

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

PRESENT:

THE HON'BLE JUSTICE TIRTHANKAR GHOSH

C.R.A. 508 of 2019

Ram Chandra Prasad @ Das & Anr.

-Versus-

The State of West Bengal

For the Appellants : Mr. Soumyajit Das Mahapatra, Adv.,
Mr. Koustav Bagchi, Adv.,
Mr. Debayan Ghosh, Adv.,
Ms. Priti Kar, Adv.

For the State : Mr. Ananda Keshari, Adv.,
Mr. Raju Mondal, Adv.

Reserved On : 27.10.2025

Judgement On : 09.01.2026

Tirthankar Ghosh, J. :-

The present appeal has been preferred against the Judgment and Order of conviction and sentence dated 20.08.2019 passed by the Ld. Additional District and Sessions Judge, 2nd Court, Barrackpore, North 24 Parganas wherein the Learned Trial Court was pleased to convict the appellants under Section 325 of IPC and sentenced them to suffer simple imprisonment for two (2) years and fine of Rs. 5,000/- i.d. to undergo simple imprisonment for further six months.

Noapara Police Station Case No. 68/08 dated 12.06.2008 was registered for investigation under Sections 326/307/34 of IPC against the

appellants and another. On the basis of an information furnished by Santoshi Shaw (PW-1) addressed to the Officer-in-Charge, Noapara Police Station complaining that on 12.06.2008, in between 10:00 A.M. to 10:15 A.M., her brother Kundan Shaw was shopping at Park Gate Bazaar. When her brother reached near the boundary of C.Q.S.A. office, at that time Ram Chandra Prasad @ Das and Rabi Prasad, resident of Ichhapur, Arabinda Pally along with their employee Kuddus Ansari were interacting with him in respect of previous business transactions. All of a sudden, the accused persons randomly assaulted on the head of her elder brother with a bicycle pump and a wooden log. As a result, her brother fell down on the road with severe bleeding injuries when local people took him to Dr. B.N. Bose Hospital for treatment. Her brother was admitted in the hospital as he was in a critical condition. The accused persons assaulted her brother with a view to kill him and accordingly, the complainant requested the police officer to take appropriate steps for punishing the guilty persons.

On the basis of the aforesaid complaint, Noapara Police Station Case No. 68/08 dated 12.06.2008 was registered for investigation and on completion of the investigation, charge-sheet was submitted under Section 326/307/34 of the Indian Penal Code and on 02.12.2009 the Ld. ACJM, Barrackpore was pleased to take cognizance of the offence and thereafter committed the case to the Ld. Additional Sessions Judge, 1st Court, Barrackpore. Records of the case suggest that one of the accused namely, one Kuddus Ansari did not appear before the Court and as such the case against

him was filed as the harsher process of law failed to yield any result. Records reflect that the present appellants namely Ram Chandra Prasad and Rabi Prasad faced trial. The Ld. Additional Sessions Judge, Fast Track Court - 2, Barrackpore was pleased to frame charges under Section 326/34 of IPC and Section 307/34 of IPC against them. The charges were read over to the appellants to which they pleaded not guilty and claimed to be tried.

The prosecution in order to prove its case relied upon thirteen witnesses, which included: P.W.1 Santoshi Shaw, complainant; P.W.2 Kundan Shaw, injured/victim; P.W.3 Badri Prasad Shaw, witness to the assault; P.W. 4 Mahendra Pratap Singh, cycle-shop owner; P.W.5 Shankar Das, neighbour; P.W.6 Om Prakash Shaw, neighbour; P.W.7 Ajoy Singh, neighbour; P.W.8 Jagannath Barman, constable/seizure-list witness; P.W.9 Dr. Samir Kumar Mandal, Doctor who treated PW-2; P.W.10 Saidul Haque Gazi, Sub-Inspector of Police who prepared the formal FIR; P.W.11 Prasanta Kumar Sahana, Sub-Inspector of Police, second investigating officer of the case; P.W.12 Dr. Ashok Bhattacharya, Doctor who initially examined P.W.2; P.W.13 Jagat Pati Jana, first investigating officer of the case.

The prosecution also relied upon number of documents, which included seizure list, injury report, letter of complaint, formal FIR, rough sketch-map with index. The wooden stick and the bicycle pump, which was seized by the police in course of investigation were marked as Mat Exhibit-1 and Mat Exhibit-2 respectively.

P.W.1, Santoshi Shaw is the complainant who deposed before the Court that the injured Kundan Shaw is her brother and the incident occurred on 12.06.2008 at 10:00/10:15 A.M. She informed the Court that her brother is a businessman, having a grocery shop at his house and regularly goes to the market by cycle for purchases. On the date of the incident, he went to the market and at that time, Ram Chandra Prasad, Rabi Prasad and another person assaulted her brother with wooden stick and bicycle pump. Her brother received injury on his head, fell down on the road and became senseless. He also suffered bleeding injuries. The incident took place in front of the metal factory and her brother was brought for treatment at B.N. Bose Hospital by the local people. He was admitted at the hospital. Ram Chandra Prasad, Rabi Prasad and the other person tried to kill her brother. She identified Ram Chandra Prasad and Rabi Prasad in Court. She stated that she knows Bengali but is unable to write in Bengali. The written complaint was drafted by one Jayanta Halder as per her directions and she filed the same with Noapara Police Station. She identified her signature in the complaint which was admitted in evidence. She also identified her signature in the seizure list which was prepared by the police authorities and the same was duly admitted in evidence. She identified the wooden stick and the bicycle pump, which was seized by the police and the same was marked as material exhibits.

P.W.2, Kundan Shaw is the injured who deposed before the Court that on 12.06.2008 at about 10.00/10.15 A.M., the incident took place in front of the rifle factory. On that day, he went to the market for purchase and when he

reached at the place of occurrence, Ram Chandra Prasad and Rabi Prasad assaulted him with a wooden stick and a bicycle pump on his head. He fell down, sustained bleeding injuries and became senseless. He regained his senses at B.N. Bose Hospital. He was referred for treatment at NRS Hospital, where he was admitted for more than a month. He identified Ram Chandra Prasad and Rabi Prasad in the Court and stated that he did not know the reason as to why the accused persons assaulted him but was aware that the intention of the assault was to murder him.

P.W.3 is Badri Prasad Shaw who deposed that he knew the injured PW-2. The incident occurred at Ghoshpara Road, Kanthadhar. On the date of the incident, when he was sitting at his shop, the accused persons along with another were talking with the injured Kundan Shaw and suddenly, all of them started fighting with each other as a result of which Kundan Shaw received injuries on his head and became senseless. Police came to the place of occurrence and arrested Ram Chandra Prasad. Kundan Shaw was taken to B.N. Bose Hospital for treatment. He deposed that Kundan Shaw was assaulted with iron rod and wooden sticks on the head. He further deposed that the police interrogated him as well as other local people on the date of the incident.

P.W.4, Mahendra Pratap Singh introduced himself as the resident of Ichapur, Arabinda Pally, Kanthadhar. He deposed that he had a cycle shop near the Park Gate and that Kundan Shaw was his neighbour. He added that

as he was out of his shop for purchasing materials, he knew nothing about the incident of the case. He heard regarding the incident from the local people and was never interrogated by the police.

P.W.5, Shankar Das is the neighbour of the injured Kundan Shaw. He deposed that the incident took place on 12.06.2008 at 10:00 a.m., when he was busy at his tea stall. In front of the gate of the C.Q.S.A., just opposite to his tea stall, local people raised hue and cry, and from his tea stall he noticed that 3/4 persons were assaulting Kundan Shaw with wooden dasha. He saw Ram Chandra Prasad with a wooden dasha in his hand, and also found Kundan Shaw receiving grievous injury as a result of such assault. The injured was taken to hospital by auto rickshaw. Ram was confined by the local people and handed over to the police. However, Rabi fled away. He identified both the accused persons in Court and submitted that police interrogated him in connection with the case.

P.W.6, Om Prakash Shaw is the neighbour of the injured Kundan Shaw who deposed that the incident took place on 12.06.2008 between 10:00 – 10:30 a.m. He described that while he was passing through Arabinda Pally on motorcycle, he found that Ram was speaking to Kundan Shaw in front of the boundary of the C.Q.S.A and then Ram gave a blow of wooden dasha on the head of Kundan. Then, Kundan fell down on the ground and Rabi assaulted Kundan with bicycle pump. As a result, Kundan Shaw received grievous injury and blood was oozing out of his head. Thereafter, he confined Ram along with

other local people and handed him over to the police. However, Rabi fled away. Local people took Kundan to Dr. B.N. Bose S.D. Hospital, where he was admitted for a week. Then he accompanied the injured to Chittaranjan Hospital, where he was admitted. He identified both the accused in Court and submitted that police interrogated him in connection with this case.

P.W. 7, Ajoy Singh is the neighbour of injured who deposed that the incident took place on 12.06.2008 between 10:00 – 10:15 A.M. by the side of the boundary of C.Q.S.A. He also stated that accused persons are his neighbours too. While he was going to his shop, at that time, he found 3/4 boys assaulting the injured, Kundan Shaw. He identified Ram and Rabi in Court and deposed that they along with their employee was assaulting Kundan Shaw. Ram had a wooden dasha in his hand, and Rabi had a bicycle pump in his hand, with which they were assaulting Kundan. He tried to separate them but Rabi and their employee fled but they caught hold of Ram. The injured Kundan fell down on the ground after receiving grievous injury on his head, when blood was oozing out. Ram was confined by him along with the local people and was thereafter handed over to the police. Kundan was sent to Dr. B.N. Bose S.D. Hospital by an auto rickshaw where the local people accompanied him. His clothes were stained with blood of Kundan and in order to change the same he had to return home. After 15/20 days, he went to NRS Hospital for visiting Kundan. He identified the accused persons in Court and stated that the police interrogated him in connection with the case.

P.W.8, Jagannath Barman was posted as a constable on 12.06.2008 at Noapara Police Station. On that day, SI J.P Jana seized bicycle pump and wooden dasa under a seizure list and he signed the same as a witness. He identified his signature on the seizure list, which was admitted in evidence.

P.W. 9 is Dr. Samir Kumar Mandal, who deposed that on 12.06.2008, he was attached to Dr. B.N Bose Medical Hospital as Medical Officer. On that day, he examined Kundan Shaw, son of one Kishore Lal Shaw, who was identified by S.K. Singh. He was at the emergency ward on the said date and as per patient and party's statement he was physically assaulted with iron rod by Ansari, Ram Jaiswara and Ravi Jaiswara. The patient was conscious. On examination, he found lacerated injury obliquely with fracture of underlying bone about 3 inch x 1 inch x skull deep, lacerated injury on right occipital region, 1½ inch x 1½ inch x 1 inch in size, lacerated injury about, 1½ inch x 1½ inch x 1½ inch in size, lacerated injury on left forearm 1½ inch x 1½ inch x 1½ inch in size. He identified the injury report along with his signature which was admitted in evidence.

P.W. 10 is Saidul Haque Gazi, who was posted at Noapara Police Station as ASI of Police. On 12.06.2008, he received a written complaint from one Santoshi Shaw and started the instant case by endorsing on the written complaint. He identified the endorsement with his signature, which was admitted in evidence. Thereafter, he drew a formal FIR and duly filled up the same. He identified his signature, which was also admitted in evidence. The

case was endorsed to SI Jagatpati Jana for investigation by the Inspector-in-Charge of the Police Station.

P.W. 11 is Sub-Inspector Prasanta Kumar Sahana. He deposed that on 10.11.2008, he was posted at Noapara Police Station and on that date he was handed over the charge of investigation by the Officer-in-Charge of the Noapara Police Station. He stated that after taking over the charge of investigation, he perused all the documents prepared and collected by the erstwhile investigating officer and examined the injured Kundan Shaw. The statement of the injured was recorded under Section 161 of Cr.PC and after consulting with the senior officials and considering the documents which were available in the case docket, he submitted the charge-sheet in connection with the instant case.

P.W. 12 is Dr. Ashok Bhattacharya, who was attached with Calcutta National Medical College and Hospital as the EMO. On 20.06.2008, he examined one Kundan Shaw at about 3:45 p.m. at emergency outdoor. The patient was initially admitted at Dr. B.N. Bose Hospital and the patient narrated to him that he was assaulted by Ram Chandra Rabidas, Rabi Rabidas, Ansari with hard object. He found that the patient was conscious and as such prepared a primary injury report. He identified the primary injury report, which was prepared and signed by him in his official capacity, the same as such was duly admitted in evidence.

P.W. 13, Jagatpati Jana is the first investigating officer of the case, who deposed that on 12.06.2008, he was posted at Noapara Police Station and on that date the Officer-in-Charge entrusted the present case to him for investigation. During investigation, he visited the place of occurrence, prepared rough sketch-map with index, examined available witnesses and recorded their statements under Section 161 Cr.PC, seized two items and prepared seizure list dated 12.06.2008, collected injury report of Kundan Shaw, arrested one of the accused person and forwarded him to Court. He identified the seizure list dated 12.06.2008, which was prepared and signed by him and the same was admitted in evidence. He also identified the rough sketch-map with index, which was prepared and signed by him and the same was admitted in evidence. Lastly, he stated that on being transferred he handed over the charge of investigation to the then Officer-in-Charge.

Mr. Mohapatra, Ld. Advocate appearing on behalf of the appellants submitted that the prosecution's version is inconsistent as none of the witnesses portrayed a definite picture as to who inflicted the vital blow on the head of the injured. The informant herself was not an eye-witness and her version was based on what she heard from others. The injured himself stated that he became senseless and as such it was not possible for him to narrate the sequence of events. Further, some of the witnesses deposed that three persons attacked Kundan Shaw while other witnesses stated that the two appellants attacked the injured. So far as the weapon is concerned, there is a confusion as to the usage of the iron rod and bicycle pump. Witnesses who did

not see the incident were tendered by the prosecution. There were variations in the prosecution story, which fails to overcome the test of proof beyond reasonable doubt and as such the interference of this Court is called for in respect of the judgment and order of conviction passed by the Ld. Trial Court which is liable to be set aside.

Ld. Advocate for the State submitted that there is a ring of truth attached to the prosecution version and the evidence of the doctors corroborate the statement of the injured as well as the eyewitnesses. The injured was never questioned by the prosecution on issues of vital blow being inflicted by the present appellants and there were only mere suggestions. The appellants presently are only attempting to highlight the minor inconsistencies which have hardly any bearing on the facts of the case. As a matter of fact, it is not the quantity but the quality of evidence which matters in a criminal trial and in this case, it is the statement of the injured before the doctor supported by the nature of injuries being inflicted by the present appellants, which points to the guilt of the accused. As such, no interference is called for in respect of the judgment and order of conviction and sentence passed by the Learned Trial Court.

I have taken into account the contentions advanced by the learned advocate appearing on behalf of the appellants as well as the State and in a case of this nature, what is more important is whether the statement of the injured inspires confidence of the Court. The Hon'ble Supreme Court in the

case of *Balu Sudam Khalde v. State of Maharashtra* reported in (2023) 13 SCC 365 was pleased to hold as follows:

“.....

26. *When the evidence of an injured eyewitness is to be appreciated, the undernoted legal principles enunciated by the courts are required to be kept in mind:*

26.1. *The presence of an injured eyewitness at the time and place of the occurrence cannot be doubted unless there are material contradictions in his deposition.*

26.2. *Unless, it is otherwise established by the evidence, it must be believed that an injured witness would not allow the real culprits to escape and falsely implicate the accused.*

26.3. *The evidence of injured witness has greater evidentiary value and unless compelling reasons exist, their statements are not to be discarded lightly.*

26.4. *The evidence of injured witness cannot be doubted on account of some embellishment in natural conduct or minor contradictions.*

26.5. *If there be any exaggeration or immaterial embellishments in the evidence of an injured witness, then such contradiction, exaggeration or embellishment should be discarded from the evidence of injured, but not the whole evidence.*

26.6. *The broad substratum of the prosecution version must be taken into consideration and discrepancies which normally creep due to loss of memory with passage of time should be discarded.”*

In this case, PW-2 deposed that when he reached at the place of occurrence, the accused persons assaulted him on his head with a wooden stick and a bicycle pump, he fell down, sustained bleeding injuries and became senseless. PW-9, the medical officer who examined at the first instance deposed that as per patient and the patient party's statement the injured was assaulted with iron rod by the appellants and at the relevant time the patient was conscious. The nature of injuries has been described by the doctor. In view of the proposition laid down by the Hon'ble Apex Court so far as the principles relating to the evidentiary value of an injured witness is concerned, there has been hardly any cross-examination, which would raise any reasonable suspicion as to the injuries being inflicted upon the injured by the appellants. In addition to the same, there were eye-witness who have seen the incident to have taken place. Having regard to the facts presented by the prosecution in support of its case accompanied by documentary and material particulars, I am of the view that the charges which have been brought against the accused/appellants are established beyond reasonable doubt. As such the judgment and order of conviction passed by the Ld. Trial Court do not call for any interference.

Insofar as the issue relating to the sentence is concerned, after going through the records of the case, I find that both the petitioners have suffered custody for more than a month and the incident complained of relates back to 12.06.2008. As such, after seventeen and half years, no fruitful purpose would be served by sending the appellants to jail/correctional home.

Thus, I direct the sentence so imposed be reduced to the period already undergone by them on condition that the appellants shall furnish a personal bond of Rs. 10,000-/ (Ten Thousand) under Section 106 (4) of Cr.P.C. before the Learned Additional District and Sessions Judge, 2nd Court, Barrackpore, North 24 Parganas within a month from date. Such conditional bond will remain in existence for two years.

In case, the appellants are found to be involved in similar nature of offences i.e. injuring persons by way of assault with or without the aid of deadly weapons, the said bond shall stand cancelled and the appellant concerned would be directed to serve sentence of six months.

Accordingly, C.R.A. 508 of 2019 is disposed of.

Department is directed to send back the Trial Court Records immediately. A copy of the judgment be forwarded to the learned Trial Court immediately for compliance regarding the directions given above.

All parties shall act on the server copy of this judgment duly downloaded from the official website of this Court.

Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Tirthankar Ghosh, J.)