

Calcutta High Court
In the Circuit Bench at Jalpaiguri
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

CRA 36 of 2019
IA NO: CRAN/1/2020

Shyamal Roy
vs.
The State of West Bengal & Anr.

with
CRA 38 of 2019
IA NO: CRAN/1/2019

Suren Roy
Vs.
The State of West Bengal & Anr.

For the Appellants : Mr. Sanjay Mazoomdar, Advocate

For the State : Mr. Aditi Shankar Chakraborty, Ld. A.P.P
(in the virtual platform)
Mr. Abhijit Sarkar, Advocate

Heard and Judgment on: 27.11.2025

Md. Shabbar Rashidi, J.:-

1. Two appeals are taken up together for consideration as they emanate out from the same judgment and order.

2. Appeals are directed against judgment of conviction dated September 24, 2019 and order of sentence dated September 25, 2019 passed by the learned Additional Sessions Judge, Mekhliganj, Coochbehar in connection with Sessions Trial no.05(02) of 2016 in connection with Sessions Case No.61 of 2015 arising out of G.R. Case No.391 of 2014.
3. By the impugned judgment, the appellant in CRA 38 of 2019 was found guilty and convicted for the offence punishable under Sections 447/324 of the Indian Penal Code. The appellant in CRA 36 of 2019 was convicted of the offences punishable under Sections 447 and 326 of the Indian Penal Code.
4. Two of the accused persons were acquitted. Another accused, Susen Roy died prior to the recording of examination under Section 313 of the Criminal Procedure Code.
5. By the impugned order, the appellant Suren Roy in CRA 38 of 2019 was sentenced to undergo simple imprisonment for three years and to a fine of Rs.10,000/- for the offence punishable under Section 324 of the Indian Penal Code. In default, convict, Suren Roy was directed to undergo simple imprisonment for a further period of three months. He was also directed to undergo simple imprisonment for three years and to pay a fine of Rs.500/- for the offence punishable under Section 447 of the Indian Penal Code. In default of payment of such fine, the convict was directed to undergo simple imprisonment for a further period of one month. Convict,

Shyamal Roy, appellant in CRA 36 of 2019 was sentenced to rigorous imprisonment for seven years for the offence punishable under Section 326 of the Indian Penal Code and to pay a fine of Rs.20,000/- in default of payment of fine, the convict was to undergo simple imprisonment for a further period of six months. Convict, Shyamal Roy was also sentenced to imprisonment for three months with a fine of Rs.500/- and in default payment of fine the convict was directed to undergo simple imprisonment for further period of one month. Both sentences were directed to run consecutively.

6. Learned advocate appearing for the appellants submits that appellants were falsely implicated in this case. It was also contended that, no offence under Section 326 of the Indian Penal Code does make out on the basis of the facts and circumstances of the case as well as the injury sustained by the victim.
7. Learned advocate for the appellants further submits that, learned court was not justified in awarding the maximum punishment provided for the offence under Section 326 of the Indian Penal Code. It is also submitted that, learned Trial Court did not take into consideration the facts and circumstances of the case and the circumstances under which the alleged incident happened.
8. Learned advocate for the appellants submits that the ownership of the land has not been established. As such, the victim was working in the

field at the date and time of occurrence was not established at the trial. It is also submitted that according to the case of prosecution, the accused persons assaulted the victim by a dagger and a spade. No offending weapon has been seized by the appellants in course of investigation. Similarly, the victim is alleged to have sustained bleeding injuries. However, no blood stained wearing apparels is shown to have been seized by police. Such circumstances cast serious doubt upon the veracity of the case of the prosecution.

9. Learned advocate for the appellants also submits that the eyewitnesses examined on behalf of the prosecution in support of its case are the son and cousin of the victim. As such they are highly interested witnesses. According to learned advocate for the appellants, conviction on the basis of the testimony of such highly interested witnesses cannot be sustained.
10. On such proposition, learned advocate for the appellants relied upon ***(1953) 2 Supreme Court Cases 36 (Dilip Singh & ors. vs. State of Punjab)***.
11. Learned advocate for the appellants also submits that no independent witnesses have been examined in support of the case of the prosecution. The witnesses who have supported the case of the prosecution are highly interested and as such, no conviction can be secured on the basis of such evidence. The driver of the vehicle by which, the victim was taken to hospital has also not been examined on behalf of the prosecution to

establish that the victim was actually taken to hospital. In absence of examination of independent witnesses, conviction of the appellants cannot be secured only on the basis of highly interested witnesses.

12. Learned advocate for the appellants also submits that the Medical Officer examined on behalf of the prosecution although, stated in his examination-in-chief that the victim was non diabetic and non hypertensive but in his cross-examination, P.W.8 stated that the patient was noted by him suffering from diabetes and hypertension. It is also submitted by learned advocate for the appellants that P.W.8 admitted in his cross-examination that the injuries sustained by the victim could have been caused by fall on a sharp edged hard object and it could also be self inflicted. In that view of the facts, learned advocate for the appellants submits that, there were alternative theories leading to the injuries to the victim. As per settled law, the proposition which tends to support the accused should be accepted. On such proposition, learned advocate for the appellants relied upon **(2006) 1 SCC 401 (T. Subramanian vs. State of T.N.)**.

13. One Atul Roy, son of the victim lodged a written complaint on July 11, 2014 with Mekhlignj Police Station. In such written complaint, it was alleged that on July 11, 2014 at about 9 a.m. his father was working in his field. At that time, all the accused persons jointly, with an evil intention, suddenly surrounded him with deadly weapons. It was also

stated that at the instruction of other accused persons, the appellant, Shyamal Roy dealt a blow with his knife upon the right hand of his father, resulting in bleeding injuries. His father raised shouts. At that time, the appellant, Shyamal Roy assaulted his father with the knife on his chest resulting in penetrative injury. His father fell down and became unconscious.

14. Upon such hue and cry raised by the father of the de facto complainant as well as the de facto complainant himself, local people assembled there whereupon, the appellants fled away. His father was taken to hospital for medical treatment. He was taken to Jalpaiguri Sadar Hospital wherefrom he was taken to Anandalok Nursing Home, Siliguri where his father was admitted for some days.
15. On the basis of such written complaint Mekhliganj Police Station Case No. 201 of 2014 dated July 11, 2014 under Sections 447/326/307/34 of the Indian Penal Code was started against five FIR named accused persons. Police took up investigation and on completion of investigation, submitted charge sheet against all the five FIR named accused persons. On the basis of materials in the case diary, charges under Sections 447/34/307 of the Indian Penal Code were framed against five accused persons. Accused persons pleaded not guilty to the charges and claimed to be tried.

16. In order to prove its case, prosecution examined 10 witnesses. Prosecution also relied upon certain documentary as well as material evidence which was admitted in evidence at the trial.
17. The de facto complainant himself deposed as P.W.1. He stated that, on July 11, 2014 at about 7/8 a.m., his father had gone to work in the agricultural field. At that time, five accused persons namely, Shyamal Roy, Bimal Roy, Suren Roy, Sushen Roy and Faguni Roy surrounded his father and started assaulting him. He further stated that the appellant Shyamal Roy hit his father on the left side of his chest and right hand by knife. The appellant, Suren Roy assaulted his father with a spade. Thereafter his father fell down and lost his senses.
18. P.W.1 was working in the adjacent agricultural field. On seeing the incident, he started shouting. Upon hearing his shouts, some persons who were working in nearby field came there and with the help of such persons, P.W.1 took his father to his house and from there he was taken to Jalpaiguri Hospital. Thereafter, his father was taken to Anandalok Nursing Home for better treatment where he was kept in ICU for about three days. Thereafter, he was shifted to general ward where, he remained for another five days.
19. P.W.1 further stated that after arranging for the treatment, he came to Mekhliganj Police Station for lodging a written complaint. He got it scribed by law clerk who scribed the written complaint as per the instruction of

P.W.1. P.W.1 proved his signature on the written complaint. P.W.1 was interrogated by the appellant in connection with the incident. P.W.1 identified the appellants in Court. P.W.1 was cross-examined at length by the defence but nothing favourable to the defence could be elicited in such cross-examination.

20. The victim was examined as P.W.2. He stated that, on July 11, 2014 at about 7/8 a.m. he had gone to work in his agricultural field. There, five accused persons surrounded him and started assaulting him. He also stated that the convict/appellant Shyamal Roy hit him on the left side of his chest by a dagger.
21. The other appellant, Suren Roy hit P.W.2 with spade on his right hand. Being assaulted, P.W.2 fell down and thereafter, his son, P.W.1 and other had taken him to his house. He became unconscious and regained his senses at nursing home at Siliguri. P.W. 2 was interrogated by police. He identified the appellants in Court. P.W.2 was also cross-examined on behalf of the defence. In his cross-examination, he admitted that land belonging to him, where he was working on the date of incident, was situated adjacent to the land of the appellants. There were lands of other persons also.
22. Elder brother of P.W.1 deposed as P.W.3. He also stated that on July 11, 2014 at about 7 a.m. his father was working in the agricultural field where the accused persons started cutting the boundary wall of the field.

His father raised objection. Thereafter, all accused persons started assaulting his father. The appellant, Shyamal Roy assaulted his father on the left side of his chest with knife and Suren Roy assaulted him on the right hand with a spade. Other accused persons also assaulted the victim with lathi.

23. P.W.3 further stated that at the time of incident he was at his home. He had not accompanied his father to the fields. However, there were other persons working nearby who brought his father to his home. Thereafter, his father was taken to Jalpaiguri Sadar Hospital for treatment by a Maruti Vehicle. From Jalpaiguri Sadar Hospital, his father was referred to North Bengal Medical College and Hospital but he was taken to Anandalok Nursing Home. At the nursing home his father was admitted in the ICU for three days and thereafter, he was shifted to the general ward where he remained admitted for another 14 days. P.W.3 also stated that he was interrogated by the police in connection with the case. He identified the appellants in Court. In cross-examination, P.W.3 stated that he was all along at his house on the date of incident and he did not accompany his father to the agricultural field.
24. One uncle of P.W.1 deposed as P.W.4. He stated that, about two years ago at about 7:30 a.m., he could not recollect the date, he had gone to work in his agricultural field. On going there, he had seen the appellants Shyamal Roy assaulting his Cousin, Sushil Roy, i.e. the victim, with a knife on the

left side of his chest. His cousin fell down on his agricultural field. Thereafter, his cousin was taken to Jalpaiguri Sadar Hospital for treatment and from there he was taken to Siliguri. P.W.4 was interrogated by the police over the incident. He also identified the appellants in Court. In his cross-examination, P.W.4 could not state the description of the landed properties where the incident occurred. He also could not say the exact date and year when the incident had taken place.

25. A local resident was examined as P.W.5. He stated that the incident occurred in the morning 2/3 years ago. He could not recollect the date. P.W.5 also stated that, he had not seen the incident but he heard about it from the villagers. He heard that there had been fighting in between Suren Roy and others on one side and Sushil Roy on the other side. He identified the appellants in Court. P.W.5 was declared hostile by the prosecution and in his cross-examination on behalf of the defence, P.W.5 denied having made any statement before the police.
26. The scribe of the written complaint was examined as P.W.6. He scribed the written complaint as per instructions of P.W.1. After writing the written complaint, he read over and explained its content to P.W.1 whereupon he signed on it. P.W.6 proved written complaint which was admitted in evidence and marked as Exhibit-1/1.
27. Recording Officer was examined as P.W.7. He stated that, on July 11, 2014, he was In-Charge of Mekhliganj Police Station. He recorded formal

First Information Report which was registered as Mekhliganj Police Station Case No.201/14 dated July 11, 2014. One S.I. Ashim Kumar Bose was endorsed with the investigation of the case. P.W.7 proved the formal First Information Report (Eshibit-2).

28. Medical Officer was examined as P.W.8. He stated that on July 11, 2014 he was attached with Anandaloke Hospital & Neurosciences Centre, Siliguri. On that date, a patient, namely, Sushil Roy was admitted in the hospital with a history of physical assault by a sharp cutting weapon and deep penetrating injury over the left infra axillary region as well as cut injury on his right arm, brought by his son Dulal Roy, P.W.3. He further stated that patient was non diabetic and non hypertensive. He was admitted in the hospital for treatment for stab injuries.
29. P.W.8 stated that, he had treated the said patient and operated upon him. The patient was given intercostals drains and haemothorax (i.e. the collected blood in thorax cavity due to haemorrhage in the lungs) were drained out. P.W.9 also found lacerated injury on the right forearm. The patient was under his treatment and was discharged on July 24, 2014 in a healthy state. Medical treatment papers of the victim were proved by P.W.8 (Exhibit-3) and the injury report was marked as Exhibit-4.
30. In his cross-examination, P.W.8 stated that, he had noted that patient was suffering from diabetes and hypertension. In cross-examination, he further opined that such injuries could be sustained if one falls on a

sharp edged hard object and it could be self inflicted also. He was not confronted with the weapon of assault.

31. Another Medical Officer was examined as P.W.9. He was attached to Anandaloke Hospital & Neurosciences Centre, Siliguri. He signed on the discharge certificate as well as the injury report of victim.
32. Investigating Officer of the case deposed as P.W.10. He stated that, on July 11, 2024 he was endorsed with the investigation of the Mekhliganj Police Station Case No.201/14 dated July 11, 2014 under Sections 447/326/307/34 of the Indian Penal Code. He has described the various steps taken by him in course of investigation of the case. He visited the place of occurrence and prepared a rough sketch map with index thereof. He also examined available witnesses and recorded their statements. He also wrote letters for providing the injury report of the victim. He has proved such letters. Ultimately upon conclusion of the investigation, he submitted charge-sheet against five accused persons.
33. As per the case made out by the prosecution, the victim who was working in the field was assaulted by the appellants. The appellant, Sushil Roy is alleged to have assaulted the victim on the left side of his chest by a knife whereas appellant, Suren Roy is alleged to have assaulted on his right hand with spade. The victim, P.W.2 has corroborated the case of the prosecution as made out in the First Information Report in his deposition. He has stated that, accused, Shyamal Roy hit him with a dagger on the

left side of his chest and convict, Suren Roy had hit him with a spade on the right hand. It has been stated that de facto complainant, P.W.1, who happens to be the son of the victim was also working in the nearby field. The son of the victim has also corroborated the statement of P.W.2.

34. According to the case of the prosecution, the incident is said to have happened in the morning at about 7/8 a.m. on July 11, 2014. This fact has been corroborated by both P.W.1 and P.W.2 that the incident happened on July 11, 2014 at about 7/8 a.m. P.W.1, in support of the prosecution case, stated that, on the date of incident his father had gone to work in the agricultural field and at that time, the appellants accompanied by other accused persons surrounded his father and started assaulting him. He has also corroborated that appellant, Shyamal Roy hit his father on the left side of his chest and right hand by a knife. He further corroborated that, appellant Suren Roy assaulted his father with a spade. Both P.W.1 and P.W.2 have stated that, after being assaulted by the appellants and others, the victim fell down and became unconscious.
35. P.W. 1. also stated that in such unconscious condition, he with the help of other persons in the locality, who gathered there on their shouts, brought the victim first to his house and thereafter, to Jalpaiguri Sadar Hospital for treatment and therefrom, he was referred to North Bengal Medical College & Hospital, Siliguri. However, in stead of North Bengal Medical

College and Hospital, the victim was taken to Anandalok Hospital & Neurosciece Centre at Siliguri.

36. P.W. 3 is one of the brothers of P.W.-1. He has not seen the occurrence but he was instrumental in taking the victim to the hospital. His evidence about the incident is based on hearsay evidence. A cousin of the victim who deposed as P.W.4 is also a witness to the incident. He has stated that when he reached to the place of occurrence while he was going for working in the field, he saw the appellant Shayamal assaulting the victim with a knife on the left side of his chest. Thereupon, the victim fell down. He has also stated that after the incident the victim was taken to Jalpaiguri Sadar Hospital for treatment and, thereafter, to Siliguri.
37. From such evidence, to our consideration, we find no contradiction so far as date and time of the incident, manner of incident and the place of occurrence are concerned. Depositions of P.W.2, P.W.1 and P.W. 4 consistently established that the incident took place in the agricultural fields. At least P.W. 1 and P.W. 4 have seen the incident of their own eyes. All of the aforesaid witnesses have unanimously stated that the appellant and others surrounded the victim in the agricultural field. The appellant Shyamal assaulted on the left side of the chest of the victim with a knife whereas the appellant Suren assaulted the victim with a spade on his right hand.

38. The nature of injuries sustained by the victim were corroborated by P.W. 8 together with Exhibit-3. The injuries noted by P.W. 8 in Exhibit-3 are quite consistent with the description of the incident and nature of injuries given by P.W.1, P.W. 2, and P.W. 4.
39. P.W. 5 had turned hostile at the trial. However, even while turning hostile, he has not denied the incident happening.
40. ***Dalip Singh & Ors. vs. State of Punjab*** reported in **(1953) 2 SCC 36** has considered the issue of independent witness as well as false implication due to enmity. It has observed that no uniform general rule can be laid down. A Court has to evaluate the evidence in order to find whether or not, the witnesses have falsely implicated the accused. In the facts of the present case, we are not in a position to say that there is false implication.
41. In ***Dalip Singh & Ors. (supra)***, the Hon'ble Supreme Court has held as follows:-

“24. *A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person.*

It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth. However, we are not attempting any sweeping generalization. Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts.”

42. ***T. Subramanian vs. State of T.N. (2006) 1 Supreme Court Cases 401*** has considered a case under the Prevention of Corruption Act, 1947. In the facts of that case, Supreme Court has found that, a lease rent was sought to be rendered which was liable to be received as illegal gratification. Supreme Court has held that since two views are possible, the one that benefits the accused should be taken.
43. In ***T. Subramanian (supra)*** the Hon’ble Supreme Court laid down to the following:-

“17. *The evidence throws out a clear alternative that the accused was falsely implicated at the instance of PWs 1, 2 and 6. If two views were possible from the very same evidence, it cannot be said that the prosecution had proved beyond reasonable doubt that the appellant had received the sum of Rs.200 as illegal gratification. We are, therefore, of the considered view that the trial court was right in holding that the charge against the appellant was not proved and the High Court was not justified in interfering with the same.”*

44. Again, in the facts of the present case, we are not placed with an alternative view apart from the implication of the two appellants in the commission of the crime to the extent as noted above.
45. In view of the discussions above, we affirm the judgment of conviction and the order of sentence. We do not find that the sentence award is disproportionate to the crime established. An injury endangering life surely attracts the provisions of Section 326 of the Indian Penal Code.
46. Before parting, we place on record that by an order dated January 30, 2025, submission on behalf of Suren Roy, that he has expired was recorded by the co-ordinate Bench. Subsequently also learned advocate

appearing for the appellant, Suren Roy repeated such statement. In such view, we by our order dated November 24, 2025, called for a report from State with regard to death of Suren Roy.

47. By a writing dated November 25, 2025, the Officer-in-Charge of the concerned Police Station has stated that, Suren Roy is still alive.
48. In such circumstances, none of the orders passed in the two appeals should be construed to mean that, death of Suren Roy was recorded by this Court.
49. Suren Roy was represented by a learned advocate claimed to be engaged through the High Court Legal Aid Services Committee on January 30, 2025. Such learned advocate appeared before us on our invitation but he claimed that, he was given such instruction on behalf of High Court Legal Aid Services Committee. The learned advocate who sought to appear before us on behalf of Suren Roy on November 24, 2025, submitted on our query subsequent to the report dated November 25, 2025 that, he relied on the statement recorded on January 30, 2025.
50. High Court Legal Aid Services Committee is requested to be cautious while appointing any advocate and giving instructions in view of the conduct as noted herein.
51. CRA 36 of 2019 and CRA 38 of 2019 along with the connected applications are disposed of accordingly.

52. In the event, any of the two appellants are in custody and their period of custody is over, they may be released.

(Md. Shabbar Rashidi, J.)

53. I agree.

(Debangsu Basak, J.)

CHC/Dd