

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

Present:-

HON'BLE JUSTICE CHAITALI CHATTERJEE DAS.

CRA 675 OF 2015

GOPESWAR GHOSH

VS

STATE OF WEST BENGAL

For the Appellant : Mr. Prabir Majumder, Adv.
Mr. Snehansu Majumder, Adv.
Mr. Anindita Kundu, Adv.
Mr. Debangshu Majumder, Adv.

For the State : Mr. Arindam Sen, Adv.
Ms. Manisha Sharma, Adv.

Last heard on : 17.06.2025

Judgement on : 18.07.2025

CHAITALI CHATTERJEE DAS, J. :-

1. The instant criminal appeal is filed by the applicant against a judgement and order of conviction and sentence dated August 21, 2015 passed by the learned Additional Session, Judge, 5th Court Krishna Nagar, Nadia in session trial number X (8) 2012 arising out of sessions case number 22(7) 2012, convicting

the appellant under section 324 of the Indian penal code and sentencing him to suffer rigorous imprisonment for two years and to pay fine of ₹1000.

BRIEF RESUME OF THE CASE

2. A complaint under section 156 (3) of the code of criminal procedure was filed by Krishna Ghosh against a present appellant before Court of learned chief Judicial Magistrate, Nadia at Krishnanagar alleging trespassing into his house out of a previous grudge with deadly weapon in his hand, in order to kill the complainant and physically assaulted him as a result the complainant suffered fractured injury on various parts of his body including fractured injury in his right side of jaw.

3. He was initially taken to Nakash pada Police Station and from there referred to Bethuadahari hospital. He was given five stitches on his head, three stitches in his jaw and four stitches in his finger. He was sent to Shakti Nagar district Hospital as the doctor of Bethuadahari Hospital referred him where he was admitted from 12. 10. 10 to 16. 10. 10.

The learned CJM, Nadia on 19/11/10 accepted the said written complaint and treated it as FIR which was sent to Nakashi Para Police Station for specific case and Nakash pada P. S case started being number 672/10 dated 22/11/10 under section 448/326/307 IPC.

4. After completion of the investigation, the I.O submitted the charge sheet against the F. I. R named accused person i.e Gopeshwar Ghosh under Section 448/326/307 I.P.C. Since the charges was exclusively triable by the Court of sessions ,the case was committed to the court of learned Sessions, Judge, Nadia, which was subsequently transferred before the court of Additional

Sessions, Judge, 5th Court Nadia for trial. After the accused appeared before the Court on 29/8/12, after considering the materials on C. D as well as the record, the charge was framed against accused under Section 448/326/307 of I.P.C, which was read over and explained to the accused to which he pleaded not guilty and claimed to be tried. Hence, the trial commenced.

5. In course of trial after assessing the evidences adduced by the prosecution witnesses and considering the exhibited materials, the learned court passed the order of conviction against the accused/Appellant under Section 324 I.P.C and acquitted him from the charges under Section 448/326/307IPC. Being aggrieved thereby the Appellant has filed this, criminal appeal.

The Submission

6. The Learned Counsel submitted that the Learned Court acquitted the appellant from the charges framed on account of inadequate materials but passed the order of conviction under Section 324 IPC which itself is not maintainable. It was further submitted that the complaint was lodged under Section 156 (3) of Cr.Pc after a period of 1 month which has never been explained. It was further contended that a longstanding dispute over the property matter was existing between the parties who are the brothers and as a talk of compromise failed or not materialised in order to create pressure upon the appellant the complaint was lodged with false and concocted story. It was further argued that the intention of the de-facto complainant is clear from his evidence as he deposed before the court on asking by the learned court that he demanded medical expenses from his brother as a condition of compromise and had his brother paid him Rs.20, 000/- he would not have filed the case. He mentioned about a G.D Entry which were neither seized nor produced before the Court. The

alleged offending weapon was not recovered or seized nor the wearing apparel. No document was placed to prove the Salish. Furthermore the Learned court did not find any materials to pass the order of conviction under the offences charged with but passed the order of conviction under Section 324 of IPC which has got no basis. The de-facto complainant suppressed that the accused is his brother and both of them resided at the same house so question of trespassing does not arise. Furthermore the injured sustained injuries after he fell down from the staircase as he was putting oil on his body. Furthermore no independent witnesses were examined and the evidence of the injured failed to gain any confidence to be relied upon. Accordingly prayed for an order of Acquittal after setting aside the judgement of the learned Session Court.

The State Respondent on the other hand submitted that the de-facto complainant is the injured person and his wife and son were the eye witnesses who have fully corroborated his version. The doctor has adduced evidence which supports the injuries sustained by the injured. The prosecution has adduced as many as 8 witnesses to bring home the charges and the unimpeached testimonies of the prosecution witnesses may not prove the charges under Section 448/326/307 IPC but certainly established the ingredients to attract Section 324 IPC. Therefore the Learned Court rightly passed the order of conviction under Section 324 IPC and the Appeal filed by the Appellant has got no merit.

Analysis

7. On careful consideration of the materials on record and the rival contentions of both the learned advocates, the moot question now falls for consideration is

that as to whether the Learned Court was right in passing the order of conviction under section 324 of IPC against the appellant and whether the prosecution has been able to prove the charges beyond the shadow of all reasonable doubt.

The complaint was lodged by the de-facto complainant under section 156 (3) of the code of criminal procedure against the present appellant on 19. 11. 10 alleging an incident dated 12/10/10 when the accused attacked the complainant with a Shabal on his head after trespassing into their house. As a result, he sustained fractured scalp injury and other injuries in his right hand finger, as well as at his right side of jaw, and he had to be admitted at hospital from 12. 10.10 to 16. 10. 10. The said written complaint was not supported with affidavit.

- 8.** The de-facto complainant adduced evidence as P. W1 and from his evidence, it can be gathered that the present appellant is his younger brother and both of them resides at the same house but under a separate mess. Furthermore a family dispute was in existence between the brothers due to partition of their immovable property. During his cross-examination, he deposed that his mother purchased some landed property in the names of their two brothers and the grievances between them pertain to the quantum of share in respect of land. He further deposed when asked by the court that he lost his sense soon after the assault at about 6 PM and regained his sense after one day at Krishna Nagar district Hospital. After being discharged from the hospital, he went to the Police Station and lodge a complaint. He lodged a G.D.E at the police station as a talk of compromise was going on. He also deposed that he demanded ₹20,000 from his brother and had his brother paid ₹20,000 to him,

he would not have filed the case against his brother. It was further said that a long-standing dispute is going on in respect of the share of the Immovable property between them. He admitted that one altercation was going on the date of incident with the wife of his brother. However, he denied that he suddenly fell from the stair and received the said injuries.

9. P.W.2 Smt. Minati Ghosh, the wife of the de facto complainant deposed that Gopeshwar Ghosh assaulted her husband with shabol on his head, hand, and jaw due to dispute of landed property. She first took her husband to the police station, and as per advice, took him to the hospital as he was vomiting. In her cross examination, she said that she or her son did not go to rescue her husband. She also narrated the incident to the member of gram Panchayat as well as their neighbouring people. After her husband was discharged, they lodged the written complaint after 6/7 days from the date of discharge. She further deposed that she was not interrogate it by the police, though the police went to her house after filing of the case.

10. P.W.4, Buro Ghosh the son of the de facto complainant deposed that his uncle Gopeshwar Ghosh assaulted his father with Rod and shabol. In his cross-examination, he admitted that at the time of incident, he was in his house, but out of fear, he did not go to rescue his father after the assault. His father became senseless with bleeding injuries, and he personally took his father to the hospital where he stated that his uncle assaulted his father. He also said that prior to filing of the complaint, they tried to settle the dispute with the intervention of the local people and the condition of the compromise was that the accused has to pay the cost to them. Therefore, this witness whatever has deposed before this court has said for the first time and therefore

the evidence adduced by them cannot be relied upon fully unless very strong corroboration can be found. P.W.5 Dilip Ghosh, who is the neighbour deposed that he was not interrogated by the police, and for the first time he came to court as he saw the appellant to assault Krishna Ghosh. He also said that he, Minati Ghosh and son of Krishna Ghosh went to hospital with Krishna Ghosh and Krishna was senseless at that time. PW6 said he is not aware how Krishna was assaulted.

11. The doctor of Shakti Nagar district Hospital deposed as P.W.7 who examined Krishna Ghosh after he was referred from Bethuadahari hospital with history of physical assault. In his examination, he was, he found the patient as conscious and restless. There was cut injury approximately 4 “in length on the occipital region on the scalp, which was stitched at Bethuadahari B.P.H.C . He also found a small elaboration with cut on left cheek, and that was also stitched and another cut injury measuring 1/2 “in length on right finger and that was also stitched. He proved the bed-head ticket, injury report, and the treatment sheet with his signature. He further deposed that the injury as noticed on the head of the patient could have been fatal. This witness in his cross examination said that at the time of admission of the patient at Shakti Nagar Hospital, he didn't go through the referral card of Bethuadahari B.P.H.C and the cut injury has noticed by him in his cheek and ring finger was not mentioned in the referral card. He also deposed that the patient did not state to him how he received injury and by which weapon and the place of injury. He did not notice the feature of grievous injury according to medical jurisprudence. In this regard, the exhibit 1 that is the bed head ticket reveals that on 12/10/10 Krishna Ghosh was admitted as referred by Dr is. Biswas

from BPHC at Bethuadahari. Interestingly, the other advice and discharge found in a separate paper different than that of the paper used in Department of health and family welfare. The discharge certificate of Bethuadahari BPHC, Nadia shows that he was admitted on 12/10/10 at 8:45 hours with the history of physical assault and head injury, but no indication of fractured injury as claimed can be seen from the report.

12. Therefore, from the above nature of evidence, it is clear that there was a long-standing dispute between the parties who are the brothers by relation over property matters, an altercation took place with the complainant and the wife of the accused and they lived in a same house under separate mess. Therefore, at the first instance, the allegation of invading into the house of the complainant by the accused, found to be baseless since both the parties were residing at the same house. It is also an admitted fact that the present complainant wanted to settle the dispute provided the accused paid ₹20,000 to him. Excepting the injured and his son and wife, no other person was present at the time of alleged incident. The wife of the injured that is P.W.2 was not examined by the I.O. In this regard that evidence adduced by the DWs becomes relevant as both the witnesses deposed the altercations were going on between the wives of the brothers as Krishna Ghosh tried to interfere slipped.

13. The P.W.1 himself deposed that he filed the complaint at Krishnanagar Court, when his wife claimed to lodge an FIR at Police Station. The other witnesses P.W. 3 & 5 to be a distant relative of Krishna Ghosh, who found Gopeswar Ghosh assaulting Krishna Ghosh but was not interrogated by police. The doctor of Bethuadahari BPHC was not examined. The interesting part is that both P.W.9 and 5 deposed there were number of person assembled at the

P.O. but none of them has adduced evidence or cited as witness whom can be relied upon when the two witnesses supporting the case of prosecution were not examined by the I.O

14. The referral card contains no note about the nature of injury, accepting physical assault, head injury, and vomiting. The long delay in filing the written complaint cannot be said to be substantiated because of admission of the patient as the patient was discharged on 16/10/10, but the complaint was lodged on 19-11-10. So the reason for the delay can be inferred as on account of the settlement and the version of the P.W 3 in this regard is very clear that they demanded Rs. 20,000/- and had the same amount was paid the complaint would not have been lodged. No copy of the alleged GD was produced before the court, though it was mentioned in the written complaint to show that immediately after the incident any action was taken on behalf of the complainant. No name of assailant was mentioned before any of the doctor. The bed head ticket though contains the date of admission do not contain the date of discharge. No referral card or BPHC was proved. No seizure list was prepared seizing the wearing apparel of the injured or the alleged shovel. No neighbour adduced evidence whose house are shown in the sketch map. The I.O did not examine any person whose houses are shown in the sketch map having adjacent houses. He also said excepting the present F.I.R no separate F.I.R was lodged by the wife of injured.

15. In this case, two witnesses have been cited on behalf of the defence. D.W.1 Prasad Ghosh, who is known to Gopeshwar Ghosh and the elder brother of Bhupesh Var Bishnu Ghosh. He also said altercation took place between the wife of Gopeshwar Ghosh and Krishna Ghosh when Krishna was putting oil in

his body sitting on the stair case of the kitchen, and as he tried to rush to the spot of quarrel, he suddenly fell down. D.W.2 Meghnath Ghosh, who rushed to the spot on hearing a hue and cry, said that a quarrel was going on between the wives of Gopeshwar Ghosh and Krishna Ghosh when Krishna Ghosh was putting oil in his body, sitting on the staircase of the kitchen. Many people gathered there and they tried to stop them, but the altercation was continuing. Suddenly Krishna Ghosh tried to go towards the P. O, and then suddenly slipped and fell down on the stair of the kitchen. He received injury on his head due to sudden fall. In his cross-examination, he admitted that he did not receive any summon from the Court and came at the request of Gopeshwar Ghosh. He was not interrogated by the I.O. Therefore though primarily their evidence has got no evidentiary value in the eye of law but certainly it is tallying with the evidence adduced by prosecution witness and to some extent corroborates.

16. In this factual backdrop, the learned session court came to a finding that the doctor clearly said that he did not notice any injury which are grievous in nature, so it is hard to believe that accused assaulted the complainant with an intention to commit murder of the complainant and the ingredients of section 307 IPC cannot be said to be attracted. However, the court found that the complainant received bleeding injuries on his head, jaw and hands, and that was caused by the accused, but it was not established that accused assaulted by Sovel or any weapon made of iron accused but was found guilty for commission of the offence punishable under Section 324 of IPC.

17. I am unable to consider this view of the learned court because when the prosecution has failed to establish that the accused has assaulted the

complainant and or with any offending weapon on the relevant day and time, then only because the complainant sustained injuries, the accused cannot be booked for commission of an offence, which has never been proved.

18. Therefore in the light of above discussion it can be said that that the prosecution has failed to bring home the charges beyond the shadow of all reasonable doubt .In fact the learned session judge was also of the same view therefore acquitted him from all the charges framed against the accused . Section 324 deals with the offence of voluntary causing hurt by dangerous weapon or means. It specifies that if anyone intentionally inflicts hurt on another with weapons like fire arms, sharp objects or other dangerous means, they can be punished with imprisonment. In the instant case use of weapon has not been proved. The injury was caused because of any assault by the accused has not been proved but only thing proved was that the de-facto sustain certain injuries on that day and he had to remain admitted in the hospital. So certainly these versions cannot be said to be enough to attract Section 324 IPC and or be the basis for passing the order of conviction.

19. In view of the above this criminal appeal stands allowed. The judgement and order passed by the Learned Session Court is hereby set aside.

20. Department is directed to send back the TCR to the respective Court along with the copy of this judgement for taking effective steps by the Learned Court.

21. Urgent certified copy of this judgement if applied shall be made available upon compliance of all formalities.

(CHAITALI CHATTERJEE DAS,J.)

