

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:-

HON'BLE JUSTICE CHAITALI CHATTERJEE DAS.

CRA 641 OF 2015

MOSLEM ALI @ SK MOSLEM ALI

VS

THE STATE OF WEST BENGAL

For the Appellant : Mr. Atis Kumar Biswas, Adv.
Mr. Suman Chakraborty, Adv.
Mr. Amit Singh, Adv.
Mrs. Jyoti Agarwal, Adv.

For the State : Mr. Anand Keshri, Adv.
Mr. Asif Dewan, Adv.

Last heard on : 12.08.2025

Judgement on : 28.10.2025

CHAITALI CHATTERJEE DAS, J. :-

1. The instant criminal appeal has been filed against the judgement of conviction dated 28.8.2015 passed by the learned Additional Sessions, Judge, 2nd Court, Arambagh, Hooghly in Sessions Trial No. 2(1)11, CIS 004/14 there by passed the order of conviction against the appellant for commission of offences under Section 324 of the Indian penal code and sentencing him to suffer simple imprisonment for two years.

Brief resume of the fact

2. The prosecution case was emanated on the basis of a complaint lodged by the de-facto complainant before the officer in charge of Arambagh Police Station, Arambagh Hooghly on 12 .12.2006, alleging that on that day in the evening at about 7.30 P.M. when Sk. Malek of their village was returning home and reached at Gorpukur More near Alambagh Tirol pakka Road, then the miscreants surrounded him and uttered, filthy languages towards him and threatened him with a dire consequences then Moslem took out a knife and stabbed him. The accused/present appellant had a sharp and deadly dagger like weapon, and the brother of the accused Mukhtar Ali,& anr Sk.Mindus, Sk. Saharab @ Laltu all son of Anwar Ali, and Anwar Ali himself and their servant, attacked Malek with a weapon like knife, Bhijali ,Khur etc. Then Sk. Rejaul , son of late Abdul Karim, the brother of de-facto complainant Sk. Sabar Ali and Manohar Ali, the brother of the miscreant proceeded to save Malek and then the above named miscreants caused severe injuries on his person on his chest and abdomen and at lower portion of abdomen of Manowar Ali, and they all suffered severe bleeding injuries. On seeing such condition, the de-facto complainant and said Rahul Amin, Ajijur Rahman and SK. Rafique and other brought those injured person in critical condition in a Maruti van and out of them one injured Saber Ali was transferred to Bardhaman Medical College and Hospital. It was further mentioned that on the date of the incident early morning the accused Muslem assaulted the injured Malek and for that reason, Malek lodged a diary before the Arambagh Police Station. Out of grudge on a pre-planned motive the above mentioned accused persons caused the injuries

to all those persons. On receiving such complaint Arambagh P.S case number 213/06 dated 12.12.06 under Section 147/148/149/324/326/307I.P.C started and on completion of investigation, the charge-sheet was submitted against the accused persons.

3. The learned Trial Court after hearing the evidence produced before the court found the present appellant guilty under Section 324 IPC, sentenced him to suffer 2 years imprisonment and passed the order of acquittal in favour of other accused persons. Being aggrieved, thereby and dissatisfied with the order of conviction, the present appeal has been filed.

Submissions

4. The Learned Defence Counsel representing the appellant would submit that the order of conviction passed by the Learned Trial Court is without applying judicial mind and without assessing the evidences and therefore is liable to be set aside. It is his contention that the place of occurrence is different than that is mentioned in the written complaint and the evidence adduced by the de-facto complainant. There is no recovery of offending weapon, but the learned court without having any basis held that the injury suffered by the accused was due to the use of the weapon as alleged and passed such order of conviction. That apart the injury report is silent about the name of assailant. The P.W.5, the injured did not see who stabbed him and the most interesting part is that he was not examined by I.O. P.W.6 came to the spot after the incident and therefore there is no eyewitness to the occurrence of the incident excepting the version of injured.

5. Per Contra the learned prosecution argued that the name of the assailant was specifically given by the injured and the accused persons are the family members. Therefore, question of identification is not tenable. The injured persons adduced evidence which has been further corroborated by the treating doctors. The evidence of the injured could not be demolished by the defence counsel and no evidence of shifting of place of occurrence can be found excepting minor deviations which can never be fatal for the prosecution. As many as 13 witnesses were examined in this case which not only includes the injured but the other eye witnesses who fully supported the case of the prosecution. Moreover, if any lacuna is there in the process of investigation, that cannot be fatal for the prosecution. Accordingly, prayed for dismissal of the appeal.

Analysis

6. Heard the submission of both the Learned Advocates. On perusal of the entire facts and circumstances as well as the submissions advanced by both the Learned Advocates the moot question now falls for consideration is as to whether the Learned Court was right in passing the order of conviction against the present appellant when the order of acquittal was passed against the other accused persons named in the F.I.R. In order to arrive at a decision, it is necessary to delve into the bottom of the case and to assess the evidences adduced by the prosecution witnesses.

7. In this case, the testimony given by P.W.1 Sk. Sabar Ali reveals that excepting the other accused persons are the members of same family and the incident took place on 12.12.06 at about 7/7.30 P.M in the evening at

Gorpukur Bazar in front of the tea shop of Alla and jewellery shop of Noor Alam on the road and between these two shops. The said road is known as Tirol Alambagh Highway; pitch Road when this witness was present in the tea shop of Aala talking to some people. The witness further deposed that an incident occurred in the early morning when Malek was calling the labourers who were having tea in the tea shop of Allah and Muslem was then sleeping in his shop beside the tea shop, and he came out and expressed his annoyance to Malek who cause disturbance to him then Moslem slapped Malek and he lodged a diary at Arambagh Police Station.

8. In the evening, when after the duty. Malek was going to his house, then all the accused persons assaulted him in front of the tea shop out of grudge as he lodged the diary. According to the version of this witness he along with other people went to find out what was going on and then Moslem took out a knife and stabbed Malek below the chest, and he also stab this witness in his hand and below his chest. Rajaul also went to save him, and he was also stabbed. All of them fell down and started shouting, then some people came took them to Alambagh Hospital. Meantime, the accused persons fled away the condition of this witness became serious and he was referred by the doctor of Arambagh Hospital to B.M.C.H, when other two injured were admitted at Arambagh Hospital. After 4/5 days Malek was referred to B.M.C.H. on that day Moslem's uncle Mansoor also tried to save them and sustained injury.

9. P.W. 2 Abdul Malek deposed that on that day on 12.12.06 in the morning at about 5.30 /6 A.M., he called the labourers from the road, going towards Arambag , at Tirol Bus stop near Gorpukurmore and Muslem slapped him and abused him as he called the labourers and then he lodged a diary at Arambag

P.S. being No. 590 on that day. In the evening, when he was returning home after work, all the accused persons surrounded him and threatened him as he lodged the diary and then Moslem took out a knife and stabbed him below the rib cage and above his stomach. As a result, he fell down and on shouting, some people came running. Later on Saber Ali and Rejaul Haque and another person were also stabbed. He said the accused person also stabbed their chacha @ Manowar. Local people from the market in the meantime on hearing their shouting came to spot and took them to Alambagh Hospital in a Maruti van. After four days of treatment, this witness was referred to B.M.C.H.

10. The third injured person. Sk. Rejaul has also deposed as P.W. 5 and he deposed that he was at Gour Pukur on 12.12.06 at about 7/7.30 p.m. and the incident took place in front of the tea shop of Sk. Allauddin, Sk. Alam and on hearing of shouting, he went near the place where about 50/60 persons were shouting and somebody behind him stabbed him with a knife. He could not say who stabbed him as he was in the midst of many people. He did not see the assailant. On being stabbed, he fell down and 4/5 persons took him to Arambagh hospital in a Maruti Van.

11. In order to arrive at a just decision regarding the case made out by the injured the medical evidences are to be scrutinised to ascertain how far the description of the injuries tallies. The doctor posted Arambagh Hospital as M.O on 12.12.06, Dr. Swapan Kumar Sarkar deposed as P.W.4. On that day, he was performing emergency duty and he examined Sk. Manowar Ali brought by Sk. Rukul Amir Sk. Sabar Ali brought by Sk. Fate Ali .Sk Malek brought one Sk. Hanif and Rejaul Haque by Ruhul Amir. On examination of SK Manwar Ali, he found stab injury on left thigh measuring 1"/1"/1" and the patient was

admitted at hospital. He proved the injury report marked as exhibit 1. On examination of Sk. Sabar Ali, he found incised wound on right forum measuring 3"/1"/1" and he was admitted at hospital. The injury report was proved by the witness and marked as exhibit 2. On examination of Sk. Malek he found stabbed wound at left, hypochondria, measuring 1^{1/2}" long and the injury report is marked as exhibit 3. On examination of Sk. Rejaul he found stab wound on right side of chest 1^{1/2}" long and his injury report was marked as exhibit 4. He also deposed that all the above mentioned patients he examined had a history of stab wound by knife, on chest and abdomen, the vital parts of body and a person may die as a result of such injury on vital parts of body. This witness during his cross-examination admitted that in the injury report of the victims in column number 10, the name of persons caused injury have not been mentioned. In exhibit1, knife injury to thigh is mentioned as the cause of injury. In the injury, reports, the detail of the injury like measurements or the extent of the wound was not mentioned in detail. The injury report was also silent whether it was bleeding injuries or not.

12. Dr Shubhamay Siddhanta deposed as P.W. 9 and said that on 12.12.06, he was posted as Medical Officer (surgeon) at Arambagh SD Hospital and he treated SK. Malek aged about 28 years, a Muslim male and he treated him from 16.12.06 to 20.12.06. He further deposed that SK. Manwar Ali, SK. Saber Ali Sk. Malek and Sk. Rejaul Haque where admitted under him on 12.12.06 at 6.30 P.M. He said that Sk. Malik was admitted with injury on left hypochondria on the left. 8" intra-coastal space and as per x-ray report, no abnormality was detected. He prescribed medicine to him and the bed head ticket is marked as exhibit 6.

13. He treated Sk. Rejaul and he found stab injury on right side of chest, one injury on the right 5" inter postal space, 1/2" inch to the right of middle clavicular line. No other injury was seen and the bed head ticket was marked with exhibit 7. Sk Saber Ali had an injury on right flank and injury on the ulna border, right forum at the middle 1/3". He proved the bed ticket marked as exhibit 8. The witness described all the injuries as stab injuries, but he could not say whether it was fresh injury or not and if such injuries can cause death. This witness in his cross could not remember whether he was interrogated by police or not, he failed to show that anything recorded in the bed ticket to show that police shown him the offending weapon and took his opinion as to whether the wounds inflicted on the patient was due to those offending weapons or not. No name of the assailant was mentioned in the bed head ticket. The patient was conscious, but it was not mentioned in the bed ticket as to whether the patient stated about the names of assailant or how they sustained such injuries.

14. P.W. 10 Krishna Nanda Majumdar, who was posted as professor and head of Department of surgery at Burdwan medical College and Hospital on 12.12.06 deposed that on that one person name SK. Saber Ali aged about 38 years was admitted under him with a history of assault by a knife by one. Moslem Ali at about 7 P.M. at Village, Chandi, Batti, P.O Golon at , Arambagh P.S, as stated by the patient to him. On examination, he found a wound on the right forearm, left hand and right flank of abdomen. The wound was already dressed and repaired at Amba S.D hospital and he was referred from Arambagh SD Hospital. He found the patient conscious and all the vitals were stable and after admission, he got treatment up to 15.12.06 when he was discharged from

BMCH. During cross examination, he said that the patient was admitted with the history of abdominal injury and the weapon used for such assault was not shown to him by police but was stated by patient that it was a knife. He could not prove the bed, head ticket or the injury report.

15. Therefore, the evidence of three injured persons and the doctors with the medical papers apparently found corroborating with each other and this certainly establishes the fact that the injured sustained injuries on account of the incident as alleged by the de-facto complainant but so far the role attributed by the appellant it is necessary to scan the other evidences adduced in this regard. The stand taken by the defence that was no street light, hence question arises about identification and the evidence manifest sufficient lights from the local shops and the accused person were identified.

16. The evidence further reveals inimical relationship existed between the parties on account of lodging a diary by P.W. 2 over an incident happened in the morning is found apparent. Not only that a further complaint was lodged by one of the injured of the rival group over the self-same incident. It is further evident that Rejaul is an accused in Arambag P.S case no. 214 of 06, where he has been falsely implicated. P.W6, Gaffar Ali, the de-facto Complainant specifically said that the incident took place at Gorpukurmore under Arambagh police station and Muslem at that time had a sharp edge weapon in his hand, other persons had knife, Bhojali and sharp pointed weapons in their hand. Muktar Ali, Kalu and Sk. Anwar where holding Malek and Moslem attacked him. Malek sustained injury in his stomach, and while trying to save Malek other persons also sustained injury, when this witness was standing at a tea shop at a distance of about 8 or 10 feet from the place of incident and

later on, he Aziz Rahman, Rahul Amin and SK. Rafique took them in a Maruti when Arambagh Hospital and admitted there .This witness is an accused in the case filed on behalf of the accused persons.

17. In this case, the P.W. 12 the I.O who was posted Arambag P.S. as S.I of police on 12.12.06 and was endorsed with investigation of Arambagh P.S. case No. 213/06 and he visited the P.O and drew rough sketch map with index and collected the bed, head ticket of the injured person and submitted the charge sheet. He did not seize any weapon of offence or any blood stained earth or controlled earth from the place of occurrence and the blood stained wearing apparels of any of the injured persons. He could not see whether any counter case to this case was there on the same incident or not.

18. At this stage the point raised by the Learned Advocate appearing on behalf of the defence counsel pertaining to shifting of place of occurrence is required to be verified since in criminal jurisprudence the place of occurrence plays a vital role. The I.O. said the P.O. is an open place and metal Road and the exact location of the P.O. was given to him by the complainant and the local people of the area. He failed to say the name of local people or the shopkeepers who identified the P.O. to him. In the written complaint, the place of occurrence was mentioned that Gore Pukur Bazar in front of Tea shop of Alla and Jewellery shop of Noor Alam and those two shops are on either side of the road and the incident took place on the road, which is known as Tirol -Alambagh Road. In the evidence of P.W. 2, it was mentioned about a distance of 20 to 25 cubic from the tea shop of Allah and near the Jewellery shop of Noor Alam. P.W.3 also said that the incident took place in front of tea shop of Sk. Alam and near the jewellery shop of Noor Alam. P.W. 5 said that incident took place

in front of tea shop of Sk Allauddin, and SK. Alam at Gorpukur .. On careful perusal of the sketch map the P.O is found to be shown open place as PO which is located in between A & D and C is shown as kamarshall which means a blacksmith shop and a metal road is shown as AB.

19. The learned Trial Court, considering all the versions of the prosecution witnesses held that incident took place on a Pucca Road in between tea shop of Ala and Jewellery shop of Noor Alam. Fact remains that the I.O. did not even mentioned about the Gorpukurmore market area or the jewellery shop or tea shop but from the evidence of P.W. 1 the presence of black smith shop can be found at the back side of the shop of Noor Alam. Despite the lackadaisical and potential attitude of flaws in the investigation the offence committed should not be down played, especially given the strong evidence from the parties injured and medical professionals. This highlights the importance of credible evidence in establishing the fact of the case regardless of procedural shortcoming. Therefore no significant discrepancies found regarding the place of occurrence and the minor variations are expected and not undermine the prosecution case fatal for the prosecution in this regard. This suggests the narrative given by prosecution about place of occurrence is relatively consistent.

20. The Learned Court on assessing the injury reports and the nature of injuries inflicted upon the other injured considered the same to be minor in nature as compared to the injury sustained by P.W.1 and P.W.2, P.W.5 and Manwar Ali. That apart, no specific overt act was found so far, the other accused persons are concerned but the specific evidence derived from the injured persons about the mode and manner of injuries clearly exposed that the present

appellant and his complicity . In this regard it is pertinent to mention that before the doctors the injured persons despite being conscious did not divulge the name of assailant, but the de-facto complainant one of the injured mentioned in his written complaint that all the accused with deadly weapon in their hand surrounded Malek and attacked him and when he proceeded to save him all of them also inflicted injuries on Saber Ali and Rejaul .Before the Court at the time of adducing evidence the injured revealed the specific name of the assailant . Admittedly, the I.O did not make any effort to recover the said weapon but the evidence of the treating doctors with the bed head tickets are of the opinion that such nature of injury can be sustained with a knife and a sharp cutting weapon. The rivalry between the parties are apparent and it is not disputed that on the date of incident in the morning, another incident happened for which a diary was lodged by Malek. That apart on the self-same incident, another complaint has been lodged by the present appellant as a free fighting was ensued and both parties sustained injuries to some extent. More so in connection with a murder case, some of the present injured are also named as accused which further manifest that both the accused persons as well as the injured persons have other criminal antecedent .Initially the charge was framed under Section 148 /149/324/326 /307 I.P.C but the Learned Court considering the divergent opinion found the charges not proved by the prosecution witnesses against all the accused persons and accordingly passed order of acquittal of all the persons, and excepting the present appellant no one was found guilty under Section 324 of the Indian penal code.

21. In order to attract the ingredients of under Section 324 IPC it is necessary that the accused voluntarily caused bodily pain or infirmity to the victim and

accused must commit an act with the knowledge that he was likely to cause, hurt or grievous hurt to the victim and it was caused by any shooting/stabbing/cutting instrument or by any instrument, if used as a weapon of offence is likely to cause death. The accused person/appellant during his examination under Section 313 of the code of criminal procedure did not utter a single word in his defence, excepting all are false statements. It is the settled proposition of law that the evidence of injured witnesses should be given much weightage and the injured witness belongs to rival group is no ground to reject his evidence when he being an eyewitness injury which is proved by medical evidence, and they put the specific overt act on the part of the present appellant on the vital part of the body, certainly attracts the ingredients to bring home the charges under Section 324 IPC.

Conclusion

22. In the above facts and circumstances, this Court do not find any reason to interfere with the order of conviction passed by the Learned Trial Court. It is seen now that the learned trial court did not apply the provision under Section 360 Cr.Pc. considering the circumstances as well as the submissions of the convict. The judgement was delivered on 28th of August 2015, and the incident took place in the year 2006 and the appeal is pending since 2015 and in the meantime, almost 19 years have been passed from the date of the incident. In view of the decision of the Hon'ble Supreme Court in **Chellammal and another versus state**¹ represented by inspector of police in criminal appeal number 2065 of 2025 in paragraph 27 and 28 has held;

¹ 2025 INSC 540

27. What logically follows from a conjoint reading of subsection one of section 4 of the Provision Act and Section 361, Cr.PC is that if Section 360, Cr. PC were not applicable in a particular case, there is no reason why section 4 of the probation Act would not be attracted.

28. Summing up the legal position, it can be said that while an offender cannot see an order for grant of probation as a matter of right, but having noticed the object that the statutory provisions seek to achieve by grant of probation and the several decisions of this court, on the point of applicability of section 4 of the probation act, we hold that, unless applicability is excluded, in case where the circumstances stated in subsection one of section 4 of the probation act are attracted, the Court has no discretion to omit from its consideration release of the offender on probation; on the contrary, a mandatory duty is cast upon the court to consider whether the case before it warrants releasing the offender from upon fulfilment of the said circumstances. The question of grant of probation would be decided either way. In the event, the court in its discretion decides to extend the benefit of probation; it may upon considering the report of the probation officer impose such conditions as deemed and proper. However, if the answer be in the negative, it would only be just 10 proper for the court to record the reasons, therefor.'

Therefore, in view of the above decision and considering the long passage of time and the nature of injury sustained by the accused persons and that there

is a case counter case and free fighting causing injuries to both the parties the court is of the view that the provision of the probation act is applicable in this case.

23. In the light of the above as it relates with the conviction the appellant is maintained but the sentence is modified. Instead of sending him to correctional home the appellant is given benefit of Section 4 of the Probation of Offenders Act 1958 and therefore is released on probation and he is directed to file two sureties each to the tune of Rs. 30,000/- along with personal Bond before District Probationer Officer concerned and also an undertaking to that effect that he shall maintain peace and good behaviour during the period of 1 year from today .The said Bonds are to be filed by the appellant within a period of three months from the date of this judgement.

24. Hence this CRA is partly allowed with the above modifications and in view of that all connected applications are disposed of.

25. The concerned department is directed to send the copy of this order along with the T.C.R to the concerned court for necessary compliance.

26. Urgent certified copy of applied be given at an earliest subject to fulfilment of all other requirements.

(CHAITALI CHATTERJEE DAS,J.)