

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:-

HON'BLE JUSTICE CHAITALI CHATTERJEE DAS.

CRA 788 OF 2015

DEBDAS BASAK @ DEBA BASAK & ORS.

VS

THE STATE OF WEST BENGAL

For the Appellant : Mr. Sanat Kumar Das, Adv.
Mr. Sujan Chatterjee, Adv.
Mr. Rohan Bavishi, Adv.

Amicus Curiae : Mr. Satadru Lahiri, Adv.

For the State : Mr. Debasish Roy, Ld. PP.
Mr. Sandip Chakraborty, Adv.

Last heard on : 14.08.2025

Judgement on : 28.10.2025

CHAITALI CHATTERJEE DAS, J. :-

1. This instant criminal appeal against the judgement and order dated 23.9.2015 passed by learned Additional District and Session Judge, Ranaghat, District Nadia in connection with Sessions Trial number 7(11) of 2005 arising out of Shantipur Police Station no. 235 of 2004 dated July 20, 2004, wherein the accused persons/appellants were found guilty of the offence under Section 307/34 of the Indian Penal Code and sentenced to suffer rigorous

imprisonment for five years with fine of ₹5000 each and further R.I. for six months in default of payment of fine.

Prosecution case

2. Bereft of any details the prosecution case is that on 1st-2nd of July last year at about 1 A.M. the husband of the de-facto complainant while dealing with dying thread at home after having dinner, the neighbouring youth, Shambhu Dhar call him from the house and took him to a narrow Lane at Haridas Roy Road, where the accused persons named in the F.I.R attacked him with Dao and also injured him at many places as a result, he suffered serious injuries and was taken to Shakti Nagar Hospital. The de-facto complainant lodged the complaint before the Shantipur P.S against 3 accused persons on April 6, 2009 on the basis of which Shantipur P.S case no. 235/04 dated July 20, 2004 started under Section 326/307/34 I.P.C.
3. After completion of investigation, Charge sheet was submitted against all the three accused persons under the same Sections and the matter being exclusively triable by the sessions, the case was transferred to the Learned Court of Additional District and Sessions Judge, Ranaghat for trial after commitment where the charges were framed by the Learned Court under Section 307/34 IPC, which were read over and explained to all the accused persons to which they pleaded not guilty and claimed to be tried. Hence, the trial commenced.
4. The learned Court on considering the evidences adduced by the prosecution witnesses and after hearing the submissions advanced before the learned court, both by the prosecution as well as the defence counsel passed the order

of conviction against all the accused persons. Being aggrieved thereby this appeal has been filed by all the three accused persons.

5. They Learned Amicus Curie as appointed by this Court argued that the date of incident as alleged mentioned in the Formal F.I.R was on 20th July, 2004 and the date of receipt of the complaint was at 19.25 hours. The incident happened at about 1.00 hrs on 20 July 2004 as found from the written complaint and it was received at the police station on 20.7.04 at 19:25 hours. Therefore primarily there appears to be a serious discrepancy in respect of the date of alleged incident as the incident occurred at the mid of night on 20th July, 04 the complaint ought to have been dated on the next day that is 21st of July 2004. It is further argued that the place of occurrence was mentioned at Hari Das Roy Road in the written complaint as well as in the formal F.I.R, but in the sketch map the P.O is shown at a different place. In the charge framed by the learned court also the place of occurrence mentioned at a different place at Shiv Chandrapal Lane which was never mentioned in the written complaint and another place of occurrence can be found to be at Manasa Tola . In this regard, the Learned Advocate relied upon a decision reputed in **Ashraf Biswas versus the state of West Bengal**¹, where it was held considering the decision of the Hon'ble Supreme Court *in Syed Ibrahim versus state of Andhra Pradesh reported in*², that it would not be proper to accept the prosecution case when the place of occurrence itself has not been established.
6. The other discrepancies as was assailed before this court about the alleged offending weapon as throughout it was alleged that the husband/victim was

¹ 2016,0 Supreme (cal) 356

² JT 2006 (6) SC 597

injured with the use of da when in the charge framed another offending weapon Boti is added and PW1 during her evidence also did not mention about boti .

7. The Learned Amicus further tried to impress upon this Court that the victim was a habitual drunker and used to create ruckus near the locality and had a ill repute and on that day in all probability he fell down in drunken condition and sustained injury due to broken glass. There was no eye witness to the incident as alleged other than the injured. A Boti was seized which is otherwise commonly available to all and it was the specific case of the de facto complainant that her husband was assaulted with da. No special mark or thumb impression was found from such seized weapon to identify or to assert that the said weapon was used to assault the victim. Glaring inconsistencies and embellishment, distortion and suppression of fact by the witnesses are found abundantly and the Learned Court without applying her judicial mind passed the order of conviction relying upon the evidence of the injured which had no credibility and therefore is liable to be set aside.

8. The prosecution on the other hand argued that there was no delay in lodging the FIR before the Police Station and in order to bring home the charges the prosecution examined 12 witnesses including the injured himself. The injury report was exhibited after being proved by P.W. 6 , the doctor and the defence case was discarded by him. Two other doctors being P.W. 10 and 11 also supported the case of the prosecution .The accused persons did not say anything supporting the defence case while examined under Section 313 of the Criminal Procedure Code. It was further argued that the victim sustained grievous injuries and there are certain minor contradictions for which the

order of conviction was only for five years. Accordingly, prayed for dismissal of the appeal.

Analysis

- 9.** Heard the submission of both the learned Advocates. On careful perusal of the materials on record and considering the submissions advanced by both the learned prosecution and the Amicus Curiae, the moot question now falls for consideration is as to whether the prosecution was able to prove the case beyond the shadow of all reasonable doubt.

The Learned Amicus raised the question regarding the date of occurrence and place of occurrence and both the factors are essential elements to decide any criminal case where serious allegations are levelled against the accused persons and there must not be any iota of doubt in the mind of court before passing any order of conviction.

- 10.** In this case P.W.1 Rupali Roy the de-facto complainant deposed that on 19th July in the year 2004 at about/12.30 at night, she and her husband were busy in dyeing threads which was their work when Shambhu called her husband, and he went with him, and then he returned with bleeding injuries all over his body, including eyes, nose, head, back, shoulders, et cetera. Her husband told her that Debdas Basak, Sutu Basak and Shambhu Dhar inflicted Dao-blows on him. It can be gathered from her evidence that the victim returned after that ½ and 1 hour with bleeding injuries she came to learn from her husband that her husband was assaulted at Manasatala in a lane.

So apparently it is found that in the formal F.I.R the date of occurrence is mentioned as Tuesday on July 20, 2004 at about 1.00 hrs and the date when the information received was mentioned as 19.25 hrs on July 20, 2004 .Since the incident as alleged occurred at midnight, it is considered part of next day.

The complainant lodged the F.I.R qua the written complaint on the following evening aligning with the date of receipt of the complaint on July 20, 2024 at about 19.25 hrs. This suggests consistency in reporting time supporting the prosecution narrative about the time of incident.

The next question arises when the incident happened at mid-night of 19th July why the complaint was lodged on 20th July in the evening i;e after a delay of almost 12 hours in lodging the complaint so an explanation in this from the side of prosecution is called for specially when the prosecution denied the delay in lodging the F.I.R.

- 11.** In view of the discrepancies in place of occurrence mentioned by the de-facto complainant in the written complaint which suggests potential inconsistencies that requires additional evidence or clarification to establish the fact and P.W. 1 is not the eye witness to the incident of assault. According to her evidence, their house is situated on Haridas Roy Road and there is a place at their area known as Nutan Hut. The house of the accused persons are situated at Dutta Para at the opposite side of their Para. In between their para and Dattapara intervened by road number of houses are found near the house of the accused persons and Shantipur P.S is situated at a distance of 1 and 1/2 miles away from their house. Their locality is known as Berpara which is in

ward no. 5, Shantipur Municipality and about 500/600 people lives at Berpara.

12. In this case, the I.O. adduced evidence as P.W. 12. According to his testimony, he visited the P.O and prepared a rough sketch map of the P.O with index marked with exhibit 5. In the sketch map, the P.O is shown in between X and Y, described as S. Chandra Pal Lane. The sketch map shows Haridas Roy Road at the extreme left side of XY that is Shiv Chandra lane. The P.O is shown in between the houses of Nirmal Chandra Das and Gopal Chandra Pramanik however none of the said person was cited as witness. The I.O during his cross examination deposed that the P.O is at Shiv Chandra Paul Lane but he did not examine any of the witness of Shiv Chandra Paul Lane. He admitted that as per F.I.R the alleged P.O is at Manashatala Lane, but he did not examine any witness from Manashatala Lane. Manashatola Lane is not shown in the sketch map but S.Chandra Lane is mentioned.

13. It is admitted that the de-facto complainant after being learnt about the same from her husband, mentioned in her written complaint that the incident took place at Manasatala Lane, therefore it is the injured whose evidence can lead to the actual place of occurrence. The victim Jagannath day deposed as P.W.7 and said that he lives at Berpara , Shantipur and the incident took place on 19th July, 2004 at about 12/12.30 at night when he was engaged in the business of dyeing thread. He was called by Shambhu Dhar and he was taken near Manasha tala which is also known as Dutta Para Shiv Lane however he did not said this fact to I.O but the lane Manasatala may also be known as Dutta Para or Sibh lane though I.O did not make any attempt to specify the same and did not examine the persons having their houses as shown in the

sketch map and he did not examine any witness from Manasha tala or Shiv chandra .This certainly manifest the lackadaisical attitude of the I.O and the manner in which he did the investigation .However the discrepancies about the name of the lanes at i)different location with a close vicinity or ii) one lane being known might be by multiple names . In the decision relied upon by the Learned Amicus Curiae in the case of **Ashraf Biswas versus the state of West Bengal (supra)** the body of the deceased was found at a different place than the sketch map and the charge framed, the place of occurrence was shown at another place and therefore it was held by the Division Bench at paragraph 41,

41; Therefore, the place of occurrence was not proved beyond all reasonable doubts in the instant case and as a result, we have no hesitation to arrive at a conclusion that there was infirmity in decision making process by the learned Trial Judge. Once it is held that the place of occurrence has not been established beyond all reasonable doubts, then the other circumstances are hardly sufficient to establish the guilt of the accused.

14. In the case in hand, the learned court considered this point and was up to view that rustic and uneducated people are more prone to make mistakes in naming the road of reference in such case, but it has to be seen what they actually mean or whether they are confused about the location of the P.O .or not. According to the learned judge, a place of occurrence does not always have a name and it maybe an unnamed field or a particular corner of a roadside or at any other place and search unnamed place occurs are identified

with reference to the nearby popular roads, which are well-known to the people at large. In this case after the victim himself stated about the place of occurrence and that it is also known as Shib Lane or Shib Chandra Lane which is found from sketch map there remains no confusion in this regard. Accordingly this point goes in favour of the Prosecution.

15. Therefore when the place of occurrence is established the evidence of the injured is required to be assessed further in order to ascertain the truth. The victim P.W. 7 deposed that he was inflicted with blows with Dao and bonti on his nose, eye, arm and on the back, and he lost his eyesight because of such blow. According to the testimony of this witness, the incident continued for about 10 minutes, accused Debdas inflicted blows with dao on his eye and nose accused Sutu inflicted dao blow on his arm.

16. It is a settled proposition of law that the evidence of the victim himself is of much importance and order of conviction can be passed solely on the basis of his evidences provided it inspire enough confidence. The evidence of both P.W.1 and P.W.7 gets further corroboration from the evidence of P.W. 2 Smt. Swapna Dey, who also deposed that when she returned after work at about 12 at night on 19th July on hearing shouting of her ja ,she and her husband came to the courtyard and found the victim with bleeding injuries and the assault was done at Manasatala in a lane and she stated this fact to the I.O. Her husband being the elder brother has also reiterated the same fact.

17. The veracity of the evidence of the victim can be tested through the medical evidence .P.W.6 Dr Sanjay Chattopadhyay was the medical officer posted at Shantipur State General Hospital on 20.7.2004 and on that day, he examined at 2 A.M., Jagannath, son of Dulal Dey of Berpara ShantiPur. On examination,

he found deep penetrating lacerated own starting from left. ala of nose through the nose and left eye up to the outer canthus left eye ball, bevelling at upper end- left eyeball shrunken-cervical orbital fat came out-measuring 8" x 1 and ½" x 1". He also found one lacerated injury over back of left arm 2" x 1" x 1". The third injury he found was lacerated to over right side of upper part of back 2" x 1" x 1". The evidence of the doctor manifests that the patient was conscious and he was referred to the District hospital for surgical management. According to the doctor, the nature of injury was grievous and the history of injury was mentioned as assault by some sharp instrument near Dutta Para Panchmatha more by Debdas Basak of Dutta Para and Shambhu. The deficiency found from his evidence that he could not produce the emergency register but stated that the patient was brought by Samir Dey and Gaurango Dey elder brother of the patient. He could not said that the mother and wife of the patient also was present there or not from the injury report and he did not mention about the time of injury in the report. He denied that such type of injury was possible by broken wine bottle or due to fall on a shortcut weapon or instrument. Nothing was mentioned in the report whether the patient was in drunken condition or not. The witness said that there was no smell of alcohol so he did not mention the same in his report.

18. P.W. 10 Dr. Rahul Gupta deposed that he was attached as a surgeon on July 20, 2004 at the District Hospital at Krishnanagar. On that day, one Jagannath Dey was admitted under his care being referred from Shantipur State General Hospital with history of assault. He was admitted under him at emergency and he had injury and fresh nasal bleeding. He examined the patient assaulted, but the accompanying person would not give details of such

assault. On examination, he found the patient was in drunken state and fully conscious. The patient said to him that he was assaulted by the liquor shop owner but did not mention the time. The doctor found the following injuries on examination which are;

- 1) 2" X 1" cut injury on the left arm, posterior mid-part-stitched wound
- 2) 2" x1" x1" cut injury, cutting muscles and medial part of right scapula intra spinous part-stitched wound.
- 3) 1 cm x ½ " cut injury on intra-scapular spinous are-stitched wound
- 4) 1" x ½" injury on retro orientar part. The wound was already stitched.
- 5) 6" x 1" variable depth cut injury extending from the left frontal temporal area, across the lateral part of left eyebrow, cutting both orbital margins-bone dip, cutting the left eyeball across to the opposite side of the nasal ala cutting the nose, just above the ala area-lateral end of the wound was stitched.

19. The witness further deposed that the patient was referred to eye surgeon and E.N.T surgeon for opinion. Necessary treatment was provided by him to the patient. Also advised for C.T scan of brain but nothing abnormality was detected from the scan report and the patient was discharged on 27.7.04. He further deposed that the nature of injury was grievous and it was sufficient to cause death. The patient was brought by his mother Bella Dey at 3 AM on 20.7.04. He also said that the patient did not mention any specific name of the assailants or the shop owner

20. P.W. 11, Dr Imtiyaz Ahmed deposed that he was posted at Krishnanagar District Hospital as Medical Officer in the eye department and on 20.7.04 at about 5 AM. He examined one Jagannath day and he found that there was head injury along with Corneo scleral rupture with prolapse of uveal tissue. Frill excision was done .He sent the patient to operation theatre. In the left eye of the patient, he found extensive cornea scleral rupture with prolapse of uveal tissue. Both upper and lower lid was incised and full thickness repair was done in three layers. The patient was advised as regular dressing. In cross examination, he said that beside 20.7.04, he did not treat the patient on any day thereafter, and his treatment sheet does not contain the cause of such injury. According to this witness, this kind of injury may occurred if a person falls and his eye come in contact with any broken glass or bottle.

21. So there is no room for doubt that the victim returned with grievous injuries on the relevant date in the mid of night when he was called from his house by Sambhu Dhar and it has not come he was consuming alcohol at that point of time.

22. According to P.W. 1 her husband lost one eye due to such assault. She also said that Swapna Dey, Gouranga Dey, Bela Dey, Sadhana Dey and Madan Pandit came to their house, hearing her shouting. She further deposed that all of them then took her husband to Shanti Pur Hospital and after primary treatment, he was referred to Shakti Nagar Hospital and then they took him to Shakti Nagar District Hospital.

23. It is further seen that P.W 1 lived along with her mother-in-law, Bhasur, Ja, and their three daughters in the same house and just beside the same, another bhasur Samir @ Kallu and his wife Sadhana reside. She also deposed

that the houses of Takkel Sekh ,Nanda Sarkar , Raju Shaikh, and Kanai Shaikh are situated near their house and they had no enmity with those persons. According to her evidence she gave the names of the assailant to the doctor at Shakti Nagar Hospital and Shantipur Hospital .In this case police did not seize those wearing apparel which are alleged to be soaked with the blood.

24. According to the testimony of this witness, the incident continued for about 10 minutes, accused Debdas inflicted blows with dao on his eye and nose accused Sutu inflicted dao blow on his arm. He shouted for 10 minutes asking for help, but none came at that place, even hearing shouting. According to him, there are many houses near his house and also on all sides. No local witness excepting his family members deposed and some of whom accompanied him at the hospital. Nobody responded when while returning home, also he shouted throughout the way. His wearing apparels were also soaked with blood and there was blood on the earth at the place of occurrence. He was wearing a Genji at that time and there was cut mark on that Genji but he did not handover the Ganji and other wearing apparels to police.

25. Interestingly Madan deposed as P.W9 and according to his version he went to the house of Jagannath Dey at about 9 A.M. when he found police vehicle beside the house of Jagannath Dey when he went there, police took him to the house of accused Debdas Bsak , where from a boti was seized by the police in his presence under a seizure list and obtained his L.T.I. In his cross-examination, he said that this type of boti is available in the market and in almost all houses and the paper pasted in the boti does not bear any signature or thumb impression. No special mark of identification was found in the said

article which was marked with exhibit 1. This witness never said that on the previous night he reached at the house of the victim.

26. Kanai SK deposed as P.W. 3 that his house is situated adjacent to the house of the victim, and he knows that accused Debdas Basak sales country made liquor from his house. This he heard hue and cry at about 12/12.30 at night in the year 2004 (he failed to give the date of the incident) and then he went to the house of P.W. 1, found Jagannath with bleeding injuries. In his cross-examination, he said that when he reached at the house of Jagannath, neither Jagannath nor his family members told him the names of the persons who assaulted him though Jagannath was in his sense. This part of evidence fully corroborates with the version of P.W. 1. Then the witness said that Jagannath did not give the names of the accused persons at Shantipur Hospital, but he gave the name to him at Shakti Nagar Hospital.

27. In this case excepting the injured no other eye witness is there. In absence of any eye witness the version of the injured and the supporting medical witness with other corroborating circumstantial evidence are to be relied upon to arrive at a just decision.

28. So almost within an hour the patient was brought to the District Hospital at Krishnanagar and the P.W. 10 found the patient in drunken condition when the P.W. 6 did not mention anything about such condition. The exhibit 2 is a piece of paper taken out from any copy or register as kept in the Government Office. No explanation can be found as to why Doctor Chatterjee did not record the name of patient at the emergency Register. It was not mentioned that the patient had bleeding injuries or his wearing apparel were soaked with blood.

29. The plea taken by the defence counsel that the victim was an alcoholic person has been negated the P.W. 1, P.W. 2 the sister in law or that he had a quarrel with the wine shop owner or that said wine shop owner assaulted him with broken bottle of wine for which he sustained injuries. She further denied that her husband created disturbance after taking wine from that wine shop and the owner assaulted him for which he sustained injuries. This witness denied about any ill reputation of Jagannath in the village or that the accused persons raised objection to his activities or Jagannath sustained injury on his eye due to broken glass which entered inside his eye. The court cannot be oblivious with the fact that the victim was called from his house by Shambhu and the evidence of P.W 1 the wife of the victim stood firm and no suggestion was even put to her denying such fact. Therefore it is difficult to accept the proposal that the victim was in a drunken state when he went out of his house or for that reason he sustained injuries.

30. The other person who was said to be present on that day by the victim was Gaurang Dey, his elder brother, who deposed as P.W.5. At the time of incident, he was sleeping at home, and after hearing hue and cry, he woke up and came out and went towards the house of Jagannath, which was in the same compound of him and found him with bleeding injuries on his eye, nose, back, and other parts of the body. On being asked, he told that Shambhu called him from his house and all the accused persons inflicted blows with the dao, causing the said injuries. In his cross-examination, he took the name of said Kanai SK and his mother who accompanied the patient to Shantipur Hospital with him. He met with the doctor of Shantipur Hospital and told the names of the person who inflicted blows upon his brother and the doctor wrote down the

names of the accused persons. This witness though found the brother in injured condition and the name of assailant was given to him he did not lodge any complaint regarding the incident when the police station was situated at a distance of about 1 and $\frac{1}{2}$ kilometre away from their house. He also did not inform to the local commissioner and the chairman of the municipality about the incident. According to him, Jagannath told the cause of his injuries to P.W. 1 Rupali Dey and she stated him about the fact and he did not hear anything from Jagannath. He did not see the incident and neither himself nor any of the family members was present at the place of incident. He did not show the place of occurrence to the police. The police did not take the bloodstained earth from that place also. He could not say about the statement given by his brother to the doctor of Shakti Nagar Hospital or whether his brother gave any statement to the doctor of Shantipur Hospital. In his presence, his brother did not say anything to the doctor. He could not say whether his brother used to consume liquor or used to create problem in the village and his brother, consume liquor from shop or had a quarrel with the shop owner or the shop owner injured him with broken wine bottle. The nature of evidence clearly manifest that the witness tried to disassociate him and his family members from the case for the reason best known to him but his presence at the courtyard is not disputed neither that the victim did not suffered bleeding injuries.

31. It is pertinent to mention here that in exhibit 2 it was mentioned that Samir Dey and Gouranga Dey brought the patient. Bella De, the mother of the victim deposed as P.W.4 she went to hospital and stated to the doctor the names of the accused persons and she told the same to the doctor of Shantipur Hospital

as well as Shakti Nagar Hospital. She narrated the incident to the police giving the names of the accused. She also took the name of Madan Pandit to accompany her to the hospital when, according to Madan , he came to learn about the incident on the next day morning when he found the Police jeep in front of the house of the victim. The mother specifically denied that any other family member accompanied her to the hospital, when in the medical paper the name of Gauranga Dey was mentioned. In the bed head ticket of the State General Hospital the signature of mother was found, so the presence of the mother at the State General Hospital is evident so in all possibility the mother went to the Sate General Hospital and Gauranga went to Shantipur Hospital. The situation if can be visualised would certainly was a cause of concern for the mother and it is quite difficult to memorise each and every details of that crucial time and further to disclose it before the court after passage of time.

32. The learned judge was not impressed by the point raised by defence Counsel that the injured was in drunken condition or had an altercation with the liquor shop owner or injury sustained with broken glass bottle. The learned Court on such evidence was of the view that in the injury report, nothing was mentioned about any broken glass bottle however accepted that the injured wanted to suppress that he was in drunken condition. The Court did not accept that the identity of the liquor shop owner was fully established on the basis of the evidence given by P.W.3 Kanai Sheikh, the mother of the injured person, P.W.4, Bela De and held Accused Debdas Basak may or may not be country liquor shop owner. The learned judge heavily relied upon evidence of the injured who has suffered injury and did not consider the plea of the defence

that there was any probability of sustaining the nature of injury by broken glass or bottle, and more so when no seizure of a piece of broken glass of a bottle or the broken bottle can be found. The learned court held that even if it is considered that the victim was a drunk, but the local people had no authority to take the law in their own hand and assault him with vitality, which caused loss of vision of the victim and accordingly passed the order of conviction for commission of offence under Section 307/34 IPC. Even if this observation of the learned court cannot be ignored, no clinching evidence can be found which suggest that the appellants assaulted the victim with the dao or boti and the victim suffered the injuries but the court has to see whether the act irrespective of its result was done with an intention or knowledge under the circumstances mentioned in the section.

33. Section 307 Cr.Pc read with Section 34 IPC reads as follows:-

‘Who ever does any act with such intention or knowledge, and under such circumstances that if he by the act caused with be guilty of murder, shall be punished with imprisonment of either description for term, which may extend to 10 years, and shall also be liable to fine, and if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life or to such punishment as is herein before mentioned.’

34. The essential ingredients to attract 307 IPC as held in ***State vs virendra***³ are as follows;

1) the accused did some act

2) such act was done with intention or knowledge that hurt was likely to be caused to the victim by the act.

35. Therefore in order to pass an order of conviction under this under Section 307 of IPC, all the above mentioned ingredients must be present and the act must be done with an intention or knowledge. In the light of the above, the testimony of the victim P.W.7 clearly disclosed the role attributed by the accused person and that has been proved by the medical evidence , The evidence of the injured discloses Dao and a bonti both are sharp cutting weapons. The carbon copy.(torn condition) of the seizure list was marked with exhibit 6 which shows from the house of Devdas Bsak the seizure was made but the document is torn and half of the same is missing so it cannot be ascertained what was seized by virtue of such seizure list. P.W. 5 Madan Pundit said a bonti was seized from the house of Debdas Basak and the seizure list contains his name. The I.O deposed that a wooden bonti was seized but no dao was seized by the I.O.

36. P.W. 10 said specifically mentioned that the nature of injury is not possible by a broken wine bottle and cannot occur due to fall in a sharp cut weapon or instrument. So if the entire evidence adduced can be summed up it would reveal that on 19th July, 2004 in between 12.30 to 1 A.M. Sambhu called the accused and he left the house and returned after 1 and 1/2 hours with severe

³ (2004) 9 SCC 37

bleeding injuries and stated to his wife Rupali that the accused/appellant assaulted him with da and then she called the elder brother and also after hearing Bela, Sadhana ,Swapna ,Gauranga and Madan came to their house and he was taken to Shantipur Hospital and at 2 A.M. he was examined there and referred to District Hospital krishnanagar where he was examined at 3 A.M. The doctor who examined him at 3 P.M. said the patient was in drunken condition but nothing was mentioned in the bed head ticket .The doctor who treated the patient at 5 A.M. also did not mention about the patient being admitted in inebriated condition. No reason can be found to substantiate that he was in a drunken condition. There are admittedly some inconsistencies specially with regards to the persons arrived at their place in the night and accompanied the patient. The record shows the name of two brothers of the victim and the mother to be present at the hospital and hence there is no room to doubt and their presence even if some inconsistencies are found. The major discrepancies with regards to the presence of Madan and Kanai Sk at the house after the incident as stated by the victim himself but evidence of Madan the seizure list witness says different version. Even if his evidence is ignored the presence of other person Kani Sk is proved .A bonti was recovered which without any blood stain and not sealed or labelled or any other identification mark was there. There remains no doubt that it was a faulty investigation but otherwise the injury is proved by sharp cutting weapon and the weapon is seized from the house of the F.I.R named accused person where the name of the Debdas and Shambhu can be found from the exhibit 2 and the laches on the part of investigating authority cannot be fatal for the prosecution . In this case the accused persons were put with all the incriminating materials but

they only claimed to be innocent and also did not adduce any evidence. So if the version of the injured is accepted coupled with the medical report it clearly established the prosecution case despite having some discrepancies that a Person in the mid- of night was attacked severely and none came to rescue him and he had to take to hospital where the wounds were repaired and referred to District Hospital where CT scan was advised but fortunately no such serious injuries could be found . He was then taken to Eye Department and he lost his eyesight and remained admitted at hospital almost 7 days .The I.O did the investigation in a most perfunctory manner .Only deficiency remained regarding the weapon with which the injury was inflicted but admittedly it was a sharp cutting instrument as the doctor ruled out the possibility of being injured due to fall on hard substances or by broken glass. No piece of glass was recovered by either of the doctor. Therefore it is proved that the incident happened and the injured sustained injury but this court do not find the intention or knowledge which are essential to attract section 307 of the Indian Penal Code as the injured has lost his eyesight and the specific injury was on his face.

37. Section 307 IPC has already been quoted hereinabove. At this stage, this Court would quote Section 324 IPC hereunder for a ready reference:-

"324. Voluntarily causing hurt by dangerous weapons or means.--Whoever, except in the case provided for by section 334, voluntarily causes hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to

cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both."

Conclusion

- 38.** Considering the nature of injury sustained and the mode and manner as found from the evidence of the injured and corroborated with medical papers this Court differs from the observation of the Learned Trial Court that the offences were committed under Section 307 IPC and accordingly modifies the order. The order of conviction is scaled down to Section 324 IPC and passed the sentence to suffer R.I for 2 years with affine of Rs 5000/- each and in default to suffer S.I for further 6 months.
- 39.** In this case considering the brutal act of the appellants with a premeditative plan calling the victim at the mid of the night resulting loss of his eyesight certainly does not calls for application of probation of offenders Act or to apply Section 360 Cr.PC .
- 40.** Hence this Criminal Appeal is partly allowed.
- 41.** In view of the above all other connected applications are hereby disposed of.

42. Let a copy of this order along with the T.CR be returned to the concerned court at an earliest for necessary compliance.

43. Parties to act on server copy of the order downloaded from the official website of this Court.

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

(CHAITALI CHATTERJEE DAS,J.)

