his scalp and repaired lacerated injury. He also examined Rukubuddin Sk. and found repaired wound over the scalp and left forearm. He also examined Dali Bibi and found repaired wound over scalp and abrasion over left hand and shoulder. P.W.10 also stated that all the three injured, the injuries found on the person of the persons were simple in nature.
17. A Police Officer deposed as P.W.11. He received a written complaint on February 26, 2016 at Kaliganj Police Station and started Kaliganj P.S. Case No.133/16 dated February 20, 2016 under Sections 448/325/326/427/307/34 of the Indian Penal Code. He proved the endorsement of his receipt on the written complaint as well as in the formal First Information Report.
18. The Investigating Officer, deposed as P.W.12. He stated that, he was endorsed with the investigation of Kaliganj P.S. Case No.133/2016. In course of investigation, he visited the place of occurrence, recorded statements of the witnesses under Section 161 of the Code of Criminal Procedure, 1973 and arrested one of the accused. On completion of investigation, he submitted charge sheet in the case.

19. Upon conclusion of the evidence for the prosecution, the accused persons were examined under Section 313 of the Criminal Procedure Code. The accused persons pleaded innocence during such examination.
20. They however, declined to adduce any defence witness.
21. Upon conclusion of the trial, learned Trial Judge held accused Bhatu Sk and Motor Sk @ Motar Sk guilty of the offences punishable under Sections 448/324 of the Indian Penal Code. Rest of the accused persons were found not guilty and were acquitted.
22. As noted above, convict was held guilty for the offence punishable under Sections 448/324 of the Indian Penal Code. The instant appeal has been filed on behalf of the State of West Bengal on the ground of inadequacy of sentence as well as acquittal. According to learned advocate for the State, the convicts should have been convicted for the offence punishable under Section 307 of the Indian Penal Code. From the purport of evidence placed at the trial, it transpires that, the incident took place over property disputes. Although, it has been submitted that the accused persons were armed with dao, lathi, iron rod etc, evidence has been laid that the injured persons were assaulted by the accused persons by such weapons. However, according to the evidence of the Medical Officer, P.W.10, the injuries found on the person of the injured persons were simple in nature. In cross-examination, P.W.10 has also

not ruled out the proposition that such injuries may be caused by falling on the ground.

23. Section 307 of the Indian Penal Code reads as follows:-

“307. Attempt to murder.-

Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life, or to such punishment as is hereinbefore mentioned.

Attempts by life convicts.- When any person offending under this section is under sentence of imprisonment for life, he may, if hurt is caused, be punished with death. illustrations

- (a) A shoots at Z with intention to kill him, under such circumstances that, if death ensued. A would be guilty of murder. A is liable to punishment under this section.*
- (b) A, with the intention of causing the death of a child of tender years, exposes it in a desert place. A has committed the offence defined by this section, though the death of the child does not ensue.*
- (c) A, intending to murder Z, buys a gun and loads it. A has not yet committed the offence. A fires the gun at Z. He has committed the offence defined in this section, and if by such firing he wounds Z, he is liable to the punishment provided by the latter part of the first paragraph of this section.*

(d) A, intending to murder Z by poison, purchases poison and mixes the same with food which remains in A's keeping; A has not yet committed the offence defined in this section. A places the food on Z's table or delivers it to Z's servant to place it on Z's table. A has committed the offence defined in this section."

24. P.W.10 in his deposition has stated that upon treating the injured Sahabuddin Sk with a history of physical assault, he found cutting injury over the scalp and a repaired lacerated injury which was simple in nature. Similarly, on examination of Rukubuddin Sk he found a repaired wound over scalp and left forearm. On examination of Dali Bibi, P.W.10 found repaired wound over scalp and abrasion over left hand and shoulder which, of course, were simple in nature.
25. In view of the nature of the aforesaid injury found on the injured persons and also taking into account that the altercation between the accused persons and the complainant party was a result of property disputes, it cannot be said that the injuries were inflicted by the convict with an intention or knowledge of causing death. As noted above, the injuries were found to be simple in nature. At no stretch of imagination, the provisions contained under Section 307 of the Indian Penal Code could be pressed into service in the given facts and circumstances of the case.

26. So far as the conviction under sections 324/448 of the Indian Penal Code is concerned, from the evidence brought on record it transpires that at an early point of time the accused persons were breaking the fencing around the land belonging to the complainant party. The de facto complainant raised objection whereupon the accused persons went away and, thereafter, they trespassed into the house of the de facto complainant being armed with deadly weapon, i.e., *Da, iron rod etc.* and assaulted the de facto complainant, her sister and brothers causing bleeding injuries. Evidence led at the trial together with the rough sketch map prepared by the investigating officer goes to show that the accident took place at the house of the de facto complainant. The complainant party was assaulted by such weapons, though, resulting in simple injuries. In that view of the facts, we find no fault with the impugned judgment of conviction of the convict under Sections 324/448 of the Indian Penal Code.
27. Learned Trial Court, considering the nature of incident, as well as the nature of injuries came to a conclusion that, the injuries sustained by the injured persons did not justify conviction in an offence punishable under Section 307 of the Indian Penal Code. The views taken up by the learned trial Court seems to be a plausible view. We find such view has not been conclusively established to be perverse. In such view of the

fact, we find no reason to interfere with the impugned judgment and order.

28. **CRA (DB) 78 of 2022** is accordingly **dismissed**.

(Md. Shabbar Rashidi, J.)

25. I agree.

(Debangsu Basak, J.)