

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:-

HON'BLE JUSTICE CHAITALI CHATTERJEE DAS.

CRA 934 OF 2013

RAJMAN THAPA

VS.

THE STATE OF WEST BENGAL

For the Appellant: Mr. Ramashis Mukherjee, Adv.

Ms. Debanjana Sen, Adv.

For the state : Mr. Debasish Roy, Ld. P.P

Mr. Iqbal Kabir, Adv.

Last Heard On: 24.04.2025

Judgement On: 20.05.2025

CHAITALI CHATTERJEE DAS, J:-

1. This criminal appeal is directed by the appellant against the judgement and order of conviction passed by the learned Court of Session Judge Darjeeling in Session case number 37 of 2007 where by the present appellant is found guilty of the offence punishable under Section 326 of the Indian Penal Code.

Brief fact of the case.

2. One complaint was lodged before the officer in charge, Ghoom Jore bungalow police station, Darjeeling by the De-facto complainant alleging an attack upon her father, Pradeep Alley by Ramjan Thapa on 4th February 2007 at about 8:30 PM with a sharp weapon causing severe bleeding

injuries on his hands, legs and head. He was admitted at Eden Hospital where primary medical treatment was given and as per advice of the doctor, took him to Siliguri North Bengal medical Hospital immediately, as his condition was very critical.

3. On the basis of such complaint, Ghoom Jore Bunglow P.S case No. 72 dated 3/4/2007 started and after completion of the investigation, the charge sheet was submitted against the accused person under Section 341/326/307 of the Indian penal code. The case being exclusively triable by the sessions court, the same was committed before the learned Court of Session Judge, Darjeeling and formal charge under Section 326/307I.P.C was framed which was read over and explained to the accused person to which he pleaded not guilty and claimed to be tried. Hence, the trial commenced. The prosecution cited eight witnesses and the learned session court, after considering the evidences, both oral and document passed the order of conviction against the person under Section 326 I.P.C.

Submissions

4. The learned Council for the Appellant at the outset submits, though the charge was framed under Section 326/307 I.P.C, the court passed the order of conviction only under Section 326 I.P.C as the prosecution failed to establish the said charge under Section 307I.P.C. It is submitted before this court that, this judgement and order of conviction is devoid of any merit and without application of mind as the learned Judge failed to consider that no motive could have been established by the prosecution. Furthermore despite having glaring inconsistencies, absence of forensic report, absence of seal of

the hospital in the medical paper, the learned court heavily relied upon the evidences adduced by the prosecution and therefore the judgement is not tenable in the eye of law.

- 5.** It is further contended that in all probabilities the victim himself sustained injuries on account of the sudden fall as would appear from the evidence of D.W. 1 & 2. According to him, the I.O. has not sent the seized offending weapon, and the wearing apparels of the accused person to FSL for chemical analysis and the injury report do not contain any seal of the hospital and also silent about the nature of injury sustained. It is further argued that the PW1 did not see the actual incident but heard about the incident from the complainant. P.W.2 came to learn that the accused caused injuries to Pradeep Allay. He put his signature on the same seizure list as witness, but in cross examination made a departure as said, the content of the Seizure list was not read over and explained to him by the police. The I.O. in the sketch map did not show the houses of those persons whose names were taken by the witnesses nor examined them as witness. It is further argued that from the evidence of the P.W. 3, as well as other witnesses, the time of incident was in the late evening at 8.30 pm when it was dark and there was no electricity in their village. The identification by the de-facto complainant at the time of incident becomes doubtful when he failed to say the colour of the wearing apparels of the accused but could identify him as the assailant, but this aspect has not been considered by the Learned Court.
- 6.** The Learned Counsel further submits that the version of P.W.3, the complaint pertaining to writing of the complaint is different than what P.W 4 Charan Singh deposed. Furthermore no name of scribe can be found from

the written complaint. It is the contention of the learned advocate that the nature of evidence adduced by the prosecution witnesses certainly creates doubts regarding the credibility of the witnesses and it cannot be the basis for passing an order of conviction. The most important testimony of the injured victim that is P.W.5 failed to say who lodged the complaint and admitted that there was no electric connection in their village, and there was darkness on the relevant day of the incident when his daughter said it was moonlit night. The accused was not identified as the accused was not present in the court on the day when the evidence was adduced. So the obvious question arises whether the assailant was the accused person at all when the prosecution failed to establish any motive behind such assault.

7. Furthermore, the P.W.7, I.O of the case, seized one Bamfok and one red track pant, one blue and white shirt from the house of the accused person on being produced by the accused but did not sent for forensic examination. Lastly, contended that the testimony of the doctor regarding not mentioning about the nature of injury in the report and then his subsequent statement before the court describing the injury as grievous is nothing but an embellishment in order to support the prosecution case and certainly loses its credential.

8. The prosecution on the other hand strenuously argued that there is no room to doubt the ocular evidence and the other evidences which fully corroborates the prosecution case and the minor deviation if any cannot be considered to be fatal for the prosecution who has been able to prove the charges beyond all reasonable doubt. It is his submission that the complaint was lodged by the daughter of the injured, alleging an attack on her father

by the accused Rajan Thapa at about 8:30 PM on 2 April 2007. The complaint was lodged immediately on the next day of the incident on the basis of which the investigation started, and the charge sheet was submitted, under Section 326/307 I.P.C.

9. The I.O duly investigated the case, prepared rough sketch map along with index and examined the witnesses and recorded their statement under Section 161 of the Code of Criminal Procedure. Statement of Daya Ali under Section 164 of Cr.Pc was also recorded and he seized the offending weapon and the wearing apparels of the injured from the house of accused person as produced by him. He proved the seizure list duly signed by the witnesses who has come before the court and admitted his signature. He collected the ticket, other medical papers, including the injury report and examines the treating Doctor who proved such injury report.

10. The prosecution has cited eight witnesses who have corroborated the prosecution case fully and therefore the learned court passed such order of conviction under Section 326 of the Indian Penal Code though the ingredients to attract 307 I.P.C was sufficient, nevertheless, as the prosecution has not challenged the order holding the accused as not guilty under Section 307 IPC, the prosecution refrain from making any submission on that score. Therefore there is no reason to interfere with the order of conviction passed by the trial court, and this appeal is liable to be set aside.

Analysis

- 11.** Heard the submissions of both the learned advocates. Having heard the rival contention the only question falls for consideration is whether the learned court rightly passed the judgement and the order of conviction.
- 12.** In this case the complaint was lodged by Daya Allay who deposed as PW3. The injured is her father, and the accused is her neighbour. She claimed to be the eye witness of the alleged incident when Ramjan Thapa assaulted her father and she came out from their house when she heard the shouting and rushed to the house of his uncle Charan Singh and her grandfather after the incident and then returned to the spot and found her father lying in a pool of blood. Ramjan, then fled away from the spot. She along with her uncle and grandfather removed her father to his house and then arranged a vehicle and removed her father to Darjeeling. From there at the advice of the doctor, he was removed to North Bengal Medical College and hospital and on the following day, she lodged the written complaint to the officer in charge, Jore bungalow P.S. The complaint was written by her uncle Charan Singh as per her dictation and was read over and explained to her where she put her signature. She also recorded her statement before the Learned Magistrate under Section 164 Cr.Pc.
- 13.** In her cross examination, she said that their house is surrounded by the house of the accused person and Bal Kumar Thapa. House of Bal Kumar is just adjacent to the place of occurrence and house of Charan, Singh is 10 minutes walk from their house. There was no electricity in their village, but it was moonlit night. She could not say the type of clothing, or its colour

which the accused person was then wearing. The PW5 victim said Daya Allay is his daughter. According to his version, when he came out of his house, Ramjan Thapa assaulted him on his hand and leg and on his head, also other parts of his body with a bamfok. He fell down and became unconscious and regains his consciousness at N. B. M. C and hospital. In cross examination, he said that police interrogated him at N.B.M.C and hospital Siliguri. He could not say who lodged the complaint or who took him to the hospital. He denied that he was drunk on the relevant date and fell down as a result, sustained the injuries. He admitted that there is no electric connection in the village, and there was darkness on the relevant day of the incident.

- 14.** If with these evidences, the evidence of Charan Singh Alley is look into it would appear that the injured on 4 April 2007, in between 8.30 to 9 PM Daya came to his house and informed him about that assault inflicted upon her father by the accused who happens to be the elder brother of this witness .He then rushed to the spot along with Daya and saw the injured lying on the ground in a pool of blood, and also saw the accused running back to his house with the bumfak in his hand. Then he along with others brought the injured to his house and then moved to Sadar Hospital, Darjeeling and thereafter to the Siliguri Hospital. He said that the complaint was not written by him, but was written by Daya. In his cross examination, he said he called the villagers, who came there and they were Bal Kumar, Sundar Rai, Dheera Allay and Yugal Allay and Harka Singh Allay. He also deposed that the house of Bal Kumar is nearest to the house of Pradeep/injured. The evidence adduced by P.W.8 the Doctor, who on April

3, 2007 was posted at NMC and hospital as junior doctor and one Pradeep Allay was admitted on 3.4.07, in the said hospital and was under the treatment of the doctors and was discharged on 21.06.07. The doctor has described the injuries from the injury report which are as follows :-

Compound fracture both legs

Cut injury over left forearm (3cm above wrist joint)

Cut injury across left inguinal region

Abrasion enclosed right side of penis

Abrasion over forehead.

- 15.** He prepared such report in his own handwriting and also put his signature on it. In his cross examination, he admitted that the nature and the age of injury was not mentioned in the report and there is no seal of the hospital affixed in the report. According to this witness the possibility to suffer such injury on fall on some kind of sharp object cannot be ruled out. On Perusal of the injury report, which is marked as exhibit 7, nothing can be found who brought the injured to the hospital or anything about the history of assault. The referral card of state health sector development project Darjeeling Gurkha Hill Council reflects the name of the patient and the multiple cut injury and compound fracture of both leg. Primarily nothing can be seen as of stab injury or deep cut injury which should have been there in view of the nature of weapon used as stated by the injured and the eye witness. The only cut injury is of 3cm as can be found from the report. Other than these witnesses the P.W.1 Harka Singh came to the spot as

called by the Daya on the night of 2.4.07 and he is the seizure list witness who said the content of the seizure list was not read over to him. P.W. 2 Jaynarayan Pradhan was called by police on the next date of incident at the house of the accused person. In his presence the offending weapon and the wearing apparel's were seized where he signed however he also said the content was not read over to him.

16. In this case the accused cited two witnesses. D.W. 1 Priyanka Thapa deposed that on April 2, 2006 at about 8:30 PM, she along with her family members, including the accused persons who is the father of PW1 were present at their house. On that day, the victim Pradeep Allay came to their house. He tried to molest her mother. He used to come to their house frequently and tried to molest her mother. When the victim tried to molest her mother, her father that is the accused arrived at the house at that time and saw the incident. The victim after seeing the accused person fled away and while running out, he fell down on the ground having stumbled on stone and then sustained injuries on his person. The family members of the victim then arrived there and took the victim to the hospital and falsely implicated his father with the offence. On the next day, she went to Police Station to lodge complaint, but the police refused to accept. This witness was cross-examined by the state when she said that there is one room in their house and when the victim came to her house her mother was in the kitchen, which is within their room. She was present in the room along with her brother. The father used to work in the Ration shop of the elder brother of the victim's father. She saw the victim to come to her house and tried to

molest her mother on all those locations. Diary was lodged at the PS, but she failed to produce any copy of the same.

17. D.W. 2 Prayash Thapa son of the accused deposed that Pradip came to their house and tried to molest his mother and at that time his father viz ; Rajman came and an altercation took place between them .At that time Rajman tried to fled out from their house and fell down and sustained injuries.

18. On careful examination of the evidences as adduced several inconsistencies found are 1) The Scribe of the complaint. The de-facto complainant said her uncle Charan Singh wrote as per her instruction and Charan Sigh said it is not him but Daya who wrote the complaint. The formal F.I.R shows the name of Daya as complainant. Therefore the question comes why there is such a glaring differences in the testimony amongst the nearest family members. Secondly according to Charan Singh, he called the other villagers amongst whom was Harka Singh but said Harka Singh deposed, police called him on the next date of incident and in his presence the incriminating articles were seized. Therefore the stark contrast in the testimony of these two witnesses creates enough cloud over the prosecution story. Furthermore the place of occurrence has been said to be in front of the house of the injured person which is kachha road. Daya said house of Bal Kumar Thapa is adjacent to their house and the sketch maps also corroborate the same. According to Charan Singh amongst the villagers Bal Kumar Thapa was present there but neither Daya approached him for any help on the said night when her father was lying in a pool of blood nor the police interrogated him despite being adjacent neighbour of the injured. No

medical paper is produced in respect of the Eden hospital where the injured was first taken for initial treatment. Thirdly the injury report seized being produced by Dr./M.O.I.C Medical Record Department Dr. Tapan Chakraborty but he never deposed before the Court and I.O did not examine him. The seizure list marked with exhibit 6, is proved by the I.O and no seizure list witness has been examined to prove the content of the same. Fourthly the injury report did not contain the seal of the Hospital and signed by Ajay Halder, without any seal or designation of the person. In fact the doctor while adducing evidence never said the patient was treated by him. The offending weapon as seized was not produced before the court and remained unidentified. Nothing has been produced to show that the same was sent for forensic examination before the F.S.L .Finally and most vital is that none of the above witnesses including the injured identified the accused on the pretext that he was not seen in the court. It was further admitted that there was no electricity in their village and it was dark so how could he identified the accused has not been disclosed. Only the de-facto complainant said it was moonlit night. The de-facto complainant saw the accused to fled away from the spot when she reached and Charan Singh deposed after he arrived there after being called by Daya also saw the accused running away. The house of charan Singh is 10mnts away from the place of occurrence. So it is quite impossible to see the same person running away after a gap of at least 10 minutes by these two witnesses. Beside the above deficiencies ,the prosecution also failed to show any motive of the accused behind such attack. Admittedly they belong to the same village having houses within a close vicinity of each other and it is obvious after 8/8.30 pm possibility of

villagers roaming around will be less. The de-facto complainant said her father went out to relieve him when such incident took place so certainly it is difficult to imagine that anyone waiting for a person without a motive to attack him for an uncertain period. I do agree with the Learned trial court that the defence has tried to develop a story of molestation of their mother by adducing the daughter and son of the accused which is vague and indefinite as they failed to establish the same. At the same time this Court cannot be oblivious about the absence of motive as to why all of a sudden a person will try to kill him. As per prosecution version the accused intended to kill him so the charge was made under Section 307 of IPC. The Learned trial court ignored the inconsistencies as minor and gave enough credence to the evidence of P.W. 4 and the injured despite accepting the inconsistencies and faulty investigation which according to me is not correctly assessed. It is undisputed that when the evidence of injured witness has greater evidentiary value and without any compelling reason their statements are not to be discarded lightly.

19. It is the duty of the Court to dig out the truth or otherwise the evidence has to be weighed pragmatically. It is settled law that the Court is to analyse the evidences of related witness and those witness who are inimically disposed towards the accused, but after careful analysis and scrutiny of their evidences the version given by the witnesses if appears to be clear, cogent and credible there is no reason to discard the same. In the instant case the D.W. 1 and 2 have stated about certain facts which might have caused an inimical relationship however their evidences cannot be given much weightage.

20. In this case the offending weapon has been described as Bamfak (Lepcha knife) which is mostly used by the tribal communities in the North east sides. I do agree with the submission advance by the Learned Defence counsel that the manner in which the blow was alleged to be given to the injured would certainly made severe bleeding injuries. The medical report though prima facie is not reliable because of the reason assigned above even if look into, only 3cm cut injury can be seen. No cut injury was found in the legs and Bamfak is not a blunt object to cause fractured injury. The seized wearing apparels ought to have been blood stained and the same ought to have sent before the Forensic Lab to prove the offence. Someone attacking with Bamfok must have an intention to kill or make severe injuries and for that reason the charge was made under section 307 of the Indian Penal Code.

21. According to the Indian criminal jurisprudence every person accused of an offence is presumed to be innocent till the offence is proved beyond all reasonable doubts and the onus lies upon the prosecution to prove and establish the said charges by adducing cogent and trustworthy evidence.

22. The learned Judge considering the testimonies of the injured and the Medical report had arrived at the conclusion that the accused had no intention to cause the death of the injured and so Section 307 I.P.C as brought against the accused failed to be substantiated but at the same time no reason was assigned for holding the accused guilty of the offences under Section 326. I.P.C relying upon the same evidences.

23. Therefore upon appreciation of the evidences both ocular and documentary and the submissions of the learned advocates along with the

reasoning assigned by the Learned Trial Court I find it difficult to concur with the Learned Trial court in absence of clear cogent and credible evidences on behalf of the prosecution to establish the charge beyond all reasonable doubts. Hence the said Order of conviction is liable to be set aside.

24. This CRA stands allowed.

25. The Judgement and Order of conviction and sentence imposed upon the Appellant is set aside.

26. The Appellant shall be discharged from his bail bond in terms of Section 437 A of the Code of Criminal Procedure.

27. Photostat certified copy of this order if applied for, will be made available to the applicants within a week from the date of pending requisite.

(CHAITALI CHATTERJEE DAS, J.)