

**IN THE HIGH COURT AT CALCUTTA**  
**(Criminal Revisional Jurisdiction)**  
**Appellate Side**

Present:

**Justice Bibhas Ranjan De**

**C.R.R. 5168 of 2024**

**Bhasan Sekh @ Bhasan Faraji & Anr.**

**Vs.**

**The State of West Bengal & Anr.**

For the Petitioners

:Mr. Joydeep Biswas, Adv.  
Mr. Amanul Islam, Adv.  
Mr. Sourav Mukherjee, Adv.  
Mr. Kaushik Ghosh, Adv.

For the State

:Mr. Debasish Roy, Ld. APP.  
Mr. Saryati Datta, Adv.  
Ms. Puja Goswami, Adv.

Last Heard on

:04.07.2025

**Judgment on**

**:18.07.2025**

**Bibhas Ranjan De, J.**

- 1.** The instant revision application has been preferred assailing the judgment and order dated 22<sup>nd</sup> August, 2019 passed in connection with Criminal Appeal No. 07 of 2018 wherein Ld. Sessions Judge affirmed the judgment and order of conviction dated 17<sup>th</sup> January, 2018 passed by Ld. Judicial Magistrate, 6<sup>th</sup> Court, Krishna Nagar, Nadia, in connection with G.R. Case No. 69 of 2005, thereby finding petitioners guilty of committing offence punishable under Section 325/34 of the Indian Penal Code(hereinafter referred to as IPC) [corresponding to 117(2)/ 3(5) of the BNS] and pronounced sentence of simple imprisonment for 6 (six) months and to pay a fine of Rs. 1000/- in default to suffer further imprisonment for one month.
- 2.** Factual matrix of this case is that on 13.01.2005, at about 5.30 a.m. a dispute took place between the victim and the accused over the issue of supply of water for cultivation. During such dispute the accused assaulted the victim with a spade, resulting in fracture injuries on his body.
- 3.** On receipt of the complaint, Nakashipara Police Station Case No.14 of 2005 dated 13.01.2005 was registered under

Sections 326/34 of the IPC [corresponding to 118(2)/ 3(5) of the BNS]. After investigation, charge sheet was submitted under Sections 323/325/34 of the IPC [corresponding to Section 115(2)/ 117(2)/ 3(5) of the BNS], before the Court of Ld. Chief Judicial Magistrate, Krishnanager, Nadia who, in tern, transferred the same to the Court of Ld. Judicial Magistrate, Krishna Nagar, Nadia, for disposal. Ld. Magistrate, framed charge under Sections 325/34 of IPC and after trial he found all the accused guilty of committing offence under Section 325/34 of IPC and accordingly sentenced them to suffer simple imprisonment for 6 (six) months each and to pay a fine of Rs. 1000/- each in default to suffer further imprisonment for one month each.

4. The judgment was assailed in appeal before the Ld. Sessions Judge, Nadia and the same was registered as Criminal Appeal no. 7 of 2018. Ld. Sessions Judge affirmed the judgment and order of conviction passed by the Ld. Magistrate, relying on the evidence of complainant (PW1), victim (PW4), and the doctors (PW8 & PW10).

**Argument advanced:-**

5. At the very outset, Mr. Joydeep Biswas, Ld. Counsel, appearing on behalf of the petitioners has submitted that petitioner no. 1 namely Bhasan Sekh @ Bhasan Faraji already suffered entire period of the sentence and accordingly Mr. Biswas has not pressed the application on behalf of Bhasan Sekh.
6. Mr. Biswas by drawing my attention to the evidence of the wife (PW1) of the victim (PW4) has submitted that none of the independent witnesses including the wife of the victim supported the prosecution case of alleged assault here. He has further added that injury stated by the victim and his wife has also not been ratified by the doctors (PW8 & PW10). Before parting with his argument, Mr. Biswas has submitted that neither the Ld. Trial Court nor the Ld. Appellate Court appreciated the evidence in its proper perspective.
7. On the other hand, Mr. Saryati Dutta, Ld. Counsel appearing on behalf of the State has submitted that the Ld. Trial Court perfectly appreciated the evidence of victim as well as doctors before coming to his final decision.

**Analysis:-**

- 8.** The main allegation involved in this case revolves around a rancorous altercation that erupted between the injured and the accused, sparked by a discord over the issue of watering for cultivation, which ultimately culminated in the accused launching a violent assault on the injured individual.
- 9.** After a pain staking examination of the depositions made by the injured individual (PW4), his wife (PW1) and the medical experts (PW8 & PW10), the Ld. Magistrate anchored his judgment firmly upon their concordant testimony thereby rendering a definite judgment of conviction.
- 10.** It is true, in the realm of jurisprudence, the testimony of an injured witness holds a revered position, for it is often considered a crucial and reliable piece of evidence in unraveling the truth behind a crime. The process of appreciation of the evidence of an injured witness is a meticulous and nuanced one, requiring a deep understanding of the intricacies of the human experience and vagaries of judicial process.
- 11.** While evaluating the testimony of an injured witness, the court must adopt a holistic approach, taking into account various factors that impact the credibility and reliability of

their statement. The following considerations form the bedrock of appreciation:-

- i. Presence of witnesses at the scene of crime is a crucial factor in assessing the credibility of injured witness.
- ii. The nature and extent of injuries sustained by the witness can corroborate his presence and involvement in the incident.
- iii. Testimony of injured witness must be examined in conjunction with other evidence, such as medical records, forensic evidence and other witness's statements.
- iv. The Court must assess the witness's credibility and reliability, taking into account factors like their relationship with the accused, potential biases and inconsistencies in their statement.

**12.** In conclusion, the appreciation of evidence from an injured witness is a complex and multi-faceted process requiring a deep understanding of the human experience and judicial process. The evidentiary value of such witnesses is immense, providing a crucial link in the chain of evidence and serving as a pillar of truth in the pursuit of justice.

Therefore, by carefully evaluating the credibility of an injured witness and utilizing their testimony effectively, the court can ensure that justice is served and the rights of all parties are protected.

**13.** Guided by the well established tenets concerning the veracity of an injured witness, it is necessary to scrutinize the evidence woven into the fabric of this record.

**14.** PW4, injured witness, has deposed his evidence as follows:-

*“Then there was hot exchanged with the accused persons while the accused persons have blow on me and I fell down on ground. Then they further assaulted me with lathi and kodal due to which my hand and leg fractured. I was admitted at Bethuadahari Hospital by the family members and the villagers. I was transferred to Saktinagar Hospital for treatment where I was admitted for 11 days.”*

**15.** From his cross-examination it transpires that he sustained bleeding injury on his leg and he was shifted to Hospital by Alkash Faraji, Amphal Mondal, Jillu Mondal, Kalu Sk., Anchar Sk. and Paltu Mondal. He denied the specific suggestion that he sustained injury while he fell

down in the aal (drain of the land). The injured witness further deposed that his trouser was emblazoned with blood.

**16.** Let us now unveil the layers of other recorded evidence that remain to be examined.

**17.** According to the injured witness he was shifted to Hospital by Alkash Faraji (PW2) and other five (5) persons. Among them only Alkash Faraji was cited as witness.

**18.** Alas, to my utter dismay, the said Alkash Faraji (PW2) remained woefully silent regarding the purported incident alleged to have been suffered by the injured (PW4). And to add to that, other independent witnesses (PW3, PW5, PW6, PW7 & PW11) also harped on the same string. But, unfortunately none of those independent witnesses was declared hostile from the side of the prosecution.

**19.** De facto complainant (PW1), **wife of the injured**, has testified that her husband suffered injury after falling into the aal (drain on the land). In fact, during cross-examination, PW1 unequivocally admitted that **her husband sustained injury after falling into a drain of the land, thereby ratifying the suggestion put to her husband (PW4) during cross-examination on behalf of the accused that at the**

**time of heated exchange he (PW4) fell on the aal (drain) and sustained injury on his hand, waist and legs.** She has further testified that as per her instruction PW5 reduced the complaint into writing.

**20.** PW9, recording officer, deposed that he received complaint on 13.01.2005 at Nakashipara Police Station and after registration of FIR he prepared a formal FIR.

**21.** PW10, Medical Officer, then attached to Bethuadahari BPHC has testified that the injured (PW4) was brought by one Abchad Sk. On examination, he found swelling and tenderness over the right forearm, lower side of back and left leg and also abrasion over right leg. According to the history of the assault, the injured was assaulted by Bhasan Faraji and Manirul Sk. (petitioner no. 2 of this case) on 13.01.2005 at 7.00 p.m. In cross-examination the doctor further **asserted the date and time of alleged incident.** He deposed that the patient was brought before him by some persons and from them he came to know about the history of the assault. In reply to a suggestion the doctor (PW10) expressed his opinion as follows:-

**“... if any person slipped on aal of agricultural land then this kind of injury can be caused.”**

**22.** PW8, another doctor attached to Nadia District Hospital, has testified that the patient (PW4) was referred from Bethuadahari BPHC on 13.01.2005 at 17:31 hours. On examination Doctor found injury on right forearm and left leg. In cross-examination the doctor has deposed as under:-

*“I was not interrogated by the police on said matter. The Injured did not tell me who beaten him and how injury was caused. There is no note on my report about history of assault. The said injury would have been caused if any person fallen in any drain.”*

**23.** Investigating Officer, PW12 said that he visited the place of occurrence and prepared a rough sketch map. He recorded the statements of available witnesses. He collected the injury report. However, he did not seize any blood stained wearing apparels.

**24.** Upon closer examination, the aforementioned testimony distills into a veritable labyrinth of striking inconsistencies and jarring contradictions, which, when laid bare, reveal a tangled web of discrepancies that beg for resolution as follows:-

- i. Admitted rivalry between parties with respect to watering of land for cultivation.
- ii. A candid and unequivocal admission by PW1 (wife of the injured), regarding the genesis of the injury, which was attributed to an unfortunate fall into a ditch (aal) on the land in question, lends significant credence to the circumstances surrounding the alleged incident.
- iii. Alkas Faraji (PW2), who, along with others, rushed the injured to the hospital, did not support the alleged incident.
- iv. None of the independent witnesses lend any support to the incident alleged in this case. Further it is worthy to note that none of those witnesses were ever declared hostile by the side of the prosecution.
- v. The averment of bleeding injury, vociferously claimed in this case, remains woefully unsubstantiated, having garnered neither the corroborative testimony of the doctors nor the validating endorsement of the investigating officer.
- vi. The deposition of two doctors has cast a pall of uncertainty over the prosecution's narrative,

introducing a reasonable doubt regarding time of the alleged incident, thereby rendering the veracity of the entire case susceptible to scrutiny.

- 25.** Regard being had to the above no option is left to this Court but to set aside the judgment and order of conviction passed by the Ld. Trial Court and also the judgment of the Ld. Appellate Court affirming the order of conviction.
- 26.** As a sequel, the convict Manirul S.k./petitioner no. 2 herein, is hereby acquitted of the charge under Section 325/34 of the IPC subject to compliance of Section 437A of the Code of Criminal Procedure [corresponding to Section 481 of BNSS] by submitting a bond of Rs. 5000/- with one surety of like amount to the satisfaction of the Ld. Trial Court, which shall remain, in force for six (6) months from date.
- 27.** Consequently, the judgment and order dated 22.08.2019 passed in connection with Criminal Appeal no. 07 of 2018 stands set aside and the instant revision application being no. C.R.R. 5168 of 2024 stands hereby allowed.
- 28.** Connected applications, if any, stand disposed of accordingly.

- 29.** Interim order, if there be any, stands vacated.
- 30.** Case diary be returned at once.
- 31.** All parties to this revisional application shall act on the server copy of this order duly downloaded from the official website of this Court.
- 32.** Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

**[BIBHAS RANJAN DE, J.]**