

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

Present:-

HON'BLE JUSTICE CHAITALI CHATTERJEE DAS.

CRA 562 OF 2009

MANIRUL MALLICK

VS

STATE OF WEST BENGAL

For the Appellant : Mr. Prabir Majumder, Adv.
Mr. Snehansu Majumder, Adv.

For the State : Mr. Avishek Sinha, Adv.

Last heard on : 08.05.2025

Judgement on : 11.07.2025

CHAITALI CHATTERJEE DAS, J. :-

1. This criminal appeal has been filed under Section 374 (2) of the Code of Criminal Procedure 1973 by the appellant against a judgement and order of conviction and sentence dated 17th June 2009, passed by the Learned Additional District and Session Judge, Fast Track Court No (iv), Krishnanagar, Nadia in connection with Sessions Trial no (iii) (6) 2007, Sessions Case no 62 (4), 2007 thereby convicting the appellant herein for commission of offence punishable under Section 323 of the Indian Penal Code , 1860 and under Section 25 (i) (B) of the Arms Act 1959 and thus sentencing him to suffer Rigorous imprisonment for 1 year and to pay a fine of Rs. 500 in default to

suffer further simple imprisonment for one month for commission of offence punishable under Section 323 of the Indian Penal Code , and to suffer rigorous imprisonment for 1 year and to pay an fine of Rs. 500 in default to suffer further simple imprisonment for 1 month for commission of offence punishable under Section 25 (i) (B) of the Arms Act,1959.

Brief fact of the case

2. The prosecution case was launched on the basis of a complaint lodged before the officer-in-charge Krishnaganj Police Station, District Nadia on February 23, 2006 by one Surabuddin Mondal alleging physical assault against Manirul, the present appellant and also of gunshot injury by Manirul .The alleged incident took place on 22nd of February, 2006 at about 9.30 P.M when said Surabuddin Mondal (1) Jahirbox Mondal,(2) Md. Harun Rasid,(iii) Md. Adalat Mondal (iv) Amir Hossain and the above named persons were sitting on a macha gossiping in front of a grocery shop of Yunis Ali of their village and Manirul Mallick came and he was asked by the de-facto complainant to pay Rs.45/- to him which he owed from him. Manirul denied to give the same and a scuffle took place between the de-facto complainant and Manirul and they fell on ground and thereafter Manirul brought out a revolver with an intention to kill him and shot him as a result he sustained a gunshot injury .
3. On the basis of such complaint the Krishnaganj Police Station case no 21/06 dated 23.02.2006 started under Section 307 IPC and along with 25/27 Arms Act and after investigation the charge-sheet was submitted under the aforesaid Sections. The case being exclusively triable by a Sessions Judge was transferred after commitment to the Court of the Learned Sessions Judge, Nadia which was subsequently transferred to the Court of Additional District

and Sessions Judge, Fast Track court No. IV, Krishnanagar, Nadia for disposal. The charge was framed by Learned Trial Court under Section 307 IPC and 25/27 Arms Act and the content of the charge was read over and explained to the accused who pleaded not guilty and claimed for trial. Hence the trial.

4. In order to prove the case the prosecution adduced 9 witnesses and proved the written complaint, seizure list, Arms expert report ,D.M. sanction ,rough sketch map of P.O. with index, copy of admission register of hospital which were marked as exhibited documents and one revolver, cartridge and label was marked as Mat exhibit 2 and 3. The defence case on the other hand was a complete denial and the incriminating materials were placed before the accused when he was examined under Section 313 Cr.Pc and after considering the facts and circumstances and after assessing the evidences adduced before the Court, the Learned Sessions Court passed the order of conviction under Section 323 IPC and under Section 25 (i) (B) Arms Act against the Appellant.

Submissions

5. The Learned Advocate appearing on behalf of the appellant submits that though the charge was framed on the basis of the written complaint under Section 307 IPC, the order of conviction was passed by the Learned Court under Section 323 IPC since the prosecution failed to prove the case by satisfactory and cogent evidence. It is argued that the incident happened on 22nd of February, 2006 at about 9.30 P.M. when the complaint was lodged on 23rd February, 2006 with a false and concocted story about handing over the accused to the B.S.F and the incident being happened at the late evening when the fence at the International Border was closed, to substantiate the cause of

the delay in filing such written complaint. The Learned Advocate draws the attention of this Court to the evidence adduced by the P.W. 1 being the de-facto complainant where he said that he received injury on the skin of his abdomen and thereafter he and the persons present at the relevant time at P.O. caught Manirul and then the accused was handed over to B.S.F who brought the accused at Police Station as the gate of the fence was closed. It is further submitted that if on the date of incident Manirul was caught by the persons over there and handed over to B.S.F who brought him at police station then, why no explanation has come regarding the accused was till filing of the written complaint, on the next day. No wearing apparels about of the victim/injured were handed over to the police and this fact has been admitted by the victim himself. It is submitted that a person alleging gunshot injury do not receive any bleeding injury itself is enough to annul the case of the prosecution that he sustained any gunshot injury which means the de-facto complainant lodged the F.I.R with false claim. The doctor's evidence further supports the same since the Register revealed that he was not admitted in the hospital.

6. It is further submitted that non citing the B.S.F personnel by the I.O. non mentioning of the nature of the injury or the history of assault by the injured before the doctor, not taking any name of the assailant before the Medical Office non-examination of the said Medical Officer by the prosecution, absence of supporting medical papers are the relevant factors shows the utter negligence of the investigating officer in proper investigation and to establish any gunshot injury or any injury was sustained by the injured victim where the appellant was at all involved.

7. Further argued that so far the recovery of the arms no label or signature of the I.O was found on the seized fire arms. It is assailed before this court that excepting the names of the person who were alleged to be present at the time of incident no one of that area has been cited as witness. Most importantly the seizure list was prepared by the I.O and not by B.S.F person, on the next date of the incident when as per the version of the Injured the accused was handed over to the police Station on the very date of incident. In this regard the Learned Advocate relied upon the decision reported in¹ Takhaji vs. Thakore Kuber Sing Chaman Singh and others where it was observed that *“if a material witness who would unfold the genesis of the incident or an essential part of the prosecution case, is not convincingly brought to the fore, if a material witness is not examined it may be fatal to the prosecution case”*. The Learned Advocate has further relied upon a decision reported in² Ram Kumar Pandey vs State of Madhya Pradesh on the point that failure to mention persons alleged to be eye witnesses in the FIR may be detrimental to the prosecution case.

8. It is further submitted that the Learned Sessions Court did not consider the fact that accused was not produced before the police on the very night because the B.S.F. border gate was closed and there was no opportunity to come out from the no mans land after dark. Considering the evidence of the I.O. it was observed that the defence cannot have any privilege of faulty investigation the I.O. and it was not denied on behalf of the accused that he and others handed over the appellant to B.S.F personnel on that night. The Learned Session Court relied upon the injury /medical report only despite having almost no materials

¹ 2001 6 SCC 145

² 1975 (3) SCC 815

in favour of the prosecution and passed the order of conviction holding that accused had caused simple hurt to the victim, under Section 323 IPC in place of 307 IPC and accordingly the said order of conviction is liable to be set aside.

9. The Learned prosecution on the other hand argued that on the basis of the said complaint as lodged by the de-facto complainant as well as the injured, the Krishnaganj P.S. case started under Section 307 IPC of 25/27 Arms Act. In order to prove the case, the prosecution has cited 9 witnesses which includes the victim /injured and the other eye witnesses ,The Doctor proved the medical paper which sufficiently substantiate the contention of the prosecution that the injured was treated on the relevant day at the B.P.H.C . The I.O. seized the arms in working condition from the possession of the accused and the seizure list was prepared and proved. . The I.O also adduced evidence and the evidence of those witnesses were not impeached by the defence and accordingly the prosecution was able to prove the case beyond the shadow of all reasonable doubt. However Learned Sessions Court has passed the order of conviction under Section 323 IPC and against the same and no appeal has been preferred by the state respondent. It was further submitted that even if it is considered for the sake of argument that the investigation was faulty but the accused cannot be benefitted for such faulty investigation and accordingly prays for dismissal of the instant appeal.

Analysis

10. The prosecution case was launched on the basis of the complaint of the de-facto complainant Sarabuddin on 23rd of February, 2006 alleging the incident happened on 22nd February, 2006 at about 9.30 P.M at an area falls in between the International Border, when he along with (i) Jahirbox Mondal,(ii)

Md. Harun Rasid,(iii) Md. Adalat Mondal (iv) Amir Hossain were sitting on a macha in front of a grocery shop of Yunus Ali of their village. The germane of the dispute started with the demand of the wage of Rs.45/- by the de-facto complainant who worked as labour in the house of the present appellant for one day and on refusal by Manirul an altercation took place between them which resulted in scuffling and both of them fell down on the ground and Manirul shot him with the pistol.

11. As per the testimony of P.W. 1 Manirul shot him by his pistol which was kept inside the lungi on his waist and the injury sustained by P.W. 1 was over the skin of his abdomen .The P.W.2 is Adalat Mondal who was with de-facto complainant on the very date as mentioned by the P.W.1. In this case Adalat Mandal , Harun Rasid and Jatirbox Mondal ,deposed as P.W 2,4,9,5 respectively to that extent that on the relevant time they along with the de-facto complainant were sitting on macha in front of the shop when a gondogol took place between the de-facto complainant and Manirul over issue on payment of Rs. 45 followed by an altercation and scuffling and both of them fell down on the ground as a result Manirul received minor injury on his forehead and then Manirul took out his pistol and shot the de-facto complainant. With that version all these witnesses to be considered as eye witnesses who further deposed that Manirul shot the de-facto complainant by revolver which was kept in his Lungi as a result Surabuddin received cut injury on his abdomen. None of these witnesses denied to be examined by the I.O. Besides them Yunus Ali also deposed as P.W.3 who claimed to be the owner of the grocery shop and on that relevant night Jatil, Adalat, Surabuddin and Harun were present at a Macha situated in front of his grocery shop. This

witness also appears to be an eye witness who corroborated the version of de-facto complainant as well as P.W. 2, 4 and 5 that an incident of scuffling took place between Manirul and the de-facto complainant and both of them fell down on the ground and then Manirul shot Surabuddin by revolver which was hidden inside the Lungi. All the witnesses mentioned about an injury over forehead suffered by the appellant while both the persons fell down and excepting gunshot injury the injured did not suffer any other injury.

12. P.W.4 admitted that he wrote the complaint on behalf of the de-facto complainant as per his instruction and thereafter explained the contents to him then Sarabuddin put his signature and he proved his signature on the written complaint. Dr. Chandrika Goswami deposed as P.W. 9 who was posted as Medical Officer attached to Krishnaganj Rural Hospital on the date when she adduced evidence. She brought the Emergency Medical Register of their hospital of 23rd February, 2006 which revealed that one Surabuddin under ticket 1855 was treated at their B.P.H.C by emergency Medical Officer and the type of medicine prescribed were normally given for the healing of injury. In her cross-examination it was admitted that the appellant was not admitted at their hospital and the register does not speak about the nature or the history of assault. In the above facts and circumstances the moot question which falls for consideration is whether the prosecution was able to establish the case beyond the shadow of all reasonable doubts and whether the Learned Court rightly passed the order of conviction against the appellant.

13. On marination of the above testimonies it can be gathered that there are certain uncanny similarities in the evidence adduced by the 4 witnesses but certain glaring inconsistencies exit in the evidences adduced which compels

this court to look for further corroborations. On careful scrutiny the most interesting aspect appears in this case is that excepting the presence of the said 4 persons that is Jatir box, Harun Rashid, Adalat Mondal and the shop owner Yunus Ali as mentioned by the de-facto complainant in the written complaint with whom he was sitting on macha, no other independent witness has been cited by the prosecution. These persons deposed as eye witness, signed in the seizure list, wrote the complaint.

14. The aforesaid persons never disclosed presence of any other person at the alleged P.O. They further deposed that Manirul was caught immediately after the incident and was handed over to B.S.F. who brought the accused at P.S. as the gate of fence was closed. So it can be said that other than the aforesaid 4 persons it was only the B.SF personnel who could have been the independent person. All the 4 witnesses are close aid of the de-facto complainant is well established however that alone cannot be the ground to disbelief their testimonies.

15. In that backdrop let the place of occurrence be ascertained .The alleged incident happened at the border area where the international fencing with gate and residential houses on both sides that is Indian side as well as Bangladesh side and gate of International Border are situated which remains closed since 6 P.M. till 6 A.M. The sketch map was prepared by the I.O without index and admitted by the I.O. that he did not mention the specific side that the East, West, North, South etc. in the index of the sketch map. Therefore, the rough sketch map is of no help to ascertain the exact location of the P.O more so when the I.O did not try to ascertain the identity of the persons claimed to be sitting at the late evening when the International Border gets closed. The place

of occurrence in a criminal case is of prime importance and unless it is proved beyond all reasonable doubts it becomes difficult for the Court to pass the order of conviction. The I.O did not examine the owner of the vacant land adjacent to the said alleged place of occurrence and also the owner of the plot D as per the sketch map .He also admitted that no B.S.F personnel was cited as C.S witnesses though the place of occurrence is alleged to be at border area, no document was seized by the I.O. relating to the alleged grocery shop of P.W. 3 Yunus whose name is mentioned in the written complaint as well as from the evidence about his grocery shop. It is pertinent to mention herein that one of the Prosecution witness Said in his cross all of these are residents opposite to berberis fencing.

16. No wearing apparel of the injured were seized so it also remained in dark whether at all he sustained any gunshot injury or not as the wearing apparel ought to have the mark of gunshot .Furthermore certain inconsistencies are found in the evidence of the said eye witnesses which also creates cloud over the story of prosecution about occurrence of any alleged incident on the very date. P.W. 1 himself said he received injury on the skin of his abdomen and in his cross he said he did not sustain any bleeding injury. P.W 2 the eye witness deposed Surabuddin received cut injury on his abdomen. He further said the cartridge slashed out the upper part of the abdomen. In his cross he said the injured sustained bleeding injuries and his wearing apparels were soaked in blood. In the medical report nothing was mentioned about the nature of injury and the medicine applied like settron which are normally been prescribed for healing of injury and it is an anti-biotic. Brufen was also prescribed for decreasing an inflammation. The medical paper did not show any such

evidence that any First AID was given to the patient for a gunshot injury and no history of gunshot injury or any history of sustaining such minor injuries were mentioned before the Medical Officer. No name of assailant was given before the Medical Officer. So the contradictory version of the injured and the eye witness when in the eye of law both of their testimony are given utmost importance coupled with the absence of trustworthy evidence corroborating the testimonies creates enough doubts in the mind of the court as to the occurrence of alleged incident at all. It is pertinent to mention herein that neither the injured nor the alleged eye witnesses spoke about any other injury sustained by the de-facto complainant but all of them admitted that the Appellant sustained an injury in his forehead. Therefore from the above discussion it is clear that excepting the testimony of those 4 witnesses and that of the injured no other piece of evidence can be found to corroborate the case of prosecution even though the injured went to the B.P.H.C at the emergency ward on the next day. In the above facts and circumstances it is now necessary to look into the seizure list which has confirms the possession of the fire arms by the appellant.

17. In this case the seizure list was marked with exhibit 2 and whereby one country made revolver of point 38 bore is shown to be seized from Manirul Mallick that is the appellant. The place of seizure is Krishanganj Police Station the said seizure list is signed by the de-facto complainant, the P.W. 3 and 4 as well as the appellant. The seizure list contains description of the arms that was seized. This description primarily tallies with the report given by the arms expert. Furthermore the P.W. 7, the arms expert labelled the items with his signature which have been exhibited as Mat exhibit (i) (ii).The interesting part

would reveal now that in the seizure list the recovery of the fire arms was shown from the possession of the appellant when in written complaint it was mentioned that the defacto complainant produced the fire arms with the cartridge which he recovered from the accused on 23.2.06. The learned session court was of the opinion that when the accused was caught, the International border was closed and as such they handed over the accused before the B.SF personnel and on the next day the accused was produced before the police officer and the illegal fire arms were handed over to the I.O and this is a technical fault on the part of the I.O as the fact was not properly mentioned in the seizure list.

18. This court is unable to concur with such view since the recovery by the de-facto from the accused of the offending weapon is alien to the criminal jurisprudence more so when the case of the de-facto was that on 22/2/06 the accused was handed over to B.S.F. The non-mentioning of the said facts of recovery in the seizure list further creates enough suspicion over the prosecution case barring the faulty investigation. In this regard the decision as relied upon by the Learned Advocate in Ram Kumar Pandey vs State of Madhya Pradesh (Supra) becomes relevant where the main points for decision as emerged from the evidence were whether the injured were stabbed and whether the alleged eye witnesses could be believed. The Hon'ble Court considering that the site plans do not show any place where the blood was found and or that where the alleged place of occurrence was situated was not shown in the site plan did not consider the version of the eye witnesses also and the order of conviction was set aside. The question of the weightage attached to the evidence of an injured witness is discussed by the Hon'ble

Supreme Court as well as High court in various judicial pronouncement .The testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with a built-in guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant. In order to falsely implicate someone. "Convincing evidence is required to discredit an injured witness". (Vide Ramlagan Singh & Ors. v. State of Bihar. A similar view was taken in, Jarnail Singh v. State of Punjab), ³ where this Court reiterated the special evidentiary status accorded to the testimony of an injured accused and relying on its earlier judgments .

19. In this case even though the injured deposed and the prosecution examined 4 witnesses to support the case of prosecution as eye witness because of having the lacunas which pose a question to the very root of the occurrence and the presence of only those persons at every stage of proceeding with the inconsistencies in their respected testimonies compels this court to observe that the prosecution has failed to clear the doubts and or the circumstances which culminates into benefit of doubt in favour of the accused. The evidence of P.W.7 Prakash Banerjee the arms expert who found the said arms in working condition and the ammunition alive is of no such assistance as he received the alamats on 27.03.2006 from O.C. Krishanganj P.S. vide AR SL No 33/06 in sealed condition for expert opinion and he opened the sealed packet and found the alamats for examination which were an improvised point 38 bore country made revolver type “fire arms” fitted with a cylinder of 6th chamber and wooden butt. He marked exhibit ‘A’ by labelling with his signature. Exhibit E is one round point.38 bore ammunition, exhibit C is one round empty cartridge

³ (2009) 9 SCC 719

firing pin marked as point 38O/MK-2/64/KF. The report of the expert says that the alampats were labelled and sealed up in his presence. It is undisputed that the expert prepared his report on the basis of the alampat sent to him by the I.O but if the basic seizure of the said alampat is found clouded the subsequent report also loses its credentials. That apart blood soaked wearing apparel was sent to FSL to ascertain the cause of injury and the medical report is silent about the cause of injury and/or the nature of injury sustained.

20. Therefore the argument as advanced by the Learned Advocate appearing on behalf of the appellant that the fire arms were not sealed and labelled and therefore create a doubt over the prosecution case regarding recovery of the said arm becomes relevant. In this case excepting the presence of P.W. 2,3,4,5 no other independent witness was examined and even for the sake of argument, if it is accepted that in order to frame the present appellant the false complaint was lodged, the defence fell to impeach the credibility of the witness by establishing any other alternative convincing story for not believing the eye witnesses. It is undisputed that the prosecution has miserably failed to prove that the de-facto complainant sustained gunshot injury but only suffered hurt was caused because of the scuffling took place between him and Manirul as none has said that the de-facto sustained any other injury then gunshot injury.

21. In view of the decision relied upon by the Learned Advocate appearing for the appellant in *Takhaji Hiraji (supra)* also the Hon'ble Supreme Court observed that "if a material witness who would unfold the genesis of the incident or an essential part of the prosecution case, is not convincingly brought to the fore.

Otherwise, or where there is a gap or infirmity in the prosecution case which could have been supplied or made good by examining a witnesses who though available is not examined, the prosecution case can be termed as suffering from a deficiency and withholding of such a material witness would oblige the Court to draw an adverse inference against the prosecution by holding that if the witnesses would have been examined it would not have supported the prosecution case. This decision is squarely applicable in the instant case as the material witness was not-cited and suspicion certainly cannot substitute the proof of guilt. Accordingly the appellant is entitled to the benefit of doubt and to be acquitted.

22. In the light of the above discussion this court is of the view that the prosecution has failed to bring home the charges beyond the shadow of all reasonable doubts and therefore the Appellant is entitled for the benefit of doubt.

22. Hence the conviction and sentence of the Appellants passed by the Learned Court is to be set aside.

23. This CRA stands allowed. The Appellant is acquitted of the offence level against him.

24. The TCR along with a copy of this judgement be sent down to forward the same to Learned Trial Court for necessary action.

25. Photostat copy of this judgement if applied, shall be made available upon compliance of all formalities.

(CHAITALI CHATTERJEE DAS, J.)