

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

Present:

The Hon'ble **Justice Prasenjit Biswas**

C.R.A. 654 of 2007

Swapan Das

-Versus-

The State of West Bengal & Anr.

For the Appellant : **Mr. Pradip Kumar Mondal, Adv.
Mr. Arka Mondal, Adv.**

For the State : **Mr. Suranjan Mondal, Adv.
Mr. Aditya Bikram Mahata, Adv.
Mr. Amit Bikram Mahata, Adv.**

Hearing concluded on : **18.06.2025**

Judgment On : **18.09.2025**

Prasenjit Biswas, J:-

1. The impugned judgment and order of acquittal dated 23.07.2007 passed by the learned Additional Judicial Magistrate, 2nd Court, Diamond Harbour in connection with Sessions Trial No. 113/2003 arising out of Sessions Case No. C140/2003 is assailed in this appeal.
2. Being aggrieved by and dissatisfied with the said impugned judgment and order, the present appeal is preferred at the behest of the appellant/complainant.

3. The case was started on the basis of a complainant lodged by the complainant Swapan Das before the Court of learned S.D.J.M., Diamond Harbour, South 24-Parganas stating interalia that the scheduled land measuring six sataks (decimal) is belonged to his brother Mohit Das and Tapan Kumar Das. It is sated in the complaint that the accused persons forcibly dispossessed the owners from that land and entered into possession thereof. It is further contended in the said written complainant that since before the date of incident i.e. 16.03.2003 the accused had been stocking building materials and the anticipation of propose construction by the accused person, his brother Mohit Das filed a case before the jurisdictional Civil Court and sought for ad-interim injunction which was granted by the Civil Court. On 16.03.2003 at or about 4.30 P.M. this accused along with his associates started erecting a boundary wall on their land and as the owners of the said land i.e. his brothers Mohit and Tapan were not at home, so he objected to such construction and as a result the accused abused him and assaulted by slaps, blows. The accused also hit his left wrist and as a result a wrist watch was broken and he sustained swollen injury thereto. The nephew of this complainant came to save him but he was also assaulted by the accused persons and by such incident this complainant suffered a loss of Rs.700/-. The incident was reported to the concerned police station but as no step was taken he

filed a complaint case before the Court of learned S.D.J.M. Diamond Harbour.

4. In this case, six witnesses were cited by the side of the complainant and documents were marked as exhibits on his behalf. But neither any oral nor any documentary evidence was adduced by the side of the accused person.
5. Mr. Pradip Kumar Mondal, learned Advocate for the appellant has said that the learned Trial Court has erred in law and misdirected himself in passing the impugned judgment and order of acquittal. It is said by the learned Advocate that PW1, Swapan Das, the complainant has specifically stated in his evidence that the accused persons forcibly entered in their land and started to erect the wall thereon and as the complainant objected to such erection of boundary wall, the accused person assaulted him by lathi and as such he sustained injury on his person. It is further said that the nephew of this complainant namely, Palash Das (PW2) came to save this complainant/injured from the clutches of the accused persons but he was also assaulted by the accused persons. The attention of the Court is drawn to the evidence of PW2 wherein this witness has said that the accused Harisadhan Das assaulted his uncle Swapan Das (injured) by a bamboo and as a result he sustained injury on his left wrist.
6. It is further contended by the learned Advocate for the appellant that the learned Trial Court did not at all consider the evidence of PW5

(Doctor) who himself examined the victim and prescribed treatment and stated in his evidence that this kind of injury which was sustained by the victim might occur by hitting with a hard object. So, it is said by the learned Advocate that the learned Trial Court erred in law and misdirected himself by passing the impugned judgment without following the proposition of law. As per submission of the learned Advocate, the learned Trial Court did not at all properly appreciate the case of the complainant and evidences of the witnesses cited on his behalf and as such, the impugned judgment and order of acquittal passed by the learned Trial Court may be set aside.

7. Mr. Suranjan Mondal, learned Advocate for the respondent no.2/accused Harisadhan Das has contended that there is nothing material in the record for which the impugned judgment and order of acquittal passed by the learned Trial Court may be interfered with. It is further said by the learned Advocate that there are apparent contradictions and omissions in the evidences of the witnesses and the complainant has hopelessly failed to prove his case. So, it is prayed that the appeal filed by the appellant-complainant challenging the impugned judgment and order of acquittal may be dismissed outright and the impugned judgment passed by the learned Trial Court may be upheld.

8. Having heard the submissions of the learned counsels on either side and upon perusal of the materials available on record, I proceed to decide the matter.
9. PW1, Swapan Kumar Das has stated in his evidence that this appellant and other accused persons were erecting boundary on the land of his brothers namely, Mohit Das and Swapan Das and he objected to such illegal act and on retaliation, this appellant hit on his left wrist with a bamboo and by such assault his left wrist got swollen and one wrist watch got broken. It is said by this witness that at that point of time PW2, his nephew Palash came to save him but he was also assaulted by the accused person.
10. PW2, Palash Das said that his father i.e. Mohit Das objected to erection of wall being made by the accused person and as a result the accused Harisadhan assaulted PW1 (complainant) with a bamboo causing injury at his left wrist. But PW1 has stated in his evidence that on the relevant date and time his brothers i.e. Mohit Das and Tapan Das who are the owners of the land were not present. So, the evidence made by PW2 is in apparent contradiction with the evidence of PW1. On cross-examination, this PW2 said that he could not say specifically which of the accused persons assaulted in what manner and at what place of his body. So, this witness could not say who was the person and what manner he assaulted the injured.

- 11.** PW3, Ganesh Das has stated in his evidence that Harisadhan hit on the left wrist of the complainant Swapan Das with a bamboo by which his left wrist got swollen and wrist watch got broken but he had not seen the incidence. So, this witness is not the witness to the incident.
- 12.** PW4, Rupak Das only stated that Harisadhan hit with a small lathi of bamboo on the left hand's wrist but he could not say any assault upon PW2.
- 13.** PW5 is Dr. Bholanath Das who treated the injured. The injury report is marked as exhibit 2 in this case. But the L.T.I. of the said injury report is not penned by anyone. The said injury report does not disclose any case history of assault and the date and time of injury. At the time of giving deposition, this witness has stated that this kind of injury may occur by hitting with a hard object. The injury report relied upon by the complainant does not inspire confidence of this Court and cannot be accepted as a genuine piece of evidence. It is significant to note that the injury report bears only Left Thumb Impression (L.T.I.) but the same has not been penned or attested by the doctor who treated the victim. So, in absence of any authentication the injury report has no evidentiary value and cannot be treated as a proof of identification of the injured person. Moreover, the said report does not contain any mention of the history of assault.
- 14.** It is a well-established practice in medical jurisprudence that the attending doctor, while preparing an injury report, records the history

of the injury as narrated by the patient or attendant. Such narration is crucial for linking the injuries with the alleged occurrence and the absence of any such history raises a serious doubt about the veracity of the report and creates a break in the chain connecting the injury to the alleged incident of assault. In the present case, the injury report is prepared on a plain paper which is separated and distinct from the injury book kept at the hospital. The unusual departure from the regular procedure renders the document highly suspicious and bereft of authenticity. A report prepared on a loose sheet, without being part of the hospital's official register, cannot be accorded the sanctity of a genuine medico-legal record.

- 15.** In cases involving personal injury, expert testimony plays a crucial role in establishing causation and the nature of the injuries sustained by the victim. When a doctor or medical expert provides an opinion about the cause of an injury, it is expected to be clear, definitive, and based on a sound understanding of medical science. If the expert's testimony lacks clarity or if the opinion is hedged with uncertainty, it can undermine the strength of the argument presented before the court. One such scenario could be when a doctor defers from giving a definite medical opinion regarding the cause of an injury, particularly when it comes to whether the injury was caused by a hard hit from a blunt object. The presence of uncertainty in the expert's opinion weakens the foundation of the argument being made. In situations where a medical

expert expresses hesitations, such as deferring to the possibility of alternative causes, the court may find it difficult to accept the opinion as fact. This type of ambiguous testimony can make it harder for the court to ascertain the truth with a sufficient degree of certainty.

- 16.** For all the reasons as stated above, I am of the opinion that the injury report in question is not reliable and cannot be believed. Such a document cannot be the basis for establishing injuries allegedly suffered in the incident and ought to be discarded from consideration.
- 17.** In this case, Tapan Das and Mohit Das who are the admitted owners of the schedule six satak of land were not examined and the complainant has deliberately withheld themselves from entering the witness box. Although, they were the most natural and competent witnesses to depose about the incident. It is a settled principle of law that when a party deliberately withholds material witnesses who could have thrown direct light on the facts in issue, the Court is entitled to draw an adverse inference under Section 114(g) of the Indian Evidence Act. In the instant case, Mohit and Tapan being the owners of the land where the incident is alleged to have occurred were the best persons to speak about the occurrence and their testimonies could have either corroborated or contradicted the version of the witnesses of the complainant. The non-examination of such vital witnesses give rise to a presumption that their evidence, if produce would not have supported the prosecution case. So, the complainant has not come before the

Court with clean hands and has suppressed the best available evidence.

- 18.** It is well-settled principle of criminal jurisprudence that an order of acquittal passed by the Trial Court, if it is a well reasoned judgment based upon due appreciation of evidence on record, cannot be lightly interfered with by the Appellate Court. The presumption of innocence which the accused enjoys is further reinforced by the acquittal rendered by the Trial Court. Therefore, unless the findings of the Trial Court are shown to be perverse, unreasonable, manifestly illegal or wholly against the weight of evidence, the Appellant Court should refrain from disturbing the same. Merely because another view is possible on the same set of evidence, that itself does not constitute a ground for interference with an acquittal. Unless the conclusions reached by the Trial Court are found to be palpably unsustainable or the appreciation of evidence is so erroneous that it results in miscarriage of justice, the Appellate Court should be slow in reversing the acquittal.
- 19.** In the present case, since the Trial Court has passed well reasoned judgment of acquittal after careful appreciation of evidence, without overlooking any material fact or law, there exists no valid reason for interference. The settled law mandates that unless the findings are shown to be manifestly erroneous or perverse, the judgment of acquittal must be allowed to stand.

20. In this case, after appreciation of all the evidences on record the Trial Court came to the conclusion that the case suffers from serious infirmity and as such, the story of the complainant cannot be relied upon.
21. In view of the above facts and discussion made above I find that there is nothing material in the record for which the impugned judgment and order of acquittal passed by the learned Trial Court may be interfered with.
22. Accordingly, the instant appeal be and the same is hereby **dismissed**.
23. The impugned judgement and order of acquittal passed by the learned Trial Court dated 23.07.2007 in connection with Sessions Case No. C140/2003 (Sessions Trial No. 113/2003) is hereby affirmed.
24. Let a copy of this judgment along with the Trial Court record be sent down to the Trial Court immediately.
25. Urgent Photostat certified copy of this order, if applied for, be given to the parties on payment of requisite fees.

(Prasenjit Biswas, J.)