

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 234 of 1998

Harihar Pandit

-Vs-

State of West Bengal

For the Appellant : Mr. Malay Bhattacharyya

For the State : Ms. Faria Hossain
Ms. Kanchan Roy

Heard on : 23.12.2025

Judgment on : 24.03.2026

Ananya Bandyopadhyay, J.:-

1. This appeal is preferred against judgment and order dated 28.07.1998 passed by the Learned Additional Sessions Judge, Katwa, Burdwan in Sessions Case No.28 of 1996 and Sessions Trial No.19 of 1998, thereby, the appellant was convicted under Sections 326/307 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for a period of 7 years and to pay a fine of Rs.1000/- in default to suffer further simple imprisonment for 5 months for each offence which will run concurrently.
2. The prosecution case precisely stated on 05.09.1991 at about 11:30 p.m., the appellant entered the house of one Sudeb Prodhan with a "Katari" in his hand. While the appellant approached Sudeb Prodhan, who was lying on the

verandah, resisted but Sudeb Prodhan's wife namely Lakshmi Prodhan, who was in the room instigated the appellant to slay Sudeb Prodhan who thereafter attacked Sudeb Prodhan and injured him on his head and neck. Sudeb Prodhan cried aloud whereby his brother Joydeb Prodhan and his wife arrived along with a neighbor namely Subhash. Thereafter, the appellant fled. The victim i.e. Sudeb Prodhan was taken to Katwa Hospital for treatment. The next morning, the victim lodged the complaint.

3. Based on the aforesaid complaint, the Officer-in-Charge, Katwa Police Station, had registered the case of Katwa P.S. being Case No.161/91 dated 06.09.1991 under Sections 326/307 of the Indian Penal Code.
4. After completion of the investigation a charge-sheet was submitted by the investigating officer against the appellant under Sections 326/307/109/111 of the Indian Penal Code.
5. Charges were framed against the appellant under Sections 307/326 of the Indian Penal Code to which he pleaded not guilty and claimed to be tried.
6. In order to prove its case, the prosecution examined as many as 10 witnesses and exhibited certain documents.
7. Learned Advocate for the appellant submitted as follows:-
 - i. The the prosecution case suffered from want of evidence of the independent witnesses who had neither any interest in the victim nor any malice and prejudice against the appellant.
 - ii. The sole evidence of PW-3 Sudeb Prodhan who suspected the appellant for being involved in an illicit affair with his wife was unreliable. PW-3 out of a strong animus, implicated the appellant falsely.

- iii. The evidence of PW-3 was not corroborated by any eye-witness of independent character.
- iv. The evidence of PW-4 and PW-8 was of no help to the prosecution as they were not the witnesses to the occurrence. The evidence of PW-4 and PW-8 was based on hearsay and being relatives was interested.
- v. The evidence of PW-4 and PW-8 to the effect that they saw the appellant fled with a "*Katari*" in hand could not be believed because it was a dark night. PW-4 admitted it was a dark night in absence of electric light on the way. The said evidence of PW-4 precluded the possibility of the appellant being seen by them on the eventful night.
- vi. The evidence of PW-3 (injured person) was to be disbelieved on the ground that the said witness did not disclose as to how he could see and recognize the appellant in the darkness with almost dormant eyes. It was unsafe to repose conviction upon the uncorroborated evidence of PW-3 who saw the appellant with sleeping eyes in a dark night. It was not the prosecution case that PW-3 saw the appellant in the light of torch or lantern.
- vii. The conviction should not have been granted on the sole uncorroborated testimony of the injured person.
- viii. The untorn mosquito curtain which had been seized by the police indicated the incident had not taken place in the manner as stated in the complaint. It was the persistent case of the prosecution that PW-3 while lying under mosquito curtain was chopped by the appellant with a "*Katari*". Had that story been true, the said mosquito curtain would have seen cut or torn and it would have the marks of blood.

- ix. The son and daughter of PW-3 who were in the room attached to verandah had not been examined by the Investigating Officer. It appeared from the evidence of PW-2 that the son of PW-3 was 20/21 years old. PW-3 also admitted that he married Lakshmi 21/22 years back and a child was born to them after a year of marriage and a daughter was born after two years of their marriage. Therefore, at the time of occurrence PW-3 had 14-years-old son and 12-years-old daughter. It was in evidence that they were sleeping in the room. So, it was expected that the said son and daughter had some knowledge about the incident and they were by far the best witnesses. The non-examination of the said witnesses by the Investigating Officer raised a strong presumption against the prosecution.
- x. Both PW-4 and PW-8 who claimed to have heard about the occurrence from PW-3 should be disbelieved. Because, they could not hear anything from PW-3 as he lost his voice immediately after the incident.
- xi. The evidence of PW-3, PW-4 and PW-8 smacked of contradictions. PW-3 did not state the appellant left the place with his wife Lakshmi. PW-4 and PW-8 saw both of them leaving the place of occurrence together, PW-4 stated he was called by PW-3. PW-8 heard PW-3 crying "*Ke Achho Banchao*". The said material contradictions eroded the basis of the prosecution case.
- xii. The Learned Trial Judge should have held that motive ascribed to the assault on PW-3 by the appellant was something absurd and the said motive results from afterthought. In the complaint of allegation

against the appellant having affair with Lakshmi i.e., wife of Sudeb Prodhan was not absent.

8. Learned Advocate for the State argued on the following grounds:-

- i. Section 161 statements:- Family and friends of Victim: PW-1, PW-3, PW-4, PW-5, PW-8. PW-1, Subhas Chandra Mondal, villager and the victim's neighbour, at around 11:30 pm when PW-1 came to visit his cow shed, he heard a cry of the victim (Sudeb Prodhan). Following which PW-1 rushed to the house of the victim and found him with bleeding injuries. The victim's brother's wife was holding him while his brother Joydeb Prodhan was tying cloth around the head of the victim. The victim was unconscious. When PW-1 asked the victim's brother's wife and Joydeb Prodhan, they stated the appellant caused injuries to the victim's head, hand and ears. Joydeb Prodhan and PW-1 brought the victim to hospital at Katwa by cart where he was taken to Emergency Department.
- ii. PW-3, Victim stated at about 11:00 pm to 12:00 am at night when the victim was sleeping inside a mosquito net on his veranda, the appellant stepped in, by which the victim woke up. On asking about his unexpected arrival the appellant attacked the victim on his left ear, hand and head with the "*Katari*", on command of the victim's wife, as a result he bled profusely. The victim called his brother Joydeb Prodhan and his wife and while narrating to them about the incident, the victim became unconscious. The victim suffered grievous hurt so much so that he was hospitalized for an entire month and became agile thereafter, he needed assistance in wearing

his apparels and in taking a bath. The victim even lost his voice. He stated the appellant had relations with the victim's wife and when he discovered and forbade it, he became hostile towards victim who attacked him on finding occasion to do so.

- iii. PW-4, Joydeb Prodhan, brother of the victim, confirmed the incident and stated when the victim raised alarm, he with his wife went to the veranda wherein he found the victim severely injured and profusely bleeding. While going to the veranda he saw the victim's wife eloping with the appellant. The victim while narrating the incident to him became unconscious.
- iv. PW-5, Sanat Mondal, neighbour of victim, stated that he heard the cry of the victim at 12:00 am to 12:30 am following which he came to his house wherein he got to know the appellant had attacked the victim and that victim was taken to the hospital by PW-1 and PW-4, he also heard the victim's wife had illicit relationship with the appellant to which the victim forbade. He put his signature on the seizure list presented by the Investigating Officer. One Bipad Mondal also signed the said seizure list.
- v. PW-8, Jayabati Pradhan alias Jayanti and Jayati, sister-in-law of the victim, confirmed the narration of the entire incident as stated by PW-4. She also confirmed the cause stated by PW-3 for such assault.
- vi. Medical and police witnesses:- PW-6, Dr. G.R. Manna, attended the patient (victim) half an hour after he was admitted - he stated the general condition of the patient was moderate and he had left facial paralysis with multiple incised wounds on body. O.T. was arranged

for the victim as the injuries were (1) 3" x 1" x scalp deep outer table of the bone cut. Dirt was present on the left parietal scalp, (2) incised wound 8" x 1" x bone cut at mastoid extending from left face cutting to the patofit and left ear lobe, (3) incised wound 3" x ½" x bone cut over left upper forearm dorsum (4) incised wound 1 ½" x ½" x tendon cut dorsally over the M.C.P. joint of right little finger and (5) abrasion dorsum left ring finger 1" x ½". On 13.09.1991, the victim complained of left – eye congestion for which he was referred to the eye surgeon. X-ray was taken, wherein it was found that there was a fracture on left radius of the eye. The victim was discharged on 07.10.1991 with a plaster on his left forearm. The doctor stated "*these injuries may be caused with any sharp cutting weapon like Katari by successive assaults*". Final injury report was given to the victim on 20.12.1991 with the doctor's signature and seal. He clearly stated that the victim was admitted on 06.09.1991 and discharged on 07.10.1991.

- vii. PW-7, Bidhan Chandra Das, Employee of Sub-Division Hospital, Katwa-posted as G.D.A. where victim was admitted. He stated the police seized a bed-head ticket of Sudeb Prodhan from the record room under a seizure list in PW-7's presence, to which he signed.
- viii. The appellant was rightly convicted and sentenced for offences committed under Sections 326 and 307 of the Indian Penal Code as the facts that substantiate the guilt of the appellant had been proved beyond reasonable doubt and form a complete chain:-

- a) Section 161 of Cr.P.C., of PW-1 (Subhas Chandra Mondal, victim's neighbour), PW-4 (Joydeb Prodhan, victim's brother) and PW-8 (Jayabati Prodhan, victim's sister in law) corroborates with the statement given by PW-3 (victim, Sudeb Prodhan).
- b) The statement of PW-6 (Dr. G.R. Manna, who treated the victim) also corroborated with the statement given by PW-3 (victim, Sudeb Prodhan).
- c) As per medical injury reports and the statement of the victim, the victim actually suffered grave injuries on head, left eye and hands, so much that he even lost his voice. His left eye was plastered and he was rendered hospitalized for an entire month. His injury was so deep that he couldn't do basic work unaided.

Therefore, the appellant had caused serious injuries to the victim and the conviction pronounced by the Learned Additional Sessions Judge, Katwa should not be interfered with.

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

- i. PW-1, the brother of the victim, deposed on the intervening night of 05.09.9091 at about 11:30-12:00 PM at midnight, upon hearing cries emanating from the victim's dwelling situated within proximity, he rushed to the spot and found the victim grievously injured and bleeding. He was informed by PW4 and his wife that the appellant was the assailant. The victim was promptly rushed to Katwa Hospital and written information was lodged marked as Exhibit-1.

- ii. PW-2, though of limited evidentiary value, corroborated the formal aspects of investigation, but disclosed in cross-examination that his signature had been obtained on a blank paper, thereby attenuating the probative force of Exhibit-2.
- iii. The substratum of the prosecution case rest upon PW-3, the injured witness, whose testimony bore the imprimatur of truth. He vividly narrated that while resting on his veranda, the Apple and trespassed into his dwelling, armed with a “*Katari*” and at the instigation of his wife, Lakshmi Pradhan inflicted multiple blows, including a severe incised injury below the ear and other vital parts. He further disclosed the antecedent motive arising out of an illicit relationship between the appellant and his wife. Despite a grilling cross-examination, the core of his testimony remained unshaken and the defence could not elicit any material contradiction to discredit his version.
- iv. PW-4, The brother of the substantial corroborated PW-3 by deposing upon hearing alarm, he reached the place of occurrence and found the appellant with a weapon in hand while the victim lay profusely bleeding. The immediate disclosure by the victim, implicating the appellant constituted a *res gestae* circumstance, lending assurance and probity to the prosecution case.
- v. PW-5 a post occurrence witness heard the clamour and corroborated the removal of the injured witness to the hospital. PW-8 further affirmed the narrative and the underlying motive.

vi. The medical evidence as adduced through PW-6 the attending surgeon assumed decisive significance. The victim sustained multiple incised wounds including:-

- a) a deep scalp injury cutting the outer table of the skull,
- b) a grave facial injury extending to the ear lobe,
- c) incised wounds on the forearm and finger with tendon involvement,
- d) and associated abrasions.

10. The injuries were opined to have been caused by a sharp cutting weapon like a "*Katari*" and were sufficient normally to endanger life. The patient required hospitalization for a prolonged period, surgical intervention and blood transfusion. The investigating officer PW-10 proved the formal steps including preparation of sketch map, seizure of blood stained articles and filing of charge-sheet under Sections 326/307 of the Indian Penal Code.

11. The pivotal question elicited whether the proven fact satisfied the statutory ingredients of Sections 326 and 307 of the Indian Penal Code.

12. Section 326 of the Indian Penal Code contemplated voluntarily causing grievous hurt by means of a dangerous weapon. The nature of injuries- fracture of bones (i.e radius), deep incised wounds involving vital regions and lasting impairment such as facial paralysis squarely fell within the ambit of grievous hurt as defined under Section 320 of the Indian Penal Code. The weapon used viz. a "*Katari*" was manifestly a dangerous sharp instrument.

The multiplicity of location and severity of injuries left fortified the offence under Section 326 of the Indian Penal Code to have been committed.

13. As regards Section 307 of the Indian Penal Code, the enquiry shall not be confined to the result of the injury but shall extend to the intention or knowledge accompanying the act. The essence of the said Section consistently enunciated whether the act, irrespective of its consequence had been done with such intention on knowledge and under such circumstances that if death had been ensued, the act would result in death. In the present case, the circumstances which assumed determinative significance denoted the nature of weapon, a sharp-edged "*Katari*" to be inherently lethal. The vital parts of the body such as the head and face were targeted. The victim suffered injury to an extent of losing eyesight. Moreover repeated assaults evince deliberation rather than an accident. The illicit relationship between the wife of the victim and the appellant furnishes a compelling motive coupled with the fact that the wife of the victim escaped from the place of occurrence along with the appellant at midnight, justifies the prosecution case.
14. These circumstances cumulatively assessed, irresistibly point towards an intention to cause death or at the very least knowledge that the injuries inflicted would likely to cause death. The fact that the victim survived owing to timely medical intervention does not dilute the culpability under Section 307 of the Indian Penal Code.
15. The defence has sought to assail the prosecution case on the ground of alleged inconsistencies, procedural irregularities and the purported

informality in certain witnesses. The offending weapon was not recovered. The independent witnesses were absent, the evidence of PW-4 and PW-5 was based on hearsay and being relatives they were interested witnesses. However it is trite that minor discrepancies which do not go to the root of the matter are but natural corollaries of credible testimony and cannot be magnified to discredit otherwise cogent prosecution case.

16. The testimony of an injured witness stands on a higher pedestal and unless compelling reasons exists, it commands implicit reliance. In the present Case no animus or motive for false implication has been established against PW-3. On the contrary the defence suggestion of prior enmity pales into insignificance in the face of direct ocular and medical evidence.
17. Upon a comprehensive appraisal of the evidence on record, this Court finds that the prosecution has succeeded in establishing beyond reasonable doubt that the appellant committed the offence of voluntarily causing grievous hurt by a dangerous weapon and further attempted to commit murder. Thus, the appeal being devoid of merit stands dismissed.
18. The appellant as per the records have already served out the sentence.
19. Accordingly, the instant criminal appeal is disposed of.
20. There is no order as to costs.
21. Trial Court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.

22. 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.)