

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION

APPELLATE SIDE

Present:-

HON'BLE JUSTICE CHAITALI CHATTERJEE DAS.

CRA 487 OF 2016
SUDAM BHOWMIK
VS
THE STATE OF WEST BENGAL & Anr.

For the Appellant : **Mr. Satadru Lahiri, Adv.**
Mr. Safdar Azam, Adv.
Mr. Poulam dey, Adv.

For the State : **Mr. Imran Ali, Adv.**
Ms. Debjani Sahu, Adv.

Last heard on : **25.11.2025**

Judgement on : **20.01.2026**

Uploaded on : **20.01.2026**

CHAITALI CHATTERJEE DAS:-

1. This appeal has been preferred by the appellant against the judgement and order passed on May 18, 2016 by the learned Additional Sessions Judge, F.T.C(Fast Track court) in session trial case no. 38/March/2013, under Section 341/326/307 of the Indian Penal Code, whereby the applicant has been convicted for the offence punishable under Section 326 of the Indian

Penal Code and sentenced him to suffer, regardless imprisonment for seven years for the offence committed under Section 326 of the Indian Penal Code with a fine of ₹3000 in default to suffer rigorous imprisonment for three months for the offence under Section 326 of the Indian Penal Code.

Fact of the case

2. The prosecution case was launched on the strength of a complaint lodged by one Tushar Kanti Bakshi before the O.C Beta Police Station on August 19, 2012, alleging that on August 18, 2012, his son Sandeep Bakshi get down at Garhbeta station and from there proceeding towards R.S transport and then at about 10.45 AM approximately, in front of Kangsabati gate, under the leadership and instigation of Raju Dhori ,the accused Sudam Bhowmik suddenly strike on the running motorcycle with the help of a large weapon. As a result, his son sustained wounds, measuring 20” deep cut mark in the lower abdomen and also sustained injury in pancreas. They again tried to stab his son when he fell down from motorcycle and he tried to protect himself with his hand and also sustained cut mark injury between palm and middle portion and the thumb of right hand received deep cut. He further strike near the armpit as a result, sustained 4 inch deep wound mark and it cut through the chest bone. It was further the case of the prosecution that said Sandeep Bakshi was assaulted for four times with an intention to kill him and at the intervention of the truck owners Association, his life was saved as he was taken to Garbeta Gramin Hospital and the complainant was informed. The injured was referred to Medinipur Hospital and six hours surgery took place. Seven

bottles of blood was transfused and he was advised to keep in ventilation and to take to Kolkata from there. The victim was further admitted at Ekbalpur nursing home and at the time of lodging the complaint, he was struggling for life.

3. Over the said complaint, Garhbeta police case no. 329 of 2012 dated August 19, 2012, under Section 341/326/307/34 IPC started. On completion of investigation, the charge-sheet was submitted against the appellant and the content was read over and explain to him to which he pleaded, not guilty and claimed to be tried. Hence the trial commenced.

Submissions

4. The learned advocate submitted the written notes of argument and raised the point that the prosecution withheld best evidence to the circumstances without any explanation. In view of the allegations levelled in the F.I.R as well as depositions adduced by the witnesses there are several other eyewitnesses and important witnesses, whom the prosecution withheld without any explanation. The ambulance driver as well as the persons accompanied the victim were not examined. No person of the locality who resides in the vicinity of the place of occurrence as alleged was not examined. In this regard relied upon the decision of **Godadhar Chandra versus State of West Bengal¹** and **Pawan Kumar versus State of Haryana²**.
5. It is further argued that no Reliance can be placed on the depositions of P.W.- 6, 7 and 9 because of inherent anomalies is attached to their depositions. The

¹ (2022) 6 SCC 576

² (2003) 11 SCC 241

effects which dislodged the veracity of the said prosecution witnesses are as follows;

a) Version of PW 6 is hearsay in nature and nobody corroborated his version. b) PW9 made false statement as to disclosure of source/reason of injury and allegedly assaulted the victim to the treating doctors.

c) No attempt has been made to bring on record the GDE lodged by PW 9 with the Ekbalpur police Station.

d) The deposition of PW 7 needs to be appreciated on the fact of admitted enmity between them. That apart the injured was in conscious state while taken to, did not disclose anything to the doctor.

Therefore this selected disclosure in contradictory manner raises sufficient doubt as to the veracity of his depositions.

The learned advocate relied upon the decision of **Vijender versus State of Delhi³**. It is also the contention of the learned advocate of the Appellant that there is no tangible and legally convertible evidence to connect the appellant with the alleged recovery of incriminating materials.

e) The other seizure witnesses have not been examined and no evidence to establish that weapon has been recovered from exclusive possession of the appellant. The

³ (2003) 11 SCC 241

seized article does not contain any label indicating seizure and link of the same with the alleged incident. The statement of the appellant to remain in admissible and cannot be looked into. Relied upon the decision reported in **Digambar Vaishnav & Anr. Versus State of Chattishgarh⁴** , **Bobby versus State of Kerala⁵** No endeavour to establish alleged to motive behind the alleged offence and to explain the anomalies explicit from medical documents and other materials on record. No question was put regarding several incriminating materials during examination under section 313 and as such no reliance should be placed on the same. In this regard relied upon a decision reported in **Sujit Biswas versus State of Assam⁶**.

6. The learned prosecution on the other submitted that the injured identified the appellant in the dock stop he was the driver of his truck and there was previous monetary dispute between them. The treating doctor adduced evidence and found stab injuries in consonance with the nature of injuries mentioned by the injured. It is further submitted that in this case. In this case prosecution cited 12 witnesses and the Learned Trial Court after hearing, both the learned prosecution as well as the defence Counsel and considering the

⁴ 2019) 4 SCC 522

⁵ (2023) SCC online SC 50

⁶ (2013)12 SCC 406

evidences both oral and documentary, of the prosecution witnesses passed the order of conviction against the present appellant under Section 326 of the Indian Penal Code and acquitted him from the charges under Section 341 IPC.

Analysis

7. Heard this submission of both the learned advocates. In this case the learned court discussed that from the medical report no opinion was found that the injuries were endangered to human life therefore the court found the accused is not guilty for the offence under section 307 of the Indian penal code. The prosecution has not filed any appeal challenging the said finding of the Court.
8. On careful perusal of the materials on record and the submissions advanced by both the learned advocates the moot question falls for consideration as to whether the learned Court rightly passed the order of conviction under Section 326 of the Indian Penal Code against the present appellant.
9. The learned Advocate appearing on behalf of the applicant has filed the written notes of argument. He has relied upon the decisions reported in ***Gaadha Chandra versus State of West Bengal***⁷ , ***Pavan Kumar versus State of Haryana***⁸. on the point that willful withholding of best evidence without any explanation and at first inference has to be drawn against the prosecution under Section 114 of the Indian Evidence Act. It is his contention that the version of the defect complainant was hearsay and heard the same either from the persons examined as P.W.1 to 3, but they did not corroborate the

⁷ (2022) 6 SCC 576

⁸ 2003)11 SCC 241

prosecution case. No other local people has been examined in order to establish the circumstances.

10. It is further the case of the defence that the entire criminal trial is based on the deposition of P.W.6, the father of the victim and P.W.7, the victim and P.W.9, the wife of victim, but on proper appreciation of depositions exposed the infirmities attached to their deposition, and they failed to satisfy the test of being witnesses worthy of credit. No Reliance can be placed on their deposition. It is further argued that the inner infirmities attached to the recovery are follows, a) the seizure witness on whose presence the offending weapon was recovered, did not support the recovery. b) The other seizure witnesses have not been examined and no explanation is forthcoming therefore.

11. The evidences adduced by the witnesses, both verbal and documentary on behalf of the prosecution. In this case P.W.1, Rajesh Pal.@ Raju was declared hostile, who went to see the injured to the hospital and found him unconscious. P.W.2 Aditya Mondal was declared hostile, who did not know Tushar Bakshi or his son Sandeep Bakshi. P.W.3 Kajal Das was also declared hostile, who deposed that she didn't know the injured or his father PW4 Shankar De who signed on the label of the seized article. P.W.5, being the wife of the present appellant don't say anything about any incident. P.W.6 is the de-facto complainant and the father of the injured deposed that due to some monetary matter a dispute cropped up between his son Sandeep Bakshi and the accused Sudam Bhowmik, which was settled amicably at the intervention of the members of Amlagora Truck owners Association in the year 2012, prior

to Durga Puja, when his son was going in his motorcycle from Gorbheta station to Amalgora transport office at about 11:30 AM and reached near Kankabati more. The accused Sudam stabbed his son with a knife on his back side and in the abdomen for which he fell down with severe bleeding injury. The local people took him from the spot and admitted him in Gorbheta rural hospital. He further referred to MMCH and remains admitted there, but because of lack of proper arrangement and treatment, he was taken to Ekbalpur nursing home, Calcutta. On the next day, this witness lodged the complaint which was written by his nephew, namely Atanu Bakshi as per his instruction. He further deposed during his cross-examination that at the time of incident, he was in his book shop and got the information over telephone from the local people of the locality. He admitted that accused Sudam was the driver of the truck owned by his son Sandeep Bakshi, but could not say how long he was engaged as a driver. He further admitted that he did not file any complaint before the Ekbalpore police station, but in the written complaint mentioned that it was informed to such police station. It is further admitted by him that he heard the involvement of one Raju Dhaai and Milan Panja under whose leadership and provocation Sudham assaulted his son, but after that, he withdraw their names from the written complaint.

- 12.** In this case, the vital witness is the injured Sandip Bakshi and he deposed as P.W.7. He identified the accused Sudam Bhowmik who was a known person and was the driver of his car. He also admitted about a dispute between him and the accused over monetary transaction regarding business of track and

over which the appellant lodged the complaint against him before the Garhbeta police station with allegation that he did not pay the due amount to the appellant. .After which one negotiation took place on 26.6.12 in the office of the Garhbeta police station in which it was decided that he had to pay ₹500 to the accused and accordingly, he paid the same. On 18.8.2012, when he was proceeding to his transport office in his motorcycle and near Kankabatimore, there was number of Buffalo on the road for which he had to stop his motorcycle on the road, and then suddenly the accused stabbed him with a knife from his backside and also stabbed on his spinal cord, and also in his left armpit for which he fell down from the motorcycle. Thereafter, the accused again stabbed him firstly on the right side of his abdomen and on the left side of his abdomen. Thereafter, turning on earth, he stood up and then accused tried to stab on his neck, and as he tried to resist him by raising his right hand, the said Bhojali penetrated through his right palm. Then also he tried to resist by his left hand the ring, finger and upper portion of his forum was seriously injured. After that, the accused again stabbed him on his abdomen. Then some local people gathered and the accused flew away from the place of occurrence. After that Rajesh Pal and Aditya Mondal shifted him from there to the Garvita Hospital. It is pertinent to mention here in that said Rajesh Pal P.W.1 and Aditya Mondal P.W.2, both were declared as hostile. In that circumstance this court is to scrutinize the medical evidence for the purpose of corroboration of the version of the injured. On perusal of the injury report and medical papers which are marked with exhibit 4 series it is found that at the

Medinipur College and Hospital where he was first taken, and from Garhbeta rural Hospital referral ticket referred to MCH for better management can be found the stab injury can be found which establishes that the injured sustained stab injuries and he was referred to MCH for better treatment.

13. The clinical notes of Department of health and family welfare, government of West Bengal discloses the stab injury over auxiliary left side of lower abdomen and left hand and right hand fingers, right forearm. The injury report in the medical paper suggest that the nature of injury was serious and three units of blood were given, damages were repaired and exploratory laparoscopy done and multiple injuries were found. Three penetrating injuries found in Ileum.- Excepting the injuries as described by the defacto complainant and the injured regarding injuries at the backside or near the spinal cord, the other injuries sustained over the different parts of the body are fully corroborating the evidence of the injured. Therefore it can be said that the ocular version matches with the medical documents which prima facie establish the case of the prosecution.

14. P.W.8, Satya Kinkar Maity deposed that he was the secretary of their truck owners Association in the year 2012. Sandeep Bakshi was a member of their association. Sudam was the driver of the truck of Sandeep Bakshi. He admitted the dispute over accounting between Shubham and Sandeep Bakshi and complaint lodged by both the parties before their association and also that the dispute was settled amicably with a direction to Sandeep to pay ₹500 accordingly Sandeep paid ₹500 to Sudam. He heard that one incident took

place after one or two months of that settlement. From his evidence, it is seen that the complaint was lodged before their association by Sudam as he was not receiving his remuneration properly and also that Sandeep Bakshi assaulted him. He also admitted that Shudam filed one F.I.R against Sandeep before Garhbeta Police Station.

15. P.W.9 Shampa Bakshi, wife of Sandeep Bakshi deposed that his husband has his own truck and transportation business, which is situated at Amlagora . She was informed over telephone from her matrimonial house about the incident and she was informed to reach there. Her husband was brought to the rural hospital for treatment, but she was ill and could not go to the rural hospital. After that, her husband was shifted from rural hospital to Medinipur medical College and Hospital, then she went to see her. After that, her husband was shifted and treated at Ekbalpur Nursing Home about 40 days and thereafter was discharged from the nursing home and brought back to their residence. She admitted that mummy Ghosh personally did not witness the alleged incident. She launched the complaint before the Ekbalpur Police Station and one G.D.E was made against such complaint, but she could not provide the number. She denied about any dispute between her husband and accused Sudham regarding the remuneration. P.W. 10 Kunal Sanyal, was posted as assistant professor on August 18, 2012 at Medinipur Medical College and Hospital. On that day, a patient was referred from Garvita Rural Hospital and the examination was firstly in the emergency ward, Medinipur Medical College and Hospital and thereafter in the male surgical ward in the same

hospital. A group of doctors including himself treated him and on examination, found a stab injury on his person. On examination, they found active blood from all sides of the person and was still oozing was going on. The patient was shifted to O.T for operation and exploratory laparoscopy with polytrauma repair of multiple injuries on both hands, left lateral chest left flank. There was penetrating injury on the right hand, dorsal to ventral in between there and the index. Superficial deep palmer arch seen to be damaged. Homeostasis secured, also multiple ligament injuries noted repaired with one zero vicrul multiple spurter ligated ,thenar muscles stay suture had given ,pressure ball bandage had given, a left hand none penetrating deep cut injuries repaired done by pressure one Zero vertel is ligarated pressure and ball bandage given , exploratory, laparotomy, done . Clodap and frank blood found in the abdomen, multiple gut injuries found and three penetrating anastomosis done with three zero vierya . He also said that the injuries may have sustained by sharp cutting weapons like knife.

16. In the decision of **Gadadhar Chandra (supra)** the offending weapon was not recovered. A question was asked how many blows were exchanged between Gangadhar and the accused but evidence was not up to the satisfaction and it was observed that the prosecution has not explained its failure to examine the crucial witnesses and eyewitnesses who were present adjacent to the place of incident. It was held that the prosecution has withheld the evidence of material witnesses who could have thrown light on the incident. In this case the injured succumbed to his injuries and therefore it was necessary to have the version of

the eyewitnesses act in absence of material witnesses the order of conviction passed by the learned trial court was set aside. In this case the injured himself has deposed before the court. In the **Pawan Kumar (supra)** the case was 302/34 and the articles were not identified by any family member of the deceased. It was a case of circumstantial evidence and hence the order of conviction was set aside. The case of **Vijender versus date of Delhi (supra)** pertains to the evidentiary value of the hearsay evidence and the statement made before the police officer during investigation. It is a settled law that on the order of conviction cannot be passed on the basis of hearsay evidence of a witness. In this case the injured himself adduced evidence and the ocular evidence tallies with the medical evidence and hence question of putting reliance on the hearsay evidence does not arise. In the case of **Digamvar Vaishnav (supra)** which party to 94/34 it was that becomes inadmissible under Section 27 if the information did not come from a person in the custody of a Police Officer or did not come from a person not in the custody of a police officer. The statement which is admissible under Section 27 is the one which is the information leading discovery. The basic idea embedded in Section 27 of the evidence act is the doctrine of confirmation by subsequent events. In the case of Bobby versus State of Kerala where also the case rests on circumstantial evidence and the golden principles with regard to conviction as laid down in **Sharad Birdhichand Sarda versus State of Maharashtra** was considered.

17. In the case of State of ***U.P versus Naresh***⁹ the testimony of an injured victim regarded a special status in law. The Hon'ble Supreme Court held that so far nondisclosure of names to the doctor is really of no consequences in ***Bharagavan & ors versus State of Kerala***¹⁰ . The learned trial court relied upon the decision of ***Jaynarayan Mishra and others versus State of Bihar*** reported in¹¹ where as per the opinion of the doctor the injury in the chest was of a grievous nature as the patient developed surgical emphysema on the right side of the chest. There was profuse bleeding and according to the medical officer, the condition of the patient at the time of admission was low and serious and the injury was dangerous to life. The Hon'ble Apex court found the three injuries were of simple nature though the deadly weapons were used and the fourth injury caused by the accused though endangering life, could not be deemed to be an injury, which could not be deemed to be an injury ,which could have necessarily caused death but for timely medical aid. The benefit of doubt was considered as the two injuries intended to be caused and held the offences are not one under Section 307 of the Indian penal code. In the case of ***Sujit Biswas vs State of Assam (supra)*** it was held that duty of the court is to ensure that mere conjectures or suspicion do not take place of legal proof. Clear cogent and unimpeachable evidence produced by prosecution, reiterated, is a must, before accused is condemned as convict. Further held that adverse inference can be drawn against accused only and only if incriminating

⁹ (2011) 4 SCC 32

¹⁰ (2004)12 SCC 414

¹¹ AIR 1972 SC 1764

materials stands fully established and accused is not able to furnish any explanation for the same.

18. In this case the version of the injured specifically disclosed that a sharp knife was used by the accused. The nature of injury sustained also manifest that a sharp weapon was used. The medical paper suggests stab injury by knife. The weapon which was seized from the house of the accused person was also a knife. It was found under the bed of the accused person. The seizure witness admitted his signature on the seizure list but denied the seizure and hence was declared hostile. He also admitted his signature on the label on the seized article. P.W. 4 the other witness also admitted the seizure and his signature on the seizure list as well as on the label on the seized article then denied about the article, when he was declared hostile. This evidence as a incriminating materials were placed before the appellant /accused during his examination under Section 313 of the Cr.Pc, who only said it was false .It was specifically put to him that the seizure list bears his signature but he did not deny the same excepting that it was false. It is the duty of the court to ascertain considering the facts and circumstances of the case and extent of injury, the size and nature of the weapon used .In view of the above facts and circumstances this court is also of the view that the prosecution has been able to prove the case beyond the shadow of all reasonable doubt and also do not find any infirmities in the order impugned.

Conclusion

19. Therefore from the above nature of evidence the extent of injuries are found and also that the mark of injuries are absolutely tallying with the ocular version of the injured and the de-facto complainant. There may be some inconsistencies but those are not serious enough for not believing the version of the injured and hence this Court do not find any cogent reason to interfere with the order of conviction passed by the learned Trial Court.

20. In this case the learned Court while passing the order of sentence was of the view after giving anxious consideration to the submissions advanced by and on behalf of the convict as well as on behalf of the state that there is no scope for releasing the offender on Probation of good conduct under Section 4 of the Probation of offenders Act or under Section 360 of CrPC as the accused was found guilty for a crime which caused grievous injury to the victim.

The offence was committed in the year 2012 and the injured suffered serious injury in various parts of his body including in the abdomen and ileum part.

21. Hence this Court also do not find any reason to extend the benefit of Probation of offenders Act in favour of the petitioner.

22. Accordingly this Criminal appeal stands dismissed.

23. The Judgement and order of conviction passed by the learned court is hereby affirmed.

25. Let the T.C.R along with this copy of the order be sent to the concerned Court for appropriate action.

24. Urgent certified copy of this order, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

(CHAITALI CHATTERJEE DAS,J.)

