

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

Present:

The Hon'ble **Justice Prasenjit Biswas**

CRA 265 Of 2010

Sadhan Ghosh

-Versus-

The State of West Bengal

For the Appellant : **Mr. Kusal Kumar Mukherjee**

For the State : **Mr. Anand Keshari,
Ms. Paulami Bose**

Hearing concluded on : **30.04.2025**

Delivered on : **06.05.2025**

Prasenjit Biswas, J:-

1. The judgment and order of conviction dated 16.04.2010 passed by the learned Additional Sessions Judge, Fast Track Court-IV, Krishnagar, Nadia in Sessions Trial No. IV(12)2008 corresponding to Sessions Case no. 44(11)2008 is assailed in this appeal by the appellant.

2. The appellant has been found guilty for committing an offence under Section 324 IPC and convicted him and sentenced to suffer rigorous imprisonment for 1 year along with a fine of Rs. 1000/- in default to undergo simple imprisonment for further 2 months.

3. Facts of prosecution case in nutshell is that -

“One Kanan Ghosh, wife of Faring Ghose of village Dadupur, lodged a written complaint before the Nakashipara police station on 27.01.2008 stating that on 26.01.2008 at about 4:30 pm while her husband went to graze his buffalos in the field then suddenly his buffalos entered into the land of this appellant. The buffalos started to damage the crops of the appellant and then this appellant caught hold the husband of the defacto complainant forcefully and the sons of the appellant assaulted her husband on the head and leg and as such her husband sustained serious injuries on his person. Thereafter her husband was taken at Bethuadahari hospital and from where he was shifted to the District hospital, Nadia wherein he was admitted for treatment.”

4. On the basis of the said written complaint lodged by the defacto complainant a case was started being Nakashipara Police Station Case No. 23/08 dated 27.01.2008. Thus the criminal law was set in motion. Police investigated the case and submitted charge sheet against this appellant along with other accused persons under Sections 326/308/34 of IPC.

5. Charge was framed by the learned Trial Court under Sections 326/308/34 of the Indian Penal Code which were read over and explained to the accused persons and they pleaded not guilty and claimed to be tried.

6. In this Case 8 witnesses were examined by the side of the prosecution and documents were marked as exhibits 1 to 6 on behalf of it. Neither any oral nor any documentary evidence was adduced by the side of the defense.

7. It is said by Mr. Kusal Kumar Mukherjee, the learned Advocate for the appellant that there are apparent contradictions and omissions in the statements of the witnesses and as such the impugned judgment and order does not stand under the eye of law. It is said that other two accused persons were acquitted by the learned Trial Court on the same set of facts and evidences and this appellant stands on the same footing with those persons and as such he may also be acquitted.

8. It is further assailed by the learned Advocate that the injury sustained by the victim is simple in nature and PW10, Medical Officer also affirms the nature of injury but the learned Trial Court failed to consider this vital aspect and did not at all consider the ingredients of the Section 324 of IPC. PW3 stated that Balai Ghosh caught the injured forcefully and then this appellant and Badal caused serious hit on his head and hand with Hasua but that Hasua was not seized by the investigating officer. It is admitted by PW11 wherein he stated that he did not seize any incriminating weapon by which the injuries were inflicted on the victim. So, it is said by the learned Advocate that the statements of the witnesses are unworthy of credit and cannot be accepted

by a man of reasonable prudence. The attention of this Court is drawn to the deposition of PW10, Doctor, wherein he stated that there is history of injury in bed-head ticket but there is no history of assault. PW9 who issued the injury report stated that the injury sustained by the victim is simple/severe injury. Moreover, from the depositions of the prosecution witnesses the intention of the appellant cannot be made out which is one of the essential ingredients of Section 324 of IPC. So, as per submission of the learned advocate there is illegality and material irregularity in the impugned judgment and order of conviction passed by the learned Trial Court and as such the same may be set aside.

9. Mr. Anand Keshari, Learned Advocate for the State said that there is nothing material in the record for which the impugned judgment and order of conviction may be interfered with. It is said by the learned Advocate that all the witnesses cited on behalf of the prosecution corroborated the contentions of the written complaint. The case of the prosecution is well established by the depositions of the witnesses. It is said that PW5 categorically stated that he found the victim was coming and was going towards his home with head injury on his person and at that time he was told by the victim that this appellant caused him hurt with Hasua as his buffalos were grazing in the Musuri field of this appellant which corroborates the deposition of PW3 (the injured) as well as by the defacto complainant (PW4). It is said by the learned Advocate that PW3 stated in his deposition that the acquitted accused Balai caught him forcibly and then this appellant and one another acquitted accused namely Badal

caused serious hit on his head and hand with Hasua. This victim on asking by his cousin Uday Ghosh about the cause of injury he told to his cousin about his injury and then his cousin took him at first to his home and then the injured was taken to Nakashipara Police Station and on asking by the police he was carried to Nakashipara Hospital. As per submission of the learned Advocate that PW9 categorically stated that on the date of alleged incident this victim was admitted at hospital with his history of assault by Hasua over his right hand and head by this appellant. PW10 also stated in the same line of PW9 that there was a deep cut injury on the right hand including muscle of the victim and on examination surgeon stated that there was no bone injury. The patient was discharged from the hospital on 27th January. The attention of this Court is drawn to the deposition of the PW11, the investigating officer wherein he stated that he examined Khoka Ghosh (PW8) and that witness in his statement mentioned that on 26.01.2008 at about 4:30 pm the victim went to graze his buffalos in the field and at that time a dispute between the victim and this appellant cropped up and then this appellant caused serious injury on the person of the victim with Hasua. So, it is said by the learned Advocate that the prosecution story is proved by the oral as well as documentary evidences and as such the instant appeal challenging the order of conviction filed by the appellant may be dismissed outright.

10. I have considered the rival submission advanced by both the parties. Perused the materials gathered in the record.

11. The complaint was lodged by the wife of the victim (PW4) stating that on 26.01.2008 at about 4:30 pm while her husband went to graze his buffalos in the field then suddenly his buffalos entered into the cultivable land of this appellant and caused damage to the crops of this appellant. Over that incident this appellant along with other two accused persons hit upon the head, leg and hand of her husband and for such reason her husband sustained injuries. Whereas PW3 injured stated in his deposition that on the relevant date and time his buffalos were grazing in the Musuri field of Balai Ghosh and as such the accused persons attacked him. PW7 stated that at the time of alleged incident Faring Ghosh went to graze buffalos at the field and thereafter he came back to home with cut and bleeding injuries in its hand, leg and head. So, it is evident that PW3 (victim) stated that his buffalos were grazing in the Musuri field of Balai Ghosh and PW7 stated that the victim went to graze buffalos at the field, whereas PW4 stated that on the relevant date her husband took his buffalos to the Musuri field of Balai Ghosh. PW5 stated that that the victim told him that this appellant caused him hurt with hansua as his buffaloes was grazing in the 'musuri' field of this appellant

12. PW5 stated that victim is his cousin. PW6 and PW7 stated that victim is his brother. So these witnesses are relations to the victim and the defacto complainant. Moreover, PW2, PW5, PW7 and PW6 stated that they were not examined by the police. PW5 stated that he found the injured was coming and was going towards his home with head injury on his person and on asking the injured he told that this appellant caused him hurt with Hasua whereas PW3

(injured) stated that Balai caught him forcefully and Sadhan (appellant) and Badal Ghosh caused serious hit on his head and hand with Hasua. PW4 with similar tone to her husband also stated that Balai caught her husband forcefully and then Sadhan (appellant) and Badal struck on the body of her husband. PW9 Doctor stated that on the date when the victim was admitted at hospital with history of assault by Hasua over right hand, head by the appellant. PW3 stated that Sadhan and Badal hit the victim whereas PW5 deposed that only Sadhan caused hurt upon the injured. So, there are apparent contradictions in the statements of PW3 and PW4 with PW5 and PW9.

13. It is specifically stated in evidence by PW3 (injured) that this appellant along with other accused persons hit on his hand and head with Hasua. PW5 stated that the injured told him that this appellant hurt him with Hasua. PW11, the investigating officer in his deposition stated that he did not seize any incriminating weapon. But to establish a case under Section 324 of the Indian Penal Code the instrument of which the injuries so inflicted upon the victim is vital but said weapon is not seized by the investigating officer. PW3 (injured) stated in his evidence that he received injury on his nose and arm and he fell down in earth with pool of blood but PW11, investigating officer stated that in his statement the victim did not mention that he fell down on the earth after the incident and thereafter he was hit. PW3 the injured also stated in his evidence that his cousin Uday Ghosh asked him about his cause of injury and then Uday Ghosh took him at fast at his home but PW11 stated

that PW3 in his statement made before him did not mention that at first he told the cause of injury to Uday and thereafter Uday and another took him to hospital.

14. PW2 stated that victim is his brother-in-law and he came to know from other that Faring (victim) sustained serious hurt with a Hasua by the accused Sadhan Ghosh and as a result Faring received serious injury. So, what is said by this witness is hearsay and he had no personal knowledge about the incident. Moreover, I have already stated that this witness was not examined by the police and he deposed about all this incidents for the first time before the Court. PW5 was also not the witness to the incident and he is a relation to the victim. This witness was also not examined by the police in connection with this incident and it was said for the first time before the Court about the incident. Same as to PW7 another brother of the injured stated that he was not examined by police in connection with this case and he also stated for the first time before the Court about the incident. PW8 was declared hostile by the prosecution and cross examined him but nothing has been elicited from his statement which may support the case of the prosecution.

15. I have already stated that the offending weapon, the Hasua was not seized by the investigating officer. It would be evident from exhibit 2 injury report that the injury sustained by the victim is simple in nature. PW9 who issued the injury report stated that on the relevant date the victim was admitted into the hospital with history of assault by Hasua over his right hand and head and the injury report reflects that the injury sustained by the victim

is simple/severe injury. So, as per deposition of PW9 he was not sure about the nature of injury at the time of issuing report sustained by the victim. Moreover that report as it is admitted by PW9 does not bear the signature or LTI of the patient or patient party. PW10 the another doctor in his cross examination stated that there was a history of injury in the bed-head ticket of the injured but there is no injury or assault and the scalp or head injury had no description in the bed-head ticket.

16. After over the assessment of the evidences brought on record by the side of the prosecution I am of the opinion that those evidences are unworthy of any credit and acceptance which may lead to a conclusion regarding commission of offence by the appellant. It is well settled that considering the nature of the evidence even of sole witness particularly when it is of victim/injured himself the reliance can be placed on his/her testimony and the judgment can be passed without calling for any other corroboration whatsoever but the condition is that the evidence on record should satisfy the cognition by being unimpeachable, truthful and sufficient which may arise reasonably in the mind of a prudent man and must receive answer from the evidence that has been brought on record. Unless evidence of the prime witnesses is not credit worthy reliance cannot be placed upon it. It is evident from the deposition of the witnesses that there are apparent contradictions in their statements which create doubt in my mind regarding commission of the alleged offence by the appellant. Moreover, learned Trial Judge on the basis of same sets of facts and

evidences acquitted the other two accused persons from this case and that order of acquittal has not been challenged by the prosecution

17. Under such circumstances and discussions made above, I am of the opinion that the judgment and order of conviction passed by the learned Trial Judge is liable to be set aside.

18. Appeal being no. CRA 265 of 2010 is hereby **allowed**.

19. The judgment and order of conviction dated 16.04.2010 passed by the learned Additional Sessions Judge, Fast Track Court-IV, Krishnagar, Nadia in Sessions Trial No. IV(12)2008 corresponding to Sessions Case no. 44(11)2008 is hereby set aside. He is thus acquitted from the said case.

20. The appellant is discharged from his bail bond and be set at liberty at once, if not wanted in connection with any other case.

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

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

(Prasenjit Biswas, J.)