

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:-

HON'BLE JUSTICE PARTHA SARATHI SEN

C.R.A. No. 327 of 2002
Kuber @ Bibhas Roy and Ors.

-Versus-

The State of West Bengal.

For the appellant nos.1,3,5 and 7: Mr. Souryadeep Ghosh, Adv.

For the respondent/State: Mr. Binay Panda, Adv.,
Mr. Subham Bhakat, Adv.

Last Heard on : 05.03.2025

Judgment on : 12.03.2025

PARTHA SARATHI SEN, J. : -

1. In this appeal the judgement of conviction dated 26.08.2002 and the order of sentence dated 27.08.2002 as passed by the learned Additional Sessions Judge, Jangipur, Murshidabad in Sessions Sl. No. 38 of 1998 is impugned. By the said judgement learned trial court found accused Asit Kumar Roy guilty under Section 304 Part II IPC. The said court also found accused Kuber @ Bibhas Roy, accused Srikumar Roy, accused Tejamoy Banerjee, accused Amiya Banerjee, accused Arun Banerjee and accused Ajoy Banerjee guilty under Sections 304 Part II/ 34 IPC and thus sentenced all the aforementioned accused persons to suffer RI for 7 years each and to pay a fine of Rs. 2000/- i.d to suffer RI for two years each.

2. All the convicted persons felt aggrieved and thus preferred the instant appeal. It is pertinent to mention herein that during the pendency

of the instant appeal, appellant no.2 Srikumar Roy, appellant no.4 Amiya Banerjee and appellant no.6 Ajoy Banerjee died and thus the instant appeal stood abetted against the said deceased persons. It is equally pertinent to mention herein that despite service of administrative notices upon appellant nos. 1, 3, 5 and 7 the said appellants did not turn up and accordingly finding no other alternative this Court by its order dated 21.02.2025 appointed Mr. Souryadeep Ghosh as an advocate to represent the appellant nos. 1, 3,5 and 7.

3. For effective adjudication of the instant appeal the facts leading to initiation of the aforementioned trial is required to be dealt with in a nutshell.

4. One Dhirendra Kumar Majumder of village Jamuar, P.S Raghunathganj lodged a written complaint dated 20.11.1993 with the O/C Raghunathganj P.S, District Murshidabad to the effect that on 17.11.1993 at about 8/8:30 p.m one Arun Banerjee, son of Amiyo Banerjee asked his son Debnath Majumder to accompany him. It has been stated further that at the place of occurrence of the alleged incident Kuber Roy, Srikumar Roy, Amiya Banerjee, Asit Banerjee, Arun Banerjee, Ajoy Banerjee and Tejomoy Banerjee were present with arms and thereafter the said accused persons assaulted the two sons of the informant by striking vigorously as a result whereof both his sons suffered injuries on their respective heads. The informant further stated that his son Gopinath suffered injury on his head and another son became senseless. It has been averred further that thereafter the said

victim Debnath was transferred to Beherampore Sadar Hospital. The informant stated further that at the time of alleged offence his wife was also present and in presence of his two sons, as per direction of Srikumar Roy accused Amit Roy, accused Asit Kumar Roy, Arun Banerjee, Ajoy Banerjee, Tejomoy Banerjee also assaulted his said wife upon her knee. She was taken to hospital for treatment.

5. On the basis of the said written complaint Raghunathganj P.S case no.171/93 dated 20.11.1993 under Sections 325/34 IPC was started. Investigation was taken up. In course of investigation the victim Debnath Majundar succumbed to his injuries and thus Section 304 IPC was added. On completion of the investigation charge sheet under Sections 325/34/304 IPC was submitted.

6. After commitment and transfer learned trial court considered the charges firstly on 04.03.1999 and then again on 17.01.2000. Learned trial court on consideration of the entire materials as placed before him framed charges against all the 7 accused persons under Sections 325/304/34 IPC. At the time of framing of charge the said seven accused persons pleaded their innocence and claimed to be tried and thus the trial before the learned trial court proceeded.

7. Trial court record reveals that in order to bring home the charges as against the accused persons the prosecution has examined 12 witnesses in all. On behalf of the prosecution several documents have also been exhibited.

8. In course of his argument Mr. Ghosh, learned advocate appearing on behalf of the appellant nos.1, 3, 5 and 7 draws attention of this Court to the evidence of PW2. It is submitted by him that in her evidence PW2 stated that on the relevant day and hour one of the accused persons called her husband Debnath Majumdar at Bhagabatitala and immediately thereafter her said husband and her mother-in-law rushed to the said spot. Mr. Ghosh further submits that the said PW2 further testified that within 2/3 minutes thereafter her mother-in-law and her husband were carried back home by some persons in injured condition.

9. It is thus submitted by Mr. Ghosh that such short span of time between the departure of the victims from their house for the P.O and arrival therefrom to their house in injured condition is highly improbable which raises a strong doubt with regard to the genuineness of the prosecution case.

10. Drawing attention to the evidence of PW9 (autopsy Surgeon) it is argued by Mr. Ghosh that in his cross-examination the said autopsy surgeon stated that the injuries as noticed by him on the head of the deceased might also occur even from a fall. Mr. Ghosh thus submits that probability of suffering accidental injury therefore cannot be ruled out. It is submitted by Mr. Ghosh that it is settled principle of law that in a criminal trial when two views are possible, the view which is in favour of the accused must prevail. Mr. Ghosh further submits that from the evidence of PW10 it would reveal that the investigation as conducted by the I.O is perfunctory one.

11. Per contra, Mr. Bhakat learned advocate for the State submits before this Court that from the evidence of PW3 and PW4 it would reveal as to how on the fateful day and hour the victims of the alleged incident were assaulted by the present appellants and thus there cannot be any justification to disbelieve such unchallenged testimony of PW3 and PW4. Mr. Bhakat in course of his argument also places his reliance upon the evidence of PW9 (autopsy surgeon). It is submitted by him that the oral evidence of PW3 and PW4 being the eye witnesses to the alleged incident gets due corroboration from the evidence of PW9 as well as from the post mortem report (exhibit 5).

12. For effective adjudication of the instant appeal this Court proposes to categorize the prosecution witnesses in the following manner:-

Sl. No.	Private Witnesses	Government Officials	Police Officials
1.	PW1- The informant.	PW7- Doctor of Jangipur Sadar Hospital	PW8- Recording Officer.
2.	PW2- Wife of deceased.	PW9- Autopsy Surgeon.	PW 10- Investigating Officer.
3.	PW3- Wife of informant.		PW11- ASI of police and the inquest maker.
4.	PW4- Another victim of the incident and another son of PW1 and PW3..		
5.	PW5-Co-villager of the informant.		
6.	PW6- Co-villager of the informant.		
7.	PW12-Brother of the		

	deceased.		
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13. Since in the impugned judgement learned trial court has elaborately discussed the evidence of the prosecution witnesses in detail this Court considers that discussion of the evidence of all the prosecution witnesses all over again is unnecessary except to the extent the same is required to for effective adjudication of the instant appeal. As stated supra PW1 being the informant of the said case in his examination-in-chief testified in the same tune as has been stated by him in his written complaint.

14. From the evidence of PW2 it reveals that she is a post occurrence witness and she was not present at the P.O at the time of alleged commission of crime.

PW2 being the wife of the deceased testified that her husband Debnath was murdered by accused Asit, accused Kuber, accused Amiya, accused Arun, accused Tejomay and accused Ajoy under instruction of accused Srikumar Roy. She further testified that on 1st Aghrayan, 1400 BS at about 8:00 p.m while she was at her matrimonial home with her husband, son and parents-in-laws at that time accused Arun Banerjee came to her matrimonial home and stated to her husband that her brother-in-law Gopinath was being assaulted by the accused persons at Baghabatitala. She testified further that immediately thereafter her husband and her mother-in-law rushed to Bagabatitala and within 2-3 minutes her husband and mother-in-law were carried back to home by some persons in injured conditions. She further stated that at that

material time both the injured person were fully conscious. PW2 further testified that on being asked, her husband stated to her that as per direction of accused Srikumar, accused Asit, accused Kuber, accused Amiya, accused Arun, accused Tejomay and accused Ajoy assaulted her husband with stick. She testified that her mother-in-law also reported to her that she tried to rescue her husband and at that time she was also assaulted by the said accused persons. She stated that her husband was admitted at Beherampore Sadar Hospital for treatment. Subsequently he died there. PW2 was also extensively cross-examined but in considered view of this Court her cross-examination is of not much relevance for disposal of the instant appeal.

15. PW3 being the wife of the informant and the mother of the deceased according to the prosecution is an eye witness to the alleged incident. In her examination-in chief she testified that on the first day of Aghrayan 1400 BS at about 8:30 pm while she was sitting in the verandah of her home with her husband (PW1), son Debanath Majumdar (deceased) and her daughter-in-law Purabi Majumdar (PW2) at that time accused Arun came to their house and stated to her son Debnath that her another son Gopianth was being assaulted at Bhagabatitala. She further testified that on getting such information she and her said son Debnath rushed to the P.O and noticed Gopinath was standing there in bleeding condition. She testified further that in her presence accused Srikumar Roy asked the other accused persons to assault Debnath and immediately thereafter as per instruction of the said accused Srikumar, the other

accused persons started assaulting her son Debnath with stick in a random manner causing serious injury to his person. She categorically testified that accused Asit gave a blow of stick on the head of Debnath and as a result whereof Debnath fell down on earth. She also testified that when she rushed to Debnath for his rescue, she was also assaulted by Asit with a stick on her back and thigh. It is the further testimony of PW3 that when she and her said son Debnath was brought back to home her son Debnath stated to her husband (PW1) and PW3 that as per direction of the accused Srikumar, accused Asit, accused Kuber, accused Amiya, accused Arun, accused Tejomay and accused Ajoy assaulted him (Debnath) with lathi. She further stated that on the next morning she and her said injured son Debnath were taken to Jangipur Sub-divisional Hospital for treatment. PW3 further testified that the doctor gave her first aid and released her however, seeing the serious condition of Debnath he was referred to Behrampore Sadar Hosptial for treatment. It is her further deposition that when she went to Jangipur Hospital she found Gopinath was admitted there for treatment. She further stated that Gopinath also stated to her that accused persons assaulted him.

16. PW3 was extensively cross-examined on behalf of the defence. This Court however noticed no infirmity in her deposition in course of her cross-examination.

17. PW4 is the son of PW1 and PW3 and the brother of deceased who according to the prosecution is also a victim to the alleged incident. Before the learned trial court he testified that on 17.11.1993 at about 8:30 pm,

when he was coming out of his club and reached near Bhagabatitala at that time accused Asit, accused Kuber, accused Amiya, accused Arun, accused Tejomay and accused Ajoy encircled him and asked him as to why he built up a relationship with the brother's daughter of Srikumar Roy. He further testified that soon thereafter accused Srikumar Roy reached at the P.O and immediately thereafter he asked the other accused persons to assault him. The said accused persons namely; accused Asit, accused Kuber, accused Amiya, accused Arun, accused Tejomay and accused Ajoy started assaulting him with stick causing injury to his person. He further testified that thereafter accused Arun called his elder brother Debnath and he also found that Debnath and Sabitri Majumdar also reached at the P.O. thereafter. He further testified that accused Srikumar again asked the accused persons to assault them to which accused Kuber, accused Amiya, accused Arun, accused Tejomay and accused Ajoy started assaulting Debnath with stick and accused Asit stuck the head of Debnath as a result whereof Debnath fell down on the earth. He further testified that when his mother came to rescue Debnath she was also assaulted by the accused persons to which she sustained injury on her back and leg. PW4 further testified that out of fear he rushed to Jangipur Hospital for treatment where he was admitted for treatment. He further stated that on the following day his mother and brother Debnath was brought at Jangipur Hospital. His mother was released soon thereafter after giving treatment however, considering the

serious condition of the victim Debnath he was referred to Behrampore Sadar Hospital. However, on 20.11.1993 the said Debnath died.

18. PW4 were also extensively cross-examined on behalf of the said accused persons. It appears to this Court that in his cross-examination PW4 remained absolutely consistent and nothing came out from his mouth which may be helpful to the defence.

19. PW7 is the medical officer of Jangipur Sub-divisional Hospital. In his examination-in-chief he testified that on 18.11.1993 he attended PW2 (Sabitri Majumdar). During medical examination the said patient reported to him regarding her pain in the back however the said doctor found no external injury on her person.

PW7 further testified that on the self same day at about 2 am (night) he also attended Gopinath (PW4) and during examination he found the following injuries on his person:-

“1) 1 ½” long with lacerated margins over back of skull upper part.”

According to him at that time the patient was conscious.

PW7 further testified that on the self same day at about 7:55 am he also attended Debnath Majumdar (deceased). He testified that the said patient Debnath stated to him that he was assaulted by Amiyo Banerjee and Asit Roy. During medical examination he found following injuries on his person.

“1) 1” long lacerated injury over vault of skull no other injury or abnormality was detected by me during my examination.”

The relevant portion of the cross-examination of PW7 is quoted hereinbelow in verbatim:-

“Head injury as we understand was not there with Debnath Majumder.

With the blow of lathi there may be injuries like lacerated bleeding on ecchymosis.

With the fall on rough substance and tossing there after one may sustain bruises, scratch marks and abrasion.

The injury on the upper part of back of head of Gopinath Majumder might be caused due to blow by lathi from behind.

Assault on the vault of skull of Debnath was due to blow by lathi from up to down.

I agree in case of contusion effusion of blood is sometimes so great that it forms Haematoma.

I also agree that Haematoma or contusion are seen superficially on the surface of the brain or deep within the brain and associated with punctuated haemorrhage limited in some areas. They are also associated with disturbances of cerebro-spinal fluid circulation. The symptoms are patient may become dazed and giddy with or without following. With severe injury the patient falls down and becomes unconscious.

In addition to loss of memory, headache, weakness and confusion may occur.

There are three types of haemorrhages –One is extra-dural, subdural and intra-cerebral.

This type of injury is extradural haemorrhage or haematoma is occasionally found, and in such circumstances, there may be loss of memory and consciousness.

In the case of haematoma or haemorrhage in the brain small petechial haemorrhage in the brain may be found as a result of the blow or fall.”

20. At this juncture I propose to look to the evidence of PW9 i.e. medical officer attached to Behrampore Sadar Hospital who performed autopsy over the dead body of deceased Debnath. The relevant portion of his deposition is as under:-

“Right frontal region was cleanly shaved, followed by two stitches. There was a huge subdural haematoma at right frontal parietal region. There was also collection at epidural space in the same region. Cause of death was head injury with a blunt resulting in subsequent blood loss and increasing intra cranial tension.

It was ante mortem in nature and homicidal.

Hard substance may be of lathi or iron rod by which there may be heavy thrust on the victim.”

21. In course of his cross-examination PW9 stated that a fall on the head may result in a lacerated wound on the scalp not unlike that made by lathi. He further testified that sometimes it occurs without fracture of the skull from a slight blow or from a fall. Extradural haemorrhage is occasionally found without rupture or any external injury.

22. PW10 is the I.O of the said case. He stated that after taking charge of investigation he visited P.O, prepared rough sketch map, examined the witnesses, made attempt to apprehend the accused persons, made prayer for adding Section 304 IPC in the said case, collected injury report of Gopinath Majumder (PW4) and Sabitri Majumder (PW3). He also collected the injury report of Debnath Majumder(deceased). He also collected the post mortem report of the deceased. In course of his cross-examination on behalf of the defence some questions were put to him to show some

material omission which I propose to discuss at a later stage of this judgement.

23. On careful consideration of the entire materials, more specifically the versions of the aforementioned prosecution witnesses there is no room of doubt that on 1st Aghrayan 1400 BS at about 8 p.m the deceased, his father PW1, his mother PW3 and his wife PW2 were present in their home. From the deposition of PW1, PW2, PW3 it reveals that accused Arun came to their house and reported that at the P.O i.e. at Bhagabatitala PW4 was being assaulted by the other accused persons. In considered view of this Court this part of evidence remains uncontroverted and in absence of any inconsistency this Court has got no other alternative but to hold that PW1, PW2, PW3 and PW4 adduced consistent evidence in this regard.

24. From the evidence of PW1, PW2 and PW3 it reveals further that immediately after getting information regarding assault of PW4 at the hands of accused persons, Debnath and his mother PW3 rushed to the P.O i.e. at Bhagabatitala. From the evidence of PW3 and PW4 it has also been established that as soon as Debnath Majumder, since deceased and his mother PW3 reached at the P.O. accused Srikumar asked the other accused persons to assault Debnath and then the said other accused persons namely; accused Asit, accused Kuber, accused Amiya, accused Arun, accused Tejomay and accused Ajoy started assaulting Debnath with stick and accused Asit Roy gave a blow by stick on the head of Debnath.

25. On comparative study of the evidence of PW3 and PW4 this Court finds no discrepancies in their testimonies. Admittedly in course of cross-

examination of the I.O (PW10) he stated that PW4 i.e. Gopinath did not state to him that the accused persons assaulted his brother on his head but in considered view of this Court such omission is noway helpful to the present appellants inasmuch as this Court finds from the deposition of PW7 (doctor of Jangipur Sub-divisional Hospital) that the said doctor found 1 inch long lacerated injury over the vault of skull of Debnath. It reveals from the injury report (exhibit 3/2), the deceased Debnath Majumder was then conscious and stated to the doctor that he was assaulted by accused Amiya Banerjee and Asit Roy. The evidence of PW3 and PW4 thus gets due corroboration from the evidence of PW7 vis-à-vis Exhibit 3/2.

26. On comparative study of the testimony of PW7 and PW9 this Court finds not much discrepancy in their evidence. The said autopsy surgeon in course of post mortem examination found two stitches, huge subdural haematoma at right frontal parital region and collection of epidural space in the same region. PW9 thus held that cause of death was on account of head injury with a blunt substance and the same is ante mortem and homicidal in nature.

27. The sequence of events as discussed hereinabove on the basis of the deposition of the aforementioned prosecution witnesses unerringly establishes the presence of the accused persons at the P.O on the relevant day and hour and their active role in the crime. Their common intention to assault the deceased was found from the evidence of PW4 as well as from the evidence of PW1, PW2 and PW3 since it has been stated by the

said witnesses that as per instruction of accused Srikumar, accused Arun asked Debnath to come to P.O where his brother Gopinath was assaulted by the said accused persons. From the evidence of PW3 and PW4 it reveals that all the accused persons were armed with stick.

28. Considering such circumstances this Court finds no reason to disbelieve the testimony of PW3 and PW4 who are not only the eye witnesses but also injured witnesses arising out of the said incident.

29. In the reported decision of ***State of U.P vs. Naresh and Ors.*** reported in **(2011) 4 SCC 324** the Hon'ble Apex Court while considering the relevancy of an injured witnesses expressed the following view:-

“27.Thus, the evidence of the injured witness should be relied upon unless there are grounds for the rejection of his evidence on the basis of major contradictions and discrepancies therein.”

30. The same view was taken by the Hon'ble Apex Court in the reported decision of ***Mohar and Anr. vs. State of U.P*** reported in **(2002) 7 SCC 606** wherein the Hon'ble Apex Court held thus:-

“The testimony of an injured witness has its own efficacy and relevancy. The fact that the witness sustained injuries on his body would show that he was present at the place of occurrence and had seen the occurrence by himself. Convincing evidence would require to discredit an injured witness.”

31. From the evidence of PW1, PW2, PW3 and PW4 this Court has got no hesitation to hold that the occurrence of the crime was not sudden since it has been consistently deposed that on account of a love affair

between Gopinath and a girl belonging to the accused persons' family the accused persons first assaulted Gopinath (PW4) and thereafter brought his brother Debnath (deceased) from home and started assaulting him. However, it does not transpire from the evidence of any of the said PWs that the said offenders had any intention to cause death of the deceased rather it appears that on account of hit of passion they started assaulting the deceased and ultimately accused Asit Roy gave a fatal blow on the head of the deceased with the knowledge that such act is likely to cause death.

32. This Court thus finds no infirmity in the impugned judgement in convicting accused Asit Kumar Roy under Section 304 part II IPC and other six accused persons namely; Kuber @ Bibhas Roy, Srikumar Roy, Tejamoy Banerjee, Amiya Banerjee, Arun Banerjee, Ajoy Banerjee under Section 304 Part II/34 IPC.

33. The instant appeal thus fails and is thus dismissed. The impugned judgement of conviction dated 26.08.2002 and the order of sentence dated 27.08.2002 as passed by the learned Additional Sessions Judge, Jangipur, Murshidabad in Sessions Sl. No. 38 of 1998 is hereby affirmed.

34. In view of such the bail bonds of appellant no.1 Kuber @ Bibhas Roy, appellant no.3 Tejomoy Banerjee, appellant no.5 Arun Banerjee and appellant no.7 Ashit @ Asit Kumar Roy stands hereby cancelled. The above named appellant nos. 1, 3, 5 and 7 are directed to surrender before the learned trial court within a period of 30 days from today failing which learned trial court is hereby directed to issue non-bailable warrant of

arrest against the appellants namely; appellant no.1 Kuber @ Bibhas Roy, appellant no.3 Tejomoy Banerjee, appellant no.5 Arun Banerjee and appellant no.7 Ashit @ Asit Kumar Roy for their apprehension and detention.

35. With the disposal of the instant appeal, all pending interlocutory applications if there be any, stand hereby disposed of.

36. Department is hereby directed to send down the trial court record along with a copy of this judgement forthwith.

37. Department is further directed to forward a copy of this judgement to the Member Secretary, Calcutta High Court Legal Aid Services Committee who on receipt of the same shall disburse the admissible amount of Honorarium in favour of Mr. Souryadeep Shosh, learned advocate for the appellants who has been appointed by this Court.

38. Urgent Photostat certified copy of this judgement, if applied for, be given to the parties on completion of usual formalities.

(Partha Sarathi Sen, J.)