

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 84 of 2008

Ananda Singh

-Vs-

The State of West Bengal

For the Appellant : Mr. Dipankar Dandapath

For the State : Mr. Avishek Sinha

Judgment on : 05.05.2026

Ananya Bandyopadhyay, J.:-

1. This appeal is preferred against the judgment and order dated 29.11.2007 passed by the Learned Additional District & Sessions Judge, Fast Track Court, Khatra, Bankura in Sessions Trial No.8(1)/2006 arising out of Sessions Case No.10(11)/2005 convicting the appellant under Section 307 of the Indian Penal Code and sentencing the appellant to suffer simple imprisonment for 7 years and to pay fine of Rs.5,000/- in default to suffer simple imprisonment for 1 year.
2. The prosecution case precisely stated on 27.10.04 at about 06:30 a.m., the complainant i.e., one Goutam Lohar of village Siarbani under Taldangra P.S. agitated his elder brother i.e., Uttam Lohar went to attend nature's call at a nearby pond, when the appellant assaulted him with "Katari" and "Kurul

(axe)” on his head, neck and different body parts for murdering him and instantaneously the victim fell on the ground and collapsed. The complainant and another elder brother i.e., Mangal Lohar rushed to the spot and saw the incident at a distance, while the appellant fled from the spot. His elder brother i.e., Uttam Lohar (the victim) and the wife of the appellant namely Smt. Bhakti Singh had been allegedly in an illicit relationship. Uttam Lohar was fighting for his life in Bishnupur Hospital.

3. On the basis of the aforesaid complaint, the Police initiated Taldangra P.S. Case No.46/64 dated 27.10.2004 under Sections 307/356 of Indian Penal Code.
4. After completion of investigation, the Police submitted charge-sheet against the appellant to which he pleaded not guilty and claimed to be tried.
5. In order to prove its case, the prosecution examined as many as 10 witnesses and exhibited certain documents.
6. The Learned Advocate representing the appellants submitted that the impugned judgment was pronounced without stating the name of the actual offender by whom the victim was assaulted as the evidence on record revealed the name of one Ananda Layek through the deposition of PW-7 the doctor who during his examination-in-chief stated the victim patient to have been conscious and cooperative disclosed the name of Ananda Layek to have been the person who assaulted the victim. The contradiction in the statement of PW-9 the brother of the victim in his examination-in-chief as well as that of one Mangal Lohar being PW-6 were not taken into consideration. The deposition of PW-9 and PW-6 did not corroborate with the

narrative of the written complaint marked as Exhibit-1 where both PW-9 and PW-6 projected themselves as self-acclaimed eye witnesses. PW-6 narrated to have been present at the place of occurrence witnessing the complainant to cry contradicting the prosecution case contrary to the deposition of PW-9. Such untrustworthy statements were to be discredited. It was further urged if the victim was continuously assaulted for a period of 5-10 minutes as deposed by PW-9 in his cross-examination, the same should have been noticed by either PW-4 or PW-6 if at all present in the vicinity. The conviction should not have been ideally based on suspicion, surmises and conjectures but real trustworthy evidence devoid of presumptions of any kind. PW-1 deposed in her examination-in-chief with a denial of having seen a 'katari' and 'kural' however her signature appeared on the carbon copy of the seizure list illogically and unpragmatically. The signature of the other witnesses in the seizure list was not proved by the prosecution and the same was not considered by the Learned Trial Court. The conviction should not have been exclusively based on the presumption of an illicit relationship to have been existed between the wife of the victim and the appellant as a *mens rea* on the part of the appellant to expel the victim from existence being the barrier between the two. The material contradictions, the non-examination of the Investigating Officer had been major lapses on the part of the prosecution which adequately failed to prove its case beyond reasonable doubt which destabilized in the process of investigation attributable to perversity and reasonable doubt.

7. It was further submitted by the Learned Advocate representing the appellant that the mandatory provisions of law in dealing with Section 307 of the Indian Penal Code adhered to the determination as to whether the facts proved by the prosecution had been sacrosanctly within the ambit of Section 307 of the Indian Penal Code and should not, in any manner, digress therefrom. A logical and rationale distinction between legally admissible evidence and otherwise illegally admissible evidence should be categorically described and where inadmissible evidence had been given credence, the order of conviction and sentence was liable to be set aside for want of probative value. The prosecution failed to produce the FSL report of the seized article as well as the report of the chemical examination to establish the prosecution case. Material and vital discrepancies in the testimonies of the prosecution witnesses, non-examination of the Investigating Officer, proof of the material exhibits and seized articles had been the lapses on the part of the prosecution which the Trial Court failed to consider in indicting the appellant.
8. The Learned Advocate representing the State submitted the corroborative evidence of the prosecution witnesses, moreover the testimony of the injured witness fortified by the medical evidence and the surrounding attendant circumstances attributed to the inculpatory conduct of the appellant with an ulterior motive to have occasioned the crime. Lapses on the part of the investigating agency which otherwise do not shake the formidability of the prosecution case concrete in its existence and corroborative evidence as

revealed during the course of trial cannot be evaded and the appeal shall be dismissed.

9. A conspectus of the prosecution evidence would reveal that the prosecution sought to establish the charge principally through the testimony of the injured victim, his family members, co-villagers and the attending medical witnesses, all of whom spoke in one continuum regarding the occurrence, the manner of assault and the subsequent treatment of the victim.
10. PW-1, the wife of the victim, stated that on the day of “Laxmi Puja” her husband Uttam Lohar had gone to “Bandher Ghat”, situated at a short distance from their residence, for attending nature’s call. According to her, while he was washing and drying his legs with a napkin, the appellant assaulted him. She deposed that her brother-in-law Goutam and one Mangal Lohar witnessed the aftermath of the occurrence and brought the injured victim home. She noticed extensive bleeding injuries on his head, hands and shoulder and stated that while conscious, the victim disclosed that the appellant had assaulted him with a “Katari” and “Kurul”. She further stated that the appellant acted on suspicion of an illicit relationship between the victim and the appellant’s wife. In cross-examination, she admitted that the police examined Goutam and Mangal Lohar after a few days of the incident and that their wearing apparels were stained with blood.
11. PW-2 corroborated the factum of the assault occurring at “Bandher Ghat” and stated that the victim was found with profusely bleeding injuries on his head and hands. He deposed that upon being asked, the victim named the appellant as the assailant and stated that he had been attacked with a

“Katari”. The witness also narrated the course of medical treatment commencing from Bishnupur Hospital and extending to Bankura and thereafter P.G. Hospital. During cross-examination he reiterated that the victim disclosed the name of the appellant while being brought home and denied the defence suggestion that the appellant had no connection with the occurrence.

12. PW-3, the mother of the victim, stated that on the morning of “Laxmi Puja” her son went to “Bandher Ghat” and thereafter sustained grievous injuries inflicted by the appellant with a “Katari”. She deposed that villagers rushed to the spot after hearing cries and the injured victim was brought home with severe bleeding injuries. According to her, the victim, while conscious, disclosed that the appellant was responsible for the assault. She also spoke of the prolonged medical treatment at Bishnupur Hospital, Bankura Hospital and subsequently P.G. Hospital. In cross-examination, she stated that upon reaching the place of occurrence she found the soil stained with blood and asserted that her son repeatedly disclosed the name of the appellant before the assembled villagers and family members.

13. PW-4, the brother of the victim, stated that after hearing the cries of the victim from “Bandher Ghat”, he along with PW-6 rushed to the place and saw the victim lying injured while the appellant was fleeing from the locality. He stated that the victim sustained multiple injuries on his head, neck and shoulder with profuse bleeding. He further deposed that the victim disclosed that the appellant assaulted him with a “Katari” and an axe. This witness identified the seized “Katari” and axe marked as material exhibits and also

identified the blood-stained soil and simple soil seized from the place of occurrence. In cross-examination, however, he admitted that he had not seen the actual assault with his own eyes, though he maintained that he saw the appellant fleeing from the place immediately thereafter.

14. PW-5 was declared hostile by the prosecution.

15. PW-6 stated that on the morning of the incident he went towards the embankment and found the victim lying injured with bleeding cut wounds while Goutam Lohar was crying nearby. He stated that Goutam informed him that the appellant had committed the offence. Thereafter the family members and villagers assembled and the victim disclosed before them that the appellant assaulted him with a "Katari" and "Kurul". In cross-examination, certain omissions in his previous statement to police were brought on record, though he maintained that the victim named the appellant before the villagers.

16. PW-7, an Associate Professor attached to Bangur Institute of Neurology, deposed regarding the medical treatment of the victim. He stated that Uttam Lohar was admitted with multiple cut injuries over the head, hand, forearm and ear lobe, along with an open fracture of the forearm and serious brain injury. According to him, surgical intervention became necessary and the patient remained under prolonged treatment. He opined that had immediate and proper medical treatment not been administered, the patient might not have survived. During cross-examination he referred to certain medical notes indicating lacerated injuries caused by a hard object but clarified the grave nature of the injuries sustained by the patient.

17. PW-8 proved the formal F.I.R.

18. PW-9, the victim himself, gave a detailed account of the occurrence. He stated that while he was drying his legs after attending nature's call at "Bandher Ghat", the appellant suddenly emerged from behind bushes armed with a "Katari" and an axe/"Kurul" and repeatedly assaulted him. He stated that the appellant dealt repeated blows upon his head and hands causing profuse bleeding. Hearing his cries, PW-4 and PW-6 rushed to the spot, whereupon the appellant fled away. The victim stated that he was thereafter removed first to Bishnupur Hospital, then to Bankura Hospital and ultimately to P.G. Hospital where he remained admitted for more than one month and subsequently required further treatment. In cross-examination he maintained that the appellant assaulted him for several minutes and specifically described the repeated blows inflicted upon different parts of his body.

19. PW-10, the attending doctor of Bishnupur Hospital, deposed that on examination of the victim she found him in a drowsy condition with vomiting tendencies and multiple injuries including lacerated wounds over the occipital region and cut injuries over the hands and forearm along with fracture injuries. She stated that the condition of the patient was serious and in absence of immediate medical management the injuries could have proved fatal. In cross-examination she stated that some injuries bore irregular edges suggestive of laceration caused by a hard and blunt substance, though she confirmed the existence of multiple grievous injuries upon the victim.

20. The substratum of the prosecution case rests upon the testimony of the injured witness, PW-9, whose presence at the place of occurrence cannot be doubted for a moment, having himself sustained extensive bleeding injuries requiring prolonged hospitalization and surgical intervention. The law has consistently accorded a distinct evidentiary value to the testimony of an injured witness, for the injuries borne upon his person constitute an inbuilt assurance of his presence during the occurrence and ordinarily rule out false implication without cause. In the present case, the testimony of PW-9 stands not in isolation but receives substantial corroboration from the surrounding circumstances, the conduct of the witnesses arriving immediately thereafter, the medical evidence and the proved circumstances attending the occurrence.
21. PW-9 categorically stated that while he was at “Bandher Ghat” in the early hours of the morning, the appellant emerged from behind bushes armed with a “Katari” and an axe/“Kurul” and repeatedly assaulted him on vital parts of the body including the head and hands. His evidence reveals not a stray or accidental blow but a sustained and repeated assault with sharp cutting weapons. The witness specifically stated that the appellant dealt repeated blows upon his head, besides inflicting injuries upon his limbs. The evidence further reveals that the assault continued for several minutes until villagers approached the place hearing his cries.
22. The testimony of PW-4, though not an ocular account of the assault in its entirety, assumes significance inasmuch as he rushed to the spot immediately upon hearing the cries of the victim and saw the appellant

fleeing away from the place while the victim lay profusely bleeding. PW-1, PW-2, PW-3 and PW-6 consistently stated that immediately after the occurrence, while the victim remained conscious, he disclosed that the appellant had assaulted him with “Katari” and “Kurul”. Such disclosure made contemporaneously with the occurrence and in the immediate aftermath thereof forms an integral part of the transaction and lends assurance to the prosecution narrative.

23. The medical evidence completely fortifies the ocular version. PW-7, the Neurosurgeon attached to Bangur Institute of Neurology, described multiple cut injuries over the head, hand, forearm and ear lobe coupled with open fracture and brain injury necessitating surgical intervention. He unequivocally opined that had immediate treatment not been provided, the victim might not have survived. PW-10 similarly found the victim in a serious condition with injuries over the occipital region, forearm and hands, accompanied by fracture injuries and profuse bleeding. The victim remained hospitalized for a considerable duration, including treatment at tertiary medical institutions, thereby demonstrating the gravity of the injuries sustained.

24. PW-7, the Medical Officer found the following injuries as follows:-

“(1) multiple cut injury over his head.

2) Cut injury over his right hand, at left forearm.

3) Open fracture upon dorsal aspect of left forearm.

4) Cut injury over the right ear lobe.

The patient was found conscious and cooperative at that time.

On further examination, we found his brain injury and accordingly he had to undergo through an operation in our Hospital on the next day at evening.

That was a depressed fracture at left high parietal region involving mid-line. Sagittal sinus and duramatter and brain was also involved. There were repaired.

Orthopaedic Surgeon was also consulted for his open fracture of 3rd metacarpal bone and fracture of middle 3rd of the left ulna.

He was under continuous treatment from that day to 26.11.04 and on this date he was discharged from our hospital.”

25. PW-10, the Medical Officer found the following injuries:-

“1) He was found drowsy and he was vomiting at that time.

2) One lacerated injury over his left side of occipital area, measuring about 4” x ½”.

3) One cut wound over tip of occiput, measuring about 3 cm x 1 cm.

4) Cut injuries over left hand, left forearm and at his right hand with bleeding.

5) Fracture of left forearm bone for which I suggested ‘X’-Ray.

I rendered his primary treatment and thereafter I referred the patient to Bankura Hospital.

Here is the medical certificate prepared and signed by me dated 28.10.04 (marked Exbt. 8).

These injuries may be inflicted with the help of ‘Katari’ or ‘axe’ over the body of the patient.

The patient was found in serious condition and his case may be fatal without any management/medical treatment”

26. The Hon’ble Apex Court, in the case of **PARSURAM PANDEY AND OTHERS vs. STATE OF BIHAR**¹, held as follows: -

“15. To constitute an offence under Section 307 two ingredients of the offence must be present:

- (a) an intention of or knowledge relating to commission of murder; and*
- (b) the doing of an act towards it.*

For the purpose of Section 307 what is material is the intention or the knowledge and not the consequence of the actual act done for the purpose of carrying out the intention. The section clearly contemplates an act which is done with intention of causing death but which fails to bring about the intended consequence on account of intervening circumstances. The intention or knowledge of the accused must be such as is necessary to constitute murder. In the absence of intention or knowledge which is the necessary ingredient of Section 307, there can be no offence “of attempt to murder”. Intent which is a state of mind cannot be proved by precise direct evidence, as a fact it can only be detected or inferred from other factors. Some of the relevant considerations may be the nature of the weapon used, the place where injuries were inflicted, the nature of the injuries and the circumstances in which the incident took place.”

27. The Hon’ble Supreme Court, in the case of **JAGE RAM AND OTHERS vs. STATE OF HARYANA**², has made the following observations: -

“12. For the purpose of conviction under Section 307 IPC, the prosecution has to establish (i) the intention to commit murder; and (ii) the act done by the accused. The burden is on the prosecution that the

¹(2004) 13 SCC 189

²(2015) 11 SCC 366

accused had attempted to commit the murder of the prosecution witness. Whether the accused person intended to commit murder of another person would depend upon the facts and circumstances of each case. To justify a conviction under Section 307 IPC, it is not essential that fatal injury capable of causing death should have been caused. Although the nature of injury actually caused may be of assistance in coming to a finding as to the intention of the accused, such intention may also be adduced from other circumstances. The intention of the accused is to be gathered from the circumstances like the nature of the weapon used, words used by the accused at the time of the incident, motive of the accused, parts of the body where the injury was caused and the nature of injury and severity of the blows given, etc.”

28. The Hon’ble Supreme Court, in the case of **AMIT RANA AND ANOTHER vs. STATE OF HARYANA**³, has made the following observations:-

“5. It is worthwhile to extract Section 307IPC for a proper consideration of the aforesaid question. It reads thus:

“307. Attempt to murder.—Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten 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 hereinbefore mentioned.

***Attempts by life-convicts.**—[When any person offending under this section is under sentence of [imprisonment for life], he may, if hurt is caused, be punished with death.]”*

³(2024) 15 SCC 42

6. A perusal of Section 307IPC, would make it clear that it really imbibes the true spirit of the maxim “*culpa poena par esto*” — means “let the punishment be proportionate to the offence; let the punishment fit the crime”. It itself prescribes three types of sentences imposable on a convict thereunder. If it is an attempt to murder simpliciter, the offence is punishable maximum with by a term of imprisonment of either description up to ten years and fine. The last part of Section 307 prescribes death sentence as the only punishment when the offender during the commission of the crime is under the sentence of imprisonment for life and hurt is caused to the victim.

9. Section 307IPC makes it clear that to attract the said offence the victim need not suffer any kind of bodily injury. The offence to commit murder punishable under Section 307IPC is constituted by the concurrence of mens rea followed by actus reus, to commit an attempt to murder though its accomplishment or sufferance of any kind of bodily injury to the victim is not a “sine qua non”. In other words, if a man commits an act with such intention or knowledge and under such circumstances that if death had been caused, the offence would have amounted to murder or the act itself is of such a nature as would have caused death in the usual course of an event, but something beyond his control prevented that result, his act would constitute the offence punishable as an attempt to murder under Section 307IPC.”

29. The Hon’ble Supreme Court, in the case of **STATE OF MADHYA PRADESH vs. HARJEET SINGH AND ANOTHER⁴**, has made the following observations: -

“5.6.2. This Court in *R. Prakash v. State of Karnataka* [*R. Prakash v. State of Karnataka*, (2004) 9 SCC 27 : 2004 SCC (Cri) 1408], held that: (SCC p. 30, paras 8-9)

⁴(2019) 20 SCC 524

“8. ... The first blow was on a vital part, that is, on the temporal region. Even though other blows were on non-vital parts, that does not take away the rigour of Section 307 IPC. ...

9. It is sufficient to justify a conviction under Section 307 if there is present an intent coupled with some overt act in execution thereof. It is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often give considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other circumstances, and may even, in some cases, be ascertained without any reference at all to actual wounds. The section makes a distinction between the act of the accused and its result, if any. The court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section.”

(emphasis supplied)

5.6.3. *If the assailant acts with the intention or knowledge that such action might cause death, and hurt is caused, then the provisions of Section 307 IPC would be applicable. There is no requirement for the injury to be on a “vital part” of the body, merely causing “hurt” is sufficient to attract Section 307 IPC. [State of M.P. v. Mohan, (2013) 14 SCC 116 : (2014) 4 SCC (Cri) 119]*

5.6.4. *This Court in Jage Ram v. State of Haryana [Jage Ram v. State of Haryana, (2015) 11 SCC 366 : (2015) 4 SCC (Cri) 425] held that: (SCC p. 370, para 12)*

“12. For the purpose of conviction under Section 307 IPC, prosecution has to establish (i) the intention to commit murder; and (ii) the act done by the accused. The burden is on the prosecution that the accused had attempted to commit the murder of the prosecution witness. Whether the accused person intended to commit murder of another person would depend upon the facts and circumstances of

each case. To justify a conviction under Section 307 IPC, it is not essential that fatal injury capable of causing death should have been caused. Although the nature of injury actually caused may be of assistance in coming to a finding as to the intention of the accused, such intention may also be adduced from other circumstances. The intention of the accused is to be gathered from the circumstances like the nature of the weapon used, words used by the accused at the time of the incident, motive of the accused, parts of the body where the injury was caused and the nature of injury and severity of the blows given, etc.”

(emphasis supplied)

30. The essential ingredients of Section 307 of the Indian Penal Code are the intention or knowledge to cause death coupled with an overt act done towards the commission of such offence. It is equally settled that the nature of injury, though relevant, is not by itself determinative; the intention of the assailant is to be gathered from the weapon used, the part of the body targeted, the severity and multiplicity of blows and the attendant circumstances surrounding the occurrence.

31. In the present case, the appellant lay in wait near the secluded spot where the victim had gone in the early morning. He came armed with deadly sharp-cutting weapons. The assault was directed principally upon the head, a vital and vulnerable part of the human body. The repeated blows inflicted with such weapons, resulting in brain injury, fracture and prolonged hospitalization, unmistakably disclose an intention to cause death or, at the very least, knowledge that the injuries inflicted were so imminently dangerous that death was a likely consequence thereof. The prosecution has

thus succeeded in establishing the foundational ingredients of Section 307 of the Indian Penal Code beyond reasonable doubt.

32. The defence sought to rely upon certain discrepancies emerging during cross-examination, particularly relating to whether some injuries bore lacerated characteristics or whether every witness had seen the actual assault. Such inconsistencies, however, do not strike at the root of the prosecution case. Minor variations are but natural when witnesses depose after passage of time and recount a traumatic occurrence from individual perception. The core of the prosecution case, namely that the appellant assaulted the victim with deadly weapons causing grievous bleeding injuries upon vital parts of the body, has remained unshaken throughout.

33. The evidence of the injured witness inspires confidence and finds substantial corroboration from the medical testimony as well as from the evidence of the witnesses who arrived at the scene immediately thereafter. No circumstance has been brought on record suggesting any plausible reason for false implication of the appellant in a matter involving such grave bodily injuries suffered by the victim himself.

34. In such circumstances, this Court finds no reason to interfere with the judgment of conviction and order of sentence passed by the Learned Trial Court. The appeal, accordingly, stands dismissed. The conviction of the appellant under Section 307 of the Indian Penal Code and the sentence imposed thereunder are hereby affirmed.

35. The appellant had been enlarged on bail right after his arrest. However, twenty two (22) years have lapsed from the date of occurrence of the incident

and accordingly, the sentence is reduced from 7 (seven) years to 4 (four) years.

36. Accordingly, the instant criminal appeal being CRA 84 of 2008 is dismissed.

37. There is no order as to costs.

38. Trial Court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.

39. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)