

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

Present:

The Hon'ble **Justice Prasenjit Biswas**

**CRA 567 Of 2010**

**Tushar Das**

**-Versus-**

**The State of West Bengal**

For the Appellant : **Mr. Mrityunjoy Chatterjee,  
Mr. Manas Das,  
Mr. Arindam Poali,  
Ms. Suchismita Chakroborty.**

For the State : **Ms. Z.N. Khan,  
Mr. Sharegul Haque.**

Hearing concluded on : **26.06.2025**

Delivered on : **21.08.2025**

**Prasenjit Biswas, J:-**

**1.** The impugned judgment and order of conviction dated 30.07.2010 and 31.07.2010 passed by the learned Additional Sessions Judge, Fast Track Court, Amta, Howrah in connection with Sessions Trial No. 206/2009 is assailed in this appeal.

**2.** By passing the impugned judgment this appellant was found guilty for commission of offence under Section 304 Part II of IPC and is sentenced to suffer rigorous imprisonment for 5 years along with a fine of Rs. 5,000/- and in default to suffer further rigorous imprisonment for one year.

**3.** Being aggrieved and dissatisfied with the said impugned judgement and order of conviction passed by the learned Trial Court the present appellant has preferred this instant appeal.

**4.** The instant case was started on the basis of a complaint lodged by one Raj Kr. Pramanick of Village Sibanipur, under P.S. U.N. Pur, Howrah stating interalia that on 02.07.2008 in the evening at 7:00/7:30 pm a dispute was cropped up regarding passing of rain water from the house of the defacto complainant in between accused Tushar Das, Naba Kr. Das and Tarun Das and his father. All on a sudden the three accused persons assaulted the father of the complainant and this appellant Tushar Das gave blow on the head of his father with a wooden bar. As a result the victim sustained fracture injury on his head and the accused person fled away from the spot keeping the victim lying on the ground floor

with bleeding injury. Thereafter the victim was admitted at U.N. Pur State General Hospital wherefrom he was taken to Medical College and Hospital at Kolkata. Over the complaint the instant case was started. After completion of investigation, police submitted charge sheet against the accused persons under Sections 325/304/34 IPC.

**5.** Charge was framed by the learned Trial Court against three other accused persons including this appellant under Section 325/304/34 IPC. The contents of the charge were read over and explained to the accused persons which they pleaded not guilty and claimed to be tried.

**6.** In this case 13 witnesses were examined by the side of the prosecution and documents were marked as exhibits. Netiher any oral nor any documentary evidences was adduced on behalf of the defense.

**7.** Mr. Mriyunjoy Chatterjee, learned Advocate for the appellant said that there are apparent omissions and contradictions in the evidences of the witnesses and as such the impugned judgment and order of conviction passed by the learned Trial Court is not sustainable in law. It is further said by the learned Advocate that

the evidence of PW1 suffers from inherent infirmities and he is a post occurrence witness and he found his father lying in pool of blood but at the time of examination in chief he narrated the incident as a witness to the alleged incident. Moreover, the said witness was not present at the time of seizure of the weapon of assault.

**8.** Learned Advocate further assailed that the scribe of the written complaint (PW2) admitted in his evidence that there is no endorsement on the written complaint that it was written according to the instruction of the defacto complainant (PW1) and was read over and explained to him. The attention of this Court is drawn to the evidence of PW4 who is also a post-occurrence witness and admitted that PW1/defacto complainant had arrived at the place of occurrence after happening of the incident. It is further said by the learned Advocate that PW6 and PW7 who are the witnesses to the seizure categorically admitted that they did not sign on the alleged weapon of assault and put their signatures on the seizure list in the police station. As per submission of the learned Advocate the factum of seizure in respect of this case has not been proved by the

side of the prosecution. Learned Advocate further said that the incident was happened on 02.07.2008 and the victim died on 11.07.2008 and as such there is no proximate time gap between the date of assault and the date of death of the victim. It is submitted by the learned Advocate for the appellant that the prosecution witnesses failed to establish the essential ingredients of the offence punishable under Section 304 (Part II) of the Indian Penal Code. It is prayed that the impugned judgment and order of conviction passed by the learned Trial Court may be set aside after allowing the present appeal.

**9.** Mr. J.N. Khan, learned Advocate for the State said that there is nothing material in the record for which the impugned judgment and order of conviction is to be interfered with. It is said by the learned Advocate that in the written complaint the name of this appellant is mentioned and it is stated in the said complaint that this appellant hit the head of the victim with a bolt and as such the said victim sustained injuries and succumbed to that injuries later on. In support of his contention the learned Advocate draws attention of the Court to the Post-Mortem Report which is marked

as exhibit in this case, wherein it is opined by the autopsy surgeon that the death was due to the effect of head injury as described-anti-mortem in nature. So, as per submission of the learned Advocate post-mortem report also supports the story of the prosecution.

**10.** It is further assailed by the learned Advocate for the State that PW1 stated in his evidence that after assaulting the victim, the accused Tarun Das took shelter in his house and bolted door from inside. It is further said that PW4 also stated in the same line of PW3 that the accused Tushar Das struck on the left portion on the head of the victim with a wooden bar. Another accused Naba Kr. Das was also present and Tarun Das came thereafter. It is said by the learned Advocate that PW4 in his cross examination has stated that after inflicting the blow, this appellant ran away into the house of other accused Tarun Das. So, as per submission of the learned Advocate, all the witnesses including the injury report supports the contention of the written complaint and there is nothing in the record for which the testimonies of the witnesses can be disbelieved. So, it is said that the instant appeal preferred by the

appellant may be dismissed and the impugned judgment and order of conviction passed by the learned Trial Court may be upheld.

**11.** I have heard the rival submissions advanced by both the parties and have consulted with all the materials in the record.

**12.** PW1 Raj Kumar Pramanick, defacto complainant in his examination in chief has stated that at the relevant point of time this appellant brought a wooden bar from his house and struck on his father's head (victim) with it and thereafter the victim was removed to U.N. Pur State General Hospital and thereafter to Calcutta Medical College and Hospital for treatment where the victim succumbed to the injuries. In cross examination this PW1 stated that it is written in the complaint that when he arrived at the place of occurrence he saw his father lying dead in a pool of blood and the victim was removed to hospital. So, this PW1 is not the witness to the incident rather he is ocular witness in this case. This PW1 is a post-occurrence witness who found his father (victim) lying in pool of blood and although in his deposition he narrated the incident to have witnessed the incident. It is further admitted by this PW1 that prior to that incident there is no animosity

between his family and the appellant. So there are contradictions in the deposition of this PW1 where he said in an examination in chief that he is the eye witness to the alleged incident but in cross examination he stated that on reaching on the place of occurrence he found the victim was lying on pool of blood.

**13.** PW2 Uttam Prodhan who scribed the written complaint stated in cross examination that there is no endorsement in the written complaint to the fact that it was scribed as per instruction of the defacto complainant (PW1) and it was read over and explained to him before he puts L.T.I. on it.

**14.** PW3 Lakhimi Pramanik is one of the relations of the defacto complainant (PW1) and the victim and she admitted that the victim was her 'Bhasur' (elder brother of husband). In his deposition this witness has stated that at the relevant point of time the accused Naba Das abused her son in filthy language. She raised protest against it and at that time the victim told her not to argue with the accused persons as they are dangerous. So, at the time of altercation this appellant was not present at the place of occurrence. This PW3 further said that at the time of returning the

accused Tushar Das struck on the victim's left portion of the head with a wooden bar and this statement was firstly stated by this witness before the Court and she did not made statement before the investigating officer. This PW3 has also stated in cross examination that the accused Naba Das is a habitual drunker and he spoke in the filthy language in the evening after intoxication and disturbed the study of their son. PW4 Somnath Pramanik stated that the deceased was his neighbor uncle. So, this witness is also a relation with the victim and the defacto complainant.

**15.** PW5 Ranjit Kheto stated that he heard a hue and cry and saw the victim Binoy Pramanick was lying sustaining injuries on his head and he heard that the accused Tushar Das (appellant) caused such injuries. In cross examination this PW5 stated that he heard that this appellant Tushar Das inflicted blows upon the victim Binoy Pramanick. So, what this witness said is hearsay evidence and he was not the witness to the incident. PW6 and PW 7 i.e. Ramesh Pramanik and Asit Pramanik are the witnesses to the seizure. PW6 stated in his evidence that the seized material does not bear his signature and such material may be available in their

houses and this witness puts his signature at the police station. PW7 another seizure witnesses also stated in the same line of PW6 that the seized material does not bear his signature and such material may be available in their houses and he puts his signature at the police station. This PW7 further said in cross examination that he was not aware about the contents of the seizure list and he was not present in his house at the time of incident. So, PW6 and PW7 who are the witnesses to the seizure do not support the factum of seizure as stated by the prosecution.

**16.** PW8 is Dr. Mrityunjoy Mukherjee and PW9 Dr. Pabitra Biswas is another medical officers. PW 12 and PW13 are Dr. T.K. Bose and Dr. Nabanita Adhikari. This PW8, PW9, PW12 and PW13 either issued injury report or conducted post-mortem of the victim.

**17.** PW1 and PW3 are the relations to the victim. PW4 stated that the deceased was their neighbor uncle whereas PW5 stated nothing involving this appellant with the alleged offence. This witness said that he heard the incident from the mouth of other. The learned Trial Judge relied solely upon the deposition of those interested witnesses as gospel truth when the law requires that there should

be extreme scrutiny in respect of these witnesses and has to be considered cautiously and sparingly.

**18.** The alleged incident was happened on 02.07.2008 and the victim expired on 11.07.2008 and as such there is no proximate time gap between the incident and the date of death. PW11 Investigating Officer of this case has stated in his cross examination that he did not interrogate the victim Binoy Pramanick and the doctor who treated the victim. The investigating officer may have examined the victim who died subsequently after date of alleged incident. No plausible explanation has been given by the side of the prosecution for non examination of the victim or non-recording of his statement in between the date of assault and his date of death. PW5 has stated in his cross examination that prior to the incident some altercation took place between the wife of Asta Pramanik and the wife of Naba Das and he did not see any incident of assault by the deceased upon the wife of Naba Das at that time. PW5 virtually denied that the appellant (herein) had inflicted any blow with a wooden bar on the victim. It would appear from the evidences of the doctors that the deceased died due to head injury but there is

nothing on record to show that such injury was caused by the appellant.

**19.** At the time of examination of this accused under Section 313 of Cr.P.C. he replied to a question that he being afraid of the police he had given a wood to the police and police had prepared the seizure and he signed on it on the police station but the prosecution is totally silent in respect of this answer given by the accused person. So, it appears that the impugned judgment and order of conviction is based on conjectures and surmises which are not warranted by the evidence on record. So, the entire evidences brought on record does not inspire confidence of this Court for which the impugned judgment and order of conviction is to be set aside under the law.

**20.** In view of facts and circumstances and discussion made above I am of the opinion that the impugned judgment and order of conviction dated 30.07.2010 and 31.07.2010 passed by the learned Additional Sessions Judge, Fast Track Court, Amta, Howrah in connection with Sessions Trial No. 206/2009 is liable to be set aside.

**21.** Accordingly, the criminal appeal being no. CRA 567 of 2010 is hereby **allowed**.

**22.** The impugned judgment and order of conviction dated 30.07.2010 and 31.07.2010 passed by the learned Additional Sessions Judge, Fast Track Court, Amta, Howrah in connection with Sessions Trial No. 206/2009 is hereby set aside.

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

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

**(Prasenjit Biswas, J.)**