

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:-

HON'BLE JUSTICE CHAITALI CHATTERJEE DAS.

CRA 345 OF 2015

SANAT @ SONAT JANA

VS

THE STATE OF WEST BENGAL & ANR.

For the Appellant : Mr. Somopriyo Chowdhury, Adv.
Ms. Anamika Pandey, Adv.

For the State : Mr. Debasish Roy, Adv.
Mr. anand Keshari, Adv.

Last heard on : 18.02.2026

Judgement on : 18.05.2026

Uploaded on : 18.05.2026

CHAITALI CHATTERJEE DAS:-

1. Assailing the judgement and order of conviction passed by the Learned Additional Session Judge ,18th Court, Alipore, 24 Parganas South on May 22,2015 and June 2, 2015 in Sessions Trial no 05(02)09, whereby the appellant is convicted for the offence committed under Section 323/353 and Section 307 IPC and sentenced to suffer Simple imprisonment for a term of 3 years with fine of Rs. 500 for the offence punishable under Section 323 of the Indian Penal Code , for 2 years with fine of Rs. 500/- for the offence

punishable under Section 353 of the Indian Penal Code and Simple imprisonment for 3 years and 3 months with fine of Rs. 1000/- for the offence punishable under Section 307 of the Indian Penal Code has been .

Brief Resume of the Case

2. A complaint was lodged by constable 722 Binod Kumar working at D.E.B 24 Parganas South, on February 5, 2006 around 5 P.M. in connection with the investigation of a case when he with D.E.O. went to a shop of Mahadeb Mondal at Bakrahat Kirtankhola market. At the time the adjacent VCD shops owner Sanat Jana informed the complainant about the other VCD shops running illegally dealing with Dirty VCD business and requested him to visit those shops and when the complainant proceeded followed by him, suddenly Sanjay Jana assaulted on his head from his back and before he could resist him by holding his hand the appellant assaulted with the hammer on his forehead and upper part of his eye and then he fled away. On hearing his shouting Mahadeb Mondal , Sahadeb Sahu all rushed there and rescued the complainant from Sanat Jana and thereafter his D.E.O. Kartick Chandra Bhomick the auto driver Balaram Gyen reached there and then he was taken to local Muchisa Hospital for the purpose of treatment where the wounds were stitched on the upper part of his right eye and backside of his with an advice to do a scan and also to prescribed medicine. He also submitted his injury report and his blood stained wearing apparels along with this complaint to the Police Station. On the basis of the said complaint Bishnupur P.S.case no. 25/5/2006 under Section 325/326/353/186 stared against the present appellant and on completion of investigation submitted the charge sheet incorporating Section 307 of Indian Penal Code. The Learned Court framed the

charge under Section 325/353/186/307 of the Indian Penal Code against the present appellant and the said charge was read over and explained to him to which he pleaded not guilty and claimed to be tried. Hence the trial commenced.

Submissions

3. The Learned Advocate appearing on behalf of the appellant submits that the appellant was falsely implicated in this case which is apparent from the entire facts and circumstances narrated by the de facto complainant who is Police Officer. There was no recovery of offending weapon as stated in the complaint there are contradictory statement adduced by the witnesses which is not tallying with the case of the de facto complainant. It is further argued that from the nature of allegation levelled it is clear that he went to the spot along with his D.E.O. for the purpose of investigation of a different case and only on the request of the present appellant he went to visit to the other shops. There is absolutely no mens rea and it is improbable that suddenly a shop owner would assault a Police Officer. It is further argued the presence of D.E.O is questionable as there is no GD entry to that extent and hence the story narrated by the de facto complainant to visit the place for the purpose of investigation of any other case is absolutely not proved. It is further submitted that ocular evidence and the medical evidence are not tallying with each other and that is fatal for prosecution. In this regard relied upon the decision of ***Sharam Singh And Others versus Stater of Uttar Pradesh***¹,

¹ 1962 SCC online SC 340

Krishnegowda and Others versus State of Karnataka², State of Uttarakhand versus Rajbir³.

4. Per contra the Learned Prosecution argued that the command certificate (photocopy) was exhibited which established the presence of the de facto complainant at the spot. P.W. 5 supported the case and corroborated the testimony of P.W. 1 and there are ample evidences against the present appellant. That apart the de facto complainant being injured himself adduced evidence which was supported with medical report. Therefore the Learned Trial Court rightly passed the order of conviction and this appeal is liable to be dismissed.

Analysis

5. Heard the submissions .The core issue to be decided as found from the materials on record, whether the prosecution was able to prove the case beyond the shadow of all reasonable doubt, and or whether the Learned Court rightly passed the order of conviction against the appellant.

6. In order to ascertain whether on the relevant day any incident happened as narrated in the complaint, it is necessary to go through the evidences adduced before the court by the prosecution witness. The de facto complainant Binod Kumar Singh deposed as P.W. 1 who was posted at D.E.B, South 24 Parganas as constable and reiterated mostly what was narrated in his complaint that on 05.02.06 a raid was held in the cassette shop under Bishnupur Police Station situated near Bhakra road before Swaraswati Pujo and S.I. Kartick Bhowmick of D.E.B. was in charge of their department who asked him to visit the P.O. of

² (2017) 12 SCC 98

³ (2021) SCC onLine Utt 30

that case. As per his evidence on the saying of the appellant he proceeded following the appellant towards the other cassette shop and on the way both of them noticed a bus standing on the road and after crossing that bus he moved towards the right side of the road and the owner of that cassette shop was following him and then all on a sudden he assaulted the complainant from the back side with the help of haturi (hammer) on his head and on the upper portion of his left eye brow causing severe injuries. After that his D.E.O. Kartick babu tried to save him from the accused but failed to apprehend that person and he fled away from that spot. He sustained profuse bleeding injuries and then he was shifted by Balaram, the driver of an auto rickshaw and Mahadeb the owner of a shop to the hospital at Muchisa. The witness identified the person who assaulted him. He lodged the complaint after taking discharge form the hospital complaining about the incident and also handed over her wearing apparels to the police person who seized those wearing apparels in his presence and prepared a seizure list to that effect he signed that seizure list as witness. In his cross examination he said that usually while they moved to different places in connection with a case they take command certificate from his authority concerned and he handed over the certificate to the I.O. at the time of investigation. However that certificate could not be produced in the court. It is pertinent to mention herein a photocopy of a command certificate can be found from the exhibit list which was marked with Exhibit 5 after objection . He admitted that on the relevant day he went to the market premises for the purpose of investigation pursuant to the direction of his Borobabu .

7. The said Kartick Chandra Bhowmick deposed as P.W. 5 who was posted at Bishnupur as D.E.B on 05.02.06. His testimony discloses that he went to Bakrahat Kirtankhola Market for the business for investigation of an old case and constable Binod Bihari accompanied him to the spot. He was investigating an old case and entered into a cassette shop of Mondal at that time constable Binod Behari intimated him that he would go elsewhere and thereafter he heard hue and cry outside the shop and found a mob assembled and came to learn that some person were assaulting and humiliating a police person on the road. Immediately he rushed to the spot and noticed that a man with a hammer assaulting constable Binod Bihari on the head and he tried to save him from the hand of that man who fled away from the place whom he identified in court. The witness noticed profuse bleeding from the head of the constable and with the help of local people he made arrangement for shifting the injured to Muchisa Rural Hospital and after the attending doctor stitched the wound. After primary treatment he went to the police station with the injured constable along with the injury report and the written complaint was submitted in his presence before the police station. It can be found from his evidence that about 15 to 20 people assembled near the place of occurrence but he could not give the name of those people before the Investigating Officer at the time of interrogation.

8. P.W. 8 Anindita Bhowmick, the Medical Officer was posted at L.P. Dutta Hospital Muchisa under P.S. Bishnupur. On the day he treated a patient namely Binod Kumar Singh in connection with Bishnupur P.S. case no. 25/06 dated February 5, 2006. This witness deposed that on examination of the patient she found one blunt injury on his forehead and another blunt injury

on his right eyebrow. She further found blunt injury on left lateral side. She administered two stitches on forehead as well as right eyebrow and two stitches over the occipital region. She also prescribed medicine and referred the patient to M.R. Bangur Hospital for further treatment and specially took his opinion for medical treatment. She proved the injury report where she took LTI of patient B.K. Singh who identified the LTI on the report it was marked with exhibit-4. From her evidence it can be found further that the patient did not produce any paper before her to show that he was on duty and the time of treatment was not mentioned in her report. No measurement of the injury was found since it was blunt. She administered stitches to stop bleeding. According to her evidence this type of injury may occur if one fell down on the ground or dashed on the wall.

9. In the written complaint the signature of Binod Kumar Singh is found as well as in the deposition sheet before the court. No evidence has come forward about putting his LTI on the injury report. Since his presence at the spot is clouded and no explanation comes regarding putting his L.T.I on the injury report coupled with the fact of non-examination of the Doctor by the I.O gives rise to enough suspicion and therefore further corroboration is to be seen . P.W.2 Mahadeb Mondal who had a tea stall on Kirtankhola Bazar near Sitala Tala and also had a cassette shop in that market deposed that and he knew the appellant. Further police held raid in his cassette shop on January 25,2006 after that the incident occurred when he was standing in his cassette shop after returning from the field when in the deposition the P.W 1 said about the raid held on February 5,2026. This witness was asked by a gentleman wearing civil dress about the direction of the hospital and he informed the

location and he then requested him to accompanying him towards Muchisa Hospital and he accompanied him to the Hospital and then returns to shop. This witness deposed not being interrogated by the I.O. and then declared as hostile witness .In his cross examination he denied that accused Sanat Jana assaulted the victim and due to such assault said constable fell down on the ground. He admitted that he shifted the injured Muchisa Hospital for treatment and went to Bishnupur P.S. who denied that he wrote the complaint as per direction of the constable. He also denied that he was present at the time of alleged incident.

10. P.W. 3 Saghadab Shaw a Khaini shop owner near the Kirtankhola Market area could not recognise any person named as Sanat Jana. He could not say anything regarding the incident leading to the present case and this witness also was declared as hostile witness. He denied that he stated before the I.O. that when that he was in his shop Sanat Jana who had a cassette shop in the market assaulted a constable in his presence. He admitted not to have any specific shop but he used to sale khaini on the footpath and did not know about the incident. P.W. 4 Niranjn Das a labour who used to work at Bakrahat market could not identify Sanat Jana and or about any incident happened inside the market his cross examination was declined. P.W. 7 is the Balaram Gayen is an Auto Rickshaw puller who runs auto from Gotalahat to Amtala Junction he know Sanat Jana and identified him but he could not recollect any incident on that relevant day. He also could not recollect whether any injured was taken to hospital with the help of in his auto rickshaw or nay police person who was there inside his vehicle on the very day.

11. Excepting the above witnesses the other witnesses are P.W. 6 , the S.I. of Police who received written complaint from constable No. 722 Binod Kumar Singh on 05.02.2006 and then he registered and started Bishnupur police case as above. He filled up the formal FIR. P.W. 9 is the Circle inspector and the I.O. of the present case. He prepared the sketch map and examined the available witnesses. He also seized white blood stained wearing shirt and collected the injury report in course of his investigation and made a prayer before the Court for adding Section 307 of IPC. It is pertinent to mention herein the complainant while lodging the complaint handed over the blood stained shirt and the seizure was made in the police station . He held raid number to times to apprehend the accused but could not apprehend. He collected the FSL report which was counter signed by the Learned ACJM and then on completion of investigation submitted the charge sheet. In course of cross-examination he said to have seized one command certificate dated 04.02.06 for collection of information regarding illegal business to the Essential Commodities Act by D.E.B Inspector, 24 Parganas, South. He did not examine the Medical Officer put the injured victim and she did not submitted any medical paper support regarding his treatment to him.

12. The incriminating materials against the accused persons was placed before the accused person was placed before the accused person who in course of examination under Section 313 denied the allegations levelled against him and that he was present at the relevant point of time at the place of occurrence as alleged. The Learned Session Court considered the evidence of P.W. 1 being the injured with the evidence of P.W. 5 and the medical report and hence observed that the credibility of the witnesses has not been shaken by the defence during

cross examination and hence the testimony and the statement of the witnesses corroborated the prosecution story and also proves that the accused was very much present at the spot. The Learned Session Court further considered that the appellant did not cooperate with the investigation and accordingly WPA had to be issued against the accused so the police did not get any opportunity to take the accused into their custody and therefore the police had no scope to recover the offending weapon. It was further observed that had police could arrest the accused certainly there would have any opportunity to recover the offending weapon but in the case it has not been done and therefore the argument on the point of not recovery of offending vehicle is of no use and futile. Hence pass the order of conviction.

It is the cardinal principle of criminal jurisprudence that accused is presumed to be innocent until his guilt is proved beyond reasonable doubt. In the decision as relied upon by the Learned Advocate of the appellant in **KrishnaGowda and Ors.(supra)** it was held by the Hon'ble Supreme Court that generally in criminal cases

“discrepancies in evidence of witness is bound to happen, because there was considerable gap between the date of incident and time of deposing evidence before Court but if such direction create such serious doubt in the mind of court about truthfulness of witnesses and it appears to court that there is clear , then it is not safe to rely on such evidence. It is held that it is the duty of the court to consider the truthfulness of evidence on record. As said by Bentham, “witnesses are the eyes and ears of justice”.

13. In the case of *State of Uttarakhand Versus Rajbir (supra)* it was found that the constable and the inspector stated that the information received by the secret informant was reduced to writing in the general diary but during the cross examination both the witnesses admitted that the general diary is not produced. One of the witness could not recollect the time of entry of the said information in the general diary and no explanation was furnished by the prosecution for non-production of the general diary. It was held that the absence of explanation from the prosecution for non-production of the general diary undermines its case and reduces the evidentiary value of the statement made by the witnesses.

14. In the instant case on close scrutiny of the entire facts and circumstances it is apparent that the purpose of visiting the alleged market by the constable was in connection with an old case of under Essential Commodities Act and the command certificate which was collected by him dated February 4, 2006 otherwise supports such contention. However such certificate has no evidentiary value being a photocopy without producing the original document and not seized and also not proved the content of the document. Therefore the version of the complainant that the P.W.1 and P.W. 2 went for a raid for illegal cassette business as per direction of any superior was not established. No General Diary no. was produced by the concerned complainant nor any Register. The P.W 1 took the stand that he went to visit the place as per direction of S.I. Kartick Bhowmick. Kartick Bhowmick being P.W. 5 specifically deposed that he went to Bakrahat market for the purpose of investigation of an old case and then he entered into a cassette shop of Mondal and the constable informed him that he would go elsewhere. Therefore the factum of

their visit at the cassata shop for the purpose of investigation or raid was never proved.

15. It is a settled proposition of law that the evidence of injured victim is to be given much more weightage and even order of conviction can be passed on the sole testimony of such witness, if found of sterling quality and inspire confidence in the mind of court. In the case **of Shivaji Chintappa Patil vs The State Of Maharashtra**⁴, it was observed that Section 106 of the Evidence Act does not absolve the prosecution of discharging its primary burden of proving the prosecution case beyond reasonable doubt. It is only when the prosecution has led evidence which, if believed, will sustain a conviction, or at least makes out a prima facie case, to raise the question of considering facts of which the burden of proof would lie upon the accused. The question arises at the outset as he failed to show as to what prompted him to went there for the purpose of investigation of an old case and his superior officer was present who did not direct him to do anything more. The contents of the complaint and the version of the de facto complainant even if is accepted in its entirety it seems to be quite improbable as suddenly an owner of a shop without any provocation or any other reason followed him and assaulted him with a hammer in a place which is congested and crowded within a market and is not witnessed by any other witnesses. The appellant was not apprehended at the spot despite the area being such a congested place when an assault was made on a police person. P.W. 5 after hearing hue and cry reached the spot and noticed a man assaulting the constable but Mahadeb in those cassette shop the injured was supposed to conduct raid admitted that police held raid in his

⁴ AIR 2021 SUPREME COURT 1249

shop on January 25, 2006 not on a date on incident as alleged. This witness was not examined by the Investigating Officer even though he is having a shop at the market. The further question arises as about the scribe of the complaint. The P.W 1 said he wrote the complaint.P.W 2 said in his presence the complaint was written and P.W5 after he declared hostile and in cross examination by Prosecution denied that he wrote the written complaint as per direction of Binod Bihari Singh but in the cross examination by accused person admitted that he wrote the written complaint. In the written complaint it is found the name of scribe as Mahadeb Mondal . Therefore this glaring inconsistencies gives rise to the question as to why the de facto complainant tried to suppress before the court the author of the complaint .The signature of the complaint was marked as exhibit 2 on the complaint and in the seizure list where his wearing apparel were seized but in the injury report he put his L.T.I and no explanation is found regarding putting his LTI in the injury report. The I.O. though said to have collected the injury report did not examine the Doctor and the Doctor who deposed before the and no other register was placed before the court in order to prove that the patient was treated in that BPHC. No subsequent injury report or medical paper is furnished in order to show that the patient was referred before Bangur Hospital for further treatment. The adjacent to the place of occurrence the khaini shop of Sahadeb Shaw and a pharmacy can be found Sahadeb Shaw was declared hostile being P.W.3 as he could not say anything regarding the incident and he was not interrogated by the I.O. The I.O. never said that he examined those witnesses .

16. Section 307 relates to attempt to murder. It reads as follows:

“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.”

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. 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.

17. In the case of ***Hari Singh Vs. Sukhbir Singh and others***⁵ it was observed that under section 307 of the Indian Penal Code the intention is to be gathered from all circumstances, and not merely from the consequences that ensue. The nature of the weapon used, manner in which it is used. motive for the crime, severity of the blow, the part of the body where the injury is inflicted are some of the factors that may be taken into consideration it ,determine the intention.

18. In the instant case the offending weapon was never seized, the accused could not be apprehended at the spot and even never found and or arrested and the weapon was never recovered . The doctor never said the injury could

⁵ (1988) 4 SCC 551

have been fatal and no injury is found on the back side of the head when according to the injured he was assaulted on the back side of head with a hammer.

19. In course of evidence the P.W. 8, the treating doctor specifically said that this type of injury may occur if anyone fall down on ground or dashed on the wall she never said that this injury can be caused because of hitting with a hard object like hammer. A hammer is a blunt object and it is natural that any injury sustained with the said hammer would be of different nature .In this case two stitches were given on the forehead and right eyebrow and two stitches over the occipital region the injury was not measured by the doctor. The auto rickshaw puller Could not recollect whether police person or any person was taken hospital on that relevant day or not he was not declared hostile. It can be found from the evidence of P.W. 5 that 15/20 persons assembled there at the place of occurrence but not a single witness was examined by the Investigating Officer. The blood stained wearing apparels were handed over on the very day before the Police Officer which was seized immediately and the witnesses who put a signature in the said seizure list are the de facto complainant and Balaram Gyen who is the auto rickshaw puller. However, the seizure list was not placed before this witness to identify his signature. The FSL report suggests that the wearing apparels were stained with human blood and with “O” Group blood. Even if it is considered that the injured was there at the market and sustained certain injury do not suggest that he sustained the injury as he was assaulted by the appellant.

Conclusion

20. Therefore upon conspectus of all in this case glaring lapses are found on the part of the investigating authority ,the evidence of the witnesses are not trustworthy ,clear contradiction between the ocular and medical evidence and several contradictions found created a doubtful situation even though apparently there is an injured and eye witness but the circumstances do not suggest that the prosecution was able to prove the case beyond the shadow of all reasonable doubt and this court is unable to concur with the view taken by the Learned Session that while the complainant was performing his duty he was assaulted by the accused /appellant and hence the said judgement and order of conviction is liable to be set aside.

21. Accordingly this criminal appeal stands allowed .The judgement and order of conviction passed by Additional Session Judge ,18th Court, Alipore, 24 Parganas South on May 22,2015 and June 2, 2015 in Sessions Trial no 05(02)09, is hereby set aside .

22. The appellant is hereby acquitted from the charges under Section 323/353/307 I.P.C and be set at liberty forthwith. The appellant is directed to make compliance of 437A of the code of criminal procedure within a period of 6weeks from the date of this order and to execute a bond with two sureties, each in the like amount to the satisfaction of the court concerned which shall be effective for a period of 6 months.

23. Let the T.C.R along with the copy of this Judgement be forwarded to the concerned court for intimation and compliance.

24. Urgent Photostat certified copies of this order, if applied for, be supplied to the parties upon compliance of all necessary formalities.

[CHAITALI CHATTERJEE (DAS), J.]

