

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 86 of 2002

Osman Sk.

-Vs-

The State of West Bengal

For the Appellant	: Mr. Soumyajit Das Mahapatra Ms. Upasana Banerjee
For the State	: Ms. Faria Hossain
Heard on	: 17.12.2025
Judgment on	: 24.03.2026

Ananya Bandyopadhyay, J.:-

1. This appeal is preferred against judgment and order dated 24.01.2002 passed by the Learned Additional Sessions Judge, 2nd Court, Murshidabad in Sessions Trial Case No.3/April/2001 (Sessions Case No.49/2000), convicting the appellant under Section 325 of the Indian Penal Code and sentenced him to suffer rigorous imprisonment for 2 years and to pay a fine of Rs.5,000/- in default to suffer further rigorous imprisonment for 6 months under Section 325 of the Indian Penal Code.
2. The prosecution case precisely stated of a dispute between the complainant and her brothers over the issue of co-sharing of a land. The complaint narrated of a direction whereby both the parties would refrain from

participating in cultivation on the disputed land till settlement was achieved but the accused persons allegedly cultivated the same, which resulted into a clash with the victim sustaining injuries.

The written complaint also disclosed the accused persons including the present appellant jointly attacked the house of the complainant with “*lathi*”, “*hansua*”. Allegations of house breaking, outraging the modesty and snatching of golden necklace were cited coupled with an allegation of breaking the tiles of the roof.

3. Based on the aforesaid complaint, Bhagwangola P.S. Case No.182/1993 dated 22.11.1993 under Sections 325/326/307/34 of the Indian Penal Code was initiated against the appellant.
4. On completion of investigation, the police submitted charge-sheet under Sections 307/34 of the Indian Penal Code against the appellant, who pleaded not guilty and claimed to be tried.
5. In order to prove its case, the prosecution examined as many as 7 witnesses and exhibited certain documents.
6. The Learned Advocate representing the appellant argued on the following points:-
 - i. Genesis of the criminal case was doubtful:-
 - a) PW 1 being the complainant in her complaint stated of two separate incidents on 21.11.1993. While the first incident of assault upon Goni Mohammad (PW-5) took place purportedly within disputed cultivating land at about 08:00 a.m., the second one took place after a short gap at the house of the complainant when the

accused persons attacked them with lathi, hasua etc. The second incident referred to outraging modesty of herself and her married daughter and grabbing gold necklace of a particular weight. The complainant also alleged the front door and the roof tiles were broken by the accused persons.

However, neither the PW-1/complainant nor the PW-5/the victim as well as PW-6/neighbor of the complainant disclosed the same during their depositions. Such questionable conduct of willful suppression of an alleged incident; availability of corroborative piece of evidence of which was extremely high, created serious doubt about the intention of the complainant with possibility of false implication. The unexplained silence regarding the second incident projected in all probability a contrary fact of fleeced allegations.

b) The complainant in her complaint stated the appellant was cultivating a disputed land upon which a conjoint decision was taken in local panchayet that no one would cultivate the same. However, the complainant didn't allege the same while deposing, rather she stated her son, being the victim/ PW-5 was taking food to their land. PW-6 being the sole independent witness also didn't state the appellant and others were cultivating the land. Moreover, the PW-1/complainant in her cross examination had stated the assault took place over share of homestead, which was diagonally opposite to the cause of dispute as had been portrayed. Under such

circumstances, the purported initiation of alleged dispute had not been corroborated.

c) The complainant in her cross-examination deposed he did not know the content of the complaint and one Lutfar Rahaman/ PW-4 drafted the same. However, the PW-4 in his cross-examination stated the same had been read over to the complainant and she admitted the content was correct. If the written complaint being the very genesis of the criminal case was under shadow, the appellant might be favoured with an order of acquittal, subject to the satisfaction of this Hon'ble Court.

ii. No independent witness examined:-

a) In the instant case the alleged incident occurred in an open field but no independent witness was produced. The prosecution only examined one Gias/PW-6 to prove its case who himself admitted in his cross examination that he had a previous dispute with the present appellant.

b) The PW-5/victim named two other persons viz. Bari and Mujibar Rahaman, who were present at the fateful moment with him, but none of them had been examined by the prosecution. It was further the case of the prosecution that while the incident progressed several local people had assembled. However, none of such witnesses were produced by the prosecution.

iii. Lack of corroboration regarding injuries sustained:-

a) The prosecution produced two medical officers being PW-2/ second treating doctor and PW-3/first treating doctor who allegedly treated the victim/PW-5. PW-2 could not state the age of the injury. He also admitted that the history of injury had not been mentioned in his report. PW-3/first treating doctor did not depose about anything regarding the history of injury, especially who was the assailant, though his treatment sheet/referral was exhibited. Therefore, from the medical reports it was dicey that the injuries had been caused by the present appellant.

b) Moreover, PW-5/victim admitted in his cross examination he did not disclose to the investigation officer/ PW-7 that he was admitted into Kanapukpur PHC or he was referred to Berhampore N.G. Hospital. He further admitted that he did not disclose to the investigation officer/PW-7 that he was admitted in hospital for 15 days. Such conduct of the victim was quite susceptible in nature as in one hand, he was proceeding against the appellant and on the other hand, he himself was shying away from sharing what could have been the most important piece of evidence.

iv. Identity of the victim is questionable:-

The evidence of PW-6/ Giasuddin Sk is very peculiar in nature as he referred the victim/ Abdul Gani/ PW-5 as a deceased person. PW-5/victim and PW-6 were examined on same day, i.e. 14th September. 2001 negating the possibility of impersonation.

v. Medical papers could not be looked into:-

The prosecution had tendered injury reports, bed-head ticket and discharge certificate as Exhibit 5 series and Exhibit 6 series, but the same had been done through the Investigation Officer/ PW-7 which was impermissible. In the present case in hand, although the PW-2 was examined on dock but the exhibit series 5 or exhibit series 6 had never been tendered into evidence while his deposition was going on.

vi. Previous enmity cannot be ruled out:-

A thorough reading of the depositions disclosed PW-1/complainant, PW-5/victim and PW-6/neighbour of the victim had previous enmity with the present appellant. The complaint itself contained such existence of a previous enmity over the issue of co-sharing which was incredulous of false implication.

vii. Lack of ingredient of Section 325 of the Indian Penal Code:-

To attract Section 325 of the Indian Penal Code, use of any weapon was not required. However, in the present case in hand the prosecution stated the victim had been assaulted with a "*pasli*" but the same had not been seized by the Investigating Agency.

Even, the prosecution witnesses couldn't prove any premeditated intention to cause such grievous hurt. As per the prosecution story there was a heated altercation between the victim and the accused persons in presence of other persons. So, to prove the offence under Section 325 of the Indian Penal Code it was necessary to recover the offending weapon from the possession of the accused/ appellant. In

the present case, both the ingredients of the Section 325 of the Indian Penal Code have not been fulfilled.

7. The Learned Advocate representing the State submitted as follows:-

- i. The conviction of the appellant under Section 325 of the Indian Penal Code, 1973, stands fully justified as PW-5, Goni Mohammad clearly deposed that the appellant assaulted him with a '*pasli*' resulting in grievous hurt and such testimony of the injured person had strong evidentiary value. Although the complaint also narrated a subsequent attack on the complainant's house alleging assault with lathi and hansua, outraging of modesty, snatching of gold ornaments, and damage to the door and roof. The core incident of grievous hurt remains firmly proved through consistent testimony of eyewitnesses and medical corroboration.
- ii. Any attempt to create doubt about the genesis of the complaint was irrelevant, for even if the second incident was treated as exaggerated or surplus age, it did not lessen the case of assault resulted in grievous hurt to the victim in the field, which remained completely consistent, credible and corroborated by the evidence of PW-1, PW-5 and PW-6.
- iii. It was incorrect that there was no one present at the time of occurrence. PW-6 was an independent eyewitness who accompanied the injured person to the hospital. The fact that he also had disputes with the appellant did not make him an "interested witness". It was held by the Apex Court that "*strained relations do*

not discredit the testimony and that is otherwise natural, consistent and trustworthy”.

- iv. The question of personal grudge and enmity was a double edged sword which cut both ways. The incident as proved by the prosecution narrated that said enmity between the parties.
- v. The medical evidence substantially corroborates the assault. PW-3, the first doctor who treated the victim PW-5 proved the referral papers and confirmed the presence of grievous hurt and Injury. The non-mention of the injury history by PW-2 in no manner erodes the present case, as the medical findings clearly align with and reinforce the eyewitness’s account of assault. Lastly, the nature and severity of the injuries of PW-5 leaves no scope for doubt.
- vi. The contention was that the medical documents were improperly exhibited was completely devoid of merit. When the doctor who examined victim PW-5 had deposed and supported the injury, the absence of a formal exhibit could not override substantive evidence. It was therefore, a settled principle that procedural or technical lapses could not be permitted, particularly when the oral evidence of the medical officer and the injured witness stood clear and consistent. In various judgment’s it had been held that *“insistence on rigid technicalities could not override credible, direct evidence which establishes the offence beyond reasonable doubt”*.
- vii. The alleged confusion regarding PW-5 was deceased or alive was clearly a linguistic error as PW-5 was examined in Court who

identified his signature on the complaint narrating his injury. The appellant never raised any kind of objection during the trial. Therefore such arguments had been an afterthought.

viii. The absence of seizure of the weapon (pasli) was immaterial. For conviction under the Section 325 of Indian Penal Code, 1973 the recovery of the weapon was not mandatorily required as the nature of injury itself proved the offence committed by the accused. Also the Hon'ble Supreme Court had held in one of the judgements that *"non-recovery of the weapon is not fatal when there is a direct eyewitness testimony supported by medical evidence"*.

ix. The Learned Trial Court had meticulously appreciated the evidences and there was no perversity and legal infirmity. Therefore, the appellant could not claim benefit under the "Probation of Offenders Act" as the assault was deliberate, targeted and over a land dispute resulted in grievous hurt and injury and this offence reflects serious violence.

8. The Learned Advocate representing the State further submitted the circumstances as mentioned above the prosecution had been able to prove its case beyond all reasonable doubts and hence, the instant appeal should be dismissed.

9. A circumspection of evidence of the prosecution witnesses revealed as follows:-

i. PW-1, being the father of the injured victim, Goni Mohammad, unfolded the genesis of the occurrence against the backdrop of a

long-standing and festering dispute over landed property between the parties. He deposed his son had gone to the field to take food. In the meantime, the accused persons, namely, Kasimuddin, Soleman, Nobi, Amjad, and others launched a concerted and violent assault upon him. PW-1 was present at his residence alerted by the commotion, rushed to the place of occurrence. He found his son had been brutally attacked with sharp-edged weapons resulting in grievous injuries including severe wounds to the ear, nose, and other parts of the body. The victim was initially taken for medical attention and upon meeting him later in the evening. PW-1 noticed the extent and brutality of the injuries. Thereafter, he proceeded to the police station and lodged a formal complaint. In his cross-examination, he admitted the accused persons were related to him as nephews and reiterated that the dispute over the paternal property, arising from denial of his rightful share, constituted the underlying motive for the assault.

- ii. PW-2, a medical officer attached to Berhampore New General Hospital as an ENT surgeon, deposed with clinical precision that on 21.11.1993 at about 1:40 PM, he examined the injured Goni Mohammad, who had been referred from Kanapukur Primary Health Centre. Upon examination, he found the left ear had been amputated. Additionally, he recorded multiple incised injuries on the anterior chest and neck. He described three distinct injuries with specific measurements, one measuring approximately

2"/1"x1½ on the neck, another measuring 2"x1"x2", and a third measuring 3"x1"x2". In his medical opinion, such injuries could have been caused by sharp cutting instruments, including weapons and a sword. However, in cross-examination, he acknowledged certain omissions in his report, viz., the absence of any note regarding the age of the injuries or the history furnished by the patient, thereby limiting his ability to opine on the temporal aspect of the injuries.

- iii. PW-3, another medical officer posted at Kanapukur BPHC under Bhagwangola Police Station deposed the patient identified as Goni Mohammad of village Ramchandmati was brought to the said Health Centre in an emergent condition with amputation of the left ear. Finding the facilities at the centre inadequate for such grievous trauma, he promptly referred the patient to Berhampore Hospital for specialised treatment.
- iv. PW-4, who acted as a scribe of the written complaint, stated he was acquainted with Noor Banu Bibi, the wife of Abdus Samad. On her request, he reduced her complaint into writing and read it over to her, where she put her left thumb impression, the document being marked as Exhibit 2/1. Nonetheless, in cross-examination, he considered there was no endorsement to indicate that he had tested the thumb impression of the complainant. He further admitted he had not appended his signature as a scribe or there was any explicit

note that the complaint had been written under the instructions of Noor Banu Bibi, thereby formality of the document was ostensible.

- v. PW-5, a witness to the occurrence provided a vivid account of the incident. He deposed on 21.11.1993 in the midst of an on-going dispute over land possession, he visited the field and found the accused persons, Kasimuddin, Osman Soleman, Amjad and Nabirul engaged in cultivating the disputed land. Upon his protest, Kasimuddin exhorted others to finish him. Therefore, Osman inflicted grievous injuries upon him with a '*pasli*' striking the vital parts, such as a ear, neck and chest. The assault was so severe that his left ear was completely severed. Though he fell to the ground, he remained conscious, but was unable to speak. Subsequently, localites arrived and facilitated his removal to Kanapukur PHC, wherefrom he was referred to Berhampore Hospital. He was immediately taken to the operation theatre, where surgical intervention was undertaken, including stitching of the severed ear. He remained hospitalised for an extended duration of one month and 15 days. He unequivocally asserted that the accused persons had acted with the intention to kill him. In cross-examination, however, he stated he was not interrogated by police, a statement which assumed significance in assessing the investigative thoroughness.
- vi. PW-6 deposed he was acquainted with Abdul Goni of village Ramchandmati and was present on his field on the relevant day. He

corroborated the occurrence to the extent that Osman struck Goni Mohammad with a '*pasli*'. However, in cross-examination, he admitted when the injured was taken to Kanapukur PHC he was examined by the police, thereby introducing a nuance to the earlier assertion of non-interrogation.

vii. PW-7, the Investigating Officer and the Officer-In-Charge of Bhagwangola Police Station deposed, on 22.11.1993, he received the written complaint lodged by Noor Banu Bibi. He formally registered Bhagwangola PS Case No.182/93 dated 22.11.1993 and initiated the investigation. He endorsed on the body of the FIR in his own handwriting, visited the place of occurrence at Ramchandmati field and prepared a rough sketch map with index marked collectively as Exhibit-4. He recorded statements of several witnesses under Section 161 of the Code of Criminal Procedure including Ananda, Mujibar Rahaman, Bajen Mondal, Abdul Gani, Sajjad Sk. and Gias Sk. He arrested the accused persons and collected the injury report of Goni Mohammad from Berhampore Hospital, which was marked for identification as "X". The bed-head tickets and discharge certificate were exhibited as Exhibit-5 Series and Exhibit-6 respectively. Upon completion of investigation, he submitted charge-sheet No.57 dated 30.03.1994 against the accused persons indicating one individual as absconding.

viii. In his cross-examination, PW-7 admitted certain material omissions in the statements recorded during investigation. He stated the

witness had not disclosed to him that he was present in his land at the time of occurrence nor stated Osman Shaikh assaulted Mohammed with a '*pasli*' or that the injured was taken to Kanapukur PHC by him. He further conceded there was no record indicating from whom he had received the injury report of the victim and that he had no acquaintance with the hospital office, thereby exposing certain lacunae in the chain of documentary collection.

10. Thus, the cumulative evidence revealed a consistent narrative; a land dispute acting as a motive; a brutal assault with sharp edge weapons, resulting in grievous injuries, including amputation of the ear; prompt medical intervention, corroborated by professional medical testimony and investigation which substantively supportive of the prosecution case is not free from procedural imperfections and omissions.
11. The evidentiary facts of the prosecution case must be tested on the qualitative standard, coherence, credibility, and legal sufficiency, particularly when the conviction is to be sustained under Section 325 of the Indian Penal Code.
12. At the very threshold, it is imperative to note that the cornerstone of the prosecution case rest upon a consistent and interwoven narrative emerging from the injured PW-5, the ocular corroboration furnished by the evidence of PW-1, PW-6, and the medical evidence adduced by PW-2 and PW-3. Cardinally the testimony of an injured with this carries a high and evident value as his presence at the scene of occurrence stands fortified by the injury sustained. Unless compelling circumstances are demonstrated to

discredit such testimony, the Court would be at fault to discarding it. The testimony of PW-5 described the occurrence in an unambiguous and consistent manner attributing specific role to the accused Osman Sk., who inflicted blows by means of a sharp-edged instrument on vital parts of his body. The assault resulted in the severance of his left ear and injuries to the neck and chest, the account so rendered is straightforward free from exaggeration and aligned with the natural course of events. The evidence furnished is direct, unembellished and bears intrinsic reliability.

13. The law accords a distinct degree of probative value to the testimony of an injured witness. Such testimony stands on a higher pedestal, depicting inbuilt assurance of truth unless demonstrated otherwise by prevarications, contradictions or inherent improbabilities. In the present case, the core of the version put forth by PW5 remains intact, despite cross-examination and no circumstance has emerged, which will justify its rejection.
14. The ocular account receives corroboration from PW-6, who has supported the prosecution version to the extent of witnessing the assault and identifying Osman Sk. though not an eye witness to the entire occurrence however rendered support to the immediate aftermath and the condition of the victim, thereby reinforcing the continuity of events.
15. The medical evidence lends substantial assurance to the ocular version. PW-2 had recorded the left ear of the victim was amputated and there were multiple incised injuries on the neck and chest. The nature and dimensions of these injuries are consistent with the use of a sharp-cutting weapon. The loss of ear clearly constitutes grievous hurt within the meaning of Section

325 of the Indian Penal Code being a case of permanent privation of a member of the body. The evidence of PW-3 further indicated the condition of the victim was sufficiently serious to warrant immediate referral to a higher medical centre for specialised treatment.

16. Thus, the convergence between ocular and medical evidence is complete and leaves no doubt as regards the factor of grievous hurt having been caused.

17. However, certain deficiencies in the investigation surfaced during cross-examination. PW-7 had acknowledged omissions in recording specific statements of witnesses and had been unable to indicate the precise source from which the injury reports were obtained. PW-2 also admitted the absence of details relating to the age of injuries and the history provided by the patient. These aspects, though not insignificant, do not strike at the root of the prosecution case, but they do require the Court to approach the analysis with circumspection while determining the exact degree of capability.

18. The crucial question, therefore, is not whether grievous hurt was caused which stands established, but whether the circumstances disclose an intention or knowledge of such a nature as will warrant conviction under a more aggravated provision. The materials and record do not univocally established such heightened *mens rea*. The incident appears to have arisen out of a dispute and the assault was undoubtedly severe. The evidence falls short of demonstrating beyond reasonable doubt, the intention necessary to attract a greater charge.

19. In the circumstance, the act of the accused clearly falls within the ambit of voluntarily causing grievous hurt. The ingredients of Section 125 of the Indian Penal Code stand satisfied inasmuch as the injury was grievous, the act was voluntary and the participation of the accused stands established through reliable evidence.
20. The inconsistencies and omissions brought on record remain peripheral in nature and do not create a reasonable doubt regarding the involvement of the accused. The testimony of the injured witness supported by medical evidence provides a firm basis for sustaining the conviction.
21. Under the facts and circumstances, the finding of the guilt under Section of 325 of the Indian Penal Code is affirmed being founded upon credible testimony and consistent medical co-operation.
22. In view of the observations as cited above, since the incident related to the year 1993, the appellant to be taken into custody to serve out the sentence would not be expedient in the interest of justice after a lapse of nearly 33 years. The sentence is modified to the extent of custody to have been served by the appellant. However, the appellant is directed to pay a fine of Rs.25,000/- (Twenty Five Thousand) instead of Rs.5,000/- within 60 days from the passing of this order.
23. Accordingly, the instant criminal appeal is dismissed.
24. There is no order as to costs.
25. Learned Trial Court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.

26. 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.)