

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION

APPELLATE SIDE

Present:-

HON'BLE JUSTICE CHAITALI CHATTERJEE DAS.

CRA 710 OF 2017

AJIT BISWAS

VS

THE STATE OF WEST BENGAL & ANR.

For the Appellant : Mr. Debabrata Roy, Adv.
Ms. Karabai Roy, Adv.
Ms. Sarbani Mukhopadhyay, Adv.

For the State : Ms. Sujata Das, Adv.

Last heard on : 12.02.2026

Judgement on : 13.05.2026

Uploaded on : 13.05.2026

CHAITALI CHATTERJEE DAS:-

1. Being aggrieved by the judgement and order dated 24.07.2017 passed by the Court of the Learned Additional District and Sessions Judge, 1st Court, Hooghly in Sessions case no. 62 of 2016 under Section 304/34 of the IPC thereby holding the appellant guilty of the offence punishable under Section 323 of the Indian Penal Code and thereby sentencing him to suffer simple imprisonment for six months and to pay a fine of Rs.1000/-.

Brief fact of the case

- 2.** Fact of the case in a nutshell is that the complaint was lodged before the O.C Balagarh P.S., Hooghly by the de facto complainant Sanjiban Biswas alleging that Ajit Biswas and his wife entered into his room on 5.9.2015 about 12 P.M. and willingly tried to put bamboo (stair) so that the masons can work there in in their favour. On protest being made by the father Lt. Ramdhan Biswas requesting him humbly to stop accused, Ajit Biswas, slapped on the face and made him fall on the ground and he expired there instantly. His father was then taken to Guptipara P.H.C and he was declared as brought dead. On the basis of the complaint Balagarh P.S. 194/15 under Section 304/34 IPC and U.D. case no. 51/12 dated 5.9.15 started against the accused persons being the present appellant and his wife.
- 3.** On completion of the investigation the charge sheet was submitted against them under Section 304 / 34 of Indian Penal Code and subsequently it was transferred to the Learned District Judge ,Hooghly after commitment and from there transfer to the Court of the Learned Additional District and Session Judge, 1st Court Hooghly for trial. The Learned Court after considering both the Learned Advocates and the materials framed the charge against the accused persons under Section 447/304/506/34 IPC and the content the same was read over and explained to them to which they pleaded not guilty and claimed to be tried. Hence the trial commenced.
- 4.** The Learned Trial Court after assessing the evidence adduced before the Learned Court and the considering the submissions advances by both the Learned Court and the defence taken on behalf of the accused persons passed the order of conviction only against the present appellant in respect of Section

323 of IPC when acquitted both the accused persons from the charges under Section 447/506/304/34 of the IPC. Being aggrieved thereby this appeal has been preferred.

Submissions

5. The Learned Advocate representing the appellant argued before the Court that due to lack of evidence the charges framed against the appellants under Section 304 and 447 or 506 could not be maintained the Learned Court passed the order of acquittal in favour of the co-accused. It is submitted that the sketch map as was prepared by the I.O. clearly shows the position of the respective premises and the boundary wall situated between the two houses which, on the face of it depicts how improbable it is, as narrated by the de-facto complainant. The Investigating Officer did not examine the witnesses having adjacent houses as shown in the sketch map. The witness P.W. 2 had an inimical relationship with the present appellant and several litigations were pending therefore he was an interested witness. P.W. 3 cannot be said to be the eye witness as the distance of his house was about 7 minutes walk from the place of occurrence and the area was densely polluted. P.W. 4 is the son of the deceased whose testimony is full of inconsistencies. Therefore the prosecution has miserably failed to prove the charge beyond the reasonable doubt. The Learned Trial court though observed that it is difficult to hold that the accused persons entered into the land of victim and granted benefit of doubt in favour of the accused person, passed such order of conviction under Section 323 which is absolutely bad in law and without any application of judicial mind. Therefore it is prayed that the said judgement and order of conviction is liable to be set aside.

6. The prosecution on the other hand raises objection and submits that in order to bring home the charges the witnesses were examined and the I.O. also prepared the sketch map and there was eye witness to the occurrence. Therefore the order of conviction was passed rightly by the court and this appeal has got no merit.

Analysis

7. Heard the submissions. On perusal of the materials on record and the arguments placed before this court the moot question falls for the consideration as to whether the order of conviction passed by the Learned Court under Section 323 of IPC against the accused person is sustainable in the eye of law or not while he was acquitted from the charges under Section 506/304/34/447 IPC. Furthermore the order of acquittal was also passed against the Co-accused. In this case the prosecution has adduced witnesses as many as 7 witnesses out of whom the P.W. 6 is the de facto complainant. He deposed before the court that his father restrained Ajit Biswas who came to their house in order to erect a bamboo for the purpose of plastering of his house and there was scuffling in between his father and Ajit who pushed and slapped his father and then his father fell down and subsequently was declared dead when he was taken to Guptipara Hospital.

8. From his cross-examination it can be gathered that their house is surrounded by the house of Ashalata Biswas on the adjacent north, house of Nirashi Biswas and Nibaran Biswas adjacent east, and a wide road running from Tengripara More towards South. He also admitted it takes about 7 minutes to go to the house of Ajit Biswas on foot from their house and the place is highly populated area. He also said about number of shops in their locality. The

witness did not lodge any complaint before the Balagarh P.S. or to the local Gram Panchayat for erecting bamboo 'Bhara' by Ajit on their land. He also did not said in the written complaint that Ajit Biswas came their land erecting bamboo 'bhara' which was restrained by his father. The written complaint was drafted by his instruction and his brother Sankar Biswas put his signature in the written complaint. He could not recollect whether he submitted another complaint prior to the present complaint. He denied that he did not make any allegation against Ajit Biswas in the previous complaint but this testimony certainly discloses rise to lodging of a prior complaint over the self-same issue.

9. Therefore in view of the above nature of testimony which failed to inspire enough confidence in the mind of the Court it is necessary to look for further corroboration as this witness was not the eye witness .P.W. 1, Anup Bhar who claimed to be working in the house of Ajit after fixing Bhara identified the accused person and according to his evidence the owner of the adjacent house objected to the work and asked them to remove the Bhara and accordingly they remove Bhara and started to work inside the house. After that there was conversation in between Ajit and the adjacent land owner and then he completed his work and went away. This witness did not see anything. This witness was declared hostile as the Learned Prosecution permitted to question the witness as per Section 154 of the Evidence Act on the prayer made by the Learned Prosecution. P.W. 2 Prabal Biswas claimed to be the eye witness who at that time was sitting in his Verandah on 5.9.2015 in between 11.30 to 12.00 noon and found altercation in between Ramdhan Biswas and Ajit Biswas who was doing construction work with the help of labour and after he erected Bhara on the land of Ramdhan, he raised protest and then Ajit pushed

Ramdhan for which he fell down and sustained injury on his head. People assembled and water was poured on the head and then he was taken to Guptipara Hospital where he was declared as dead. He further disclosed that the deceased Ramdhan was his uncle but he could not say whether Ramdhan was the cousin brother of Ajit Biswas. Ramdhan, the deceased, resided at 2 Mirdanga Government Colony and Ajit is a resident of Patmohal, P.S. Balagarh. This witness also said that it takes about 5 minutes to reach the house of Ramdhan Biswas from the house of Ajit Biswas. He also admitted that on the adjacent to the house of Ramdhan house of Ashalata Biswas was situated and on the eastern side house of Nibaran Biswas and Niroshi Biswas. There is 6 ft. width Panchayat road existing to the eastern side house of Nibaran Biswas. He also admitted that Mirdanga Colony is a densely populated area, it takes about 7 minutes by walking to reach his house from the house of Ramdhan Biswas. From his evidence it can be found that Ajit Biswas pushed with considerable force to the chest of Ramdhan and he did that when Ramdhan was standing on his land over the brick wall. He also said Ramdhan fell down on his land by the side of staircase. So if this evidence can be visualised it would project that a person sitting in his verandah in a densely populated area and at a distance of 7 minutes from the place of occurrence saw that Ramdhan standing on the brick wall being pushed by the accused, when admittedly the house of accused is not adjacent to the house of the deceased . This apparently manifests the improbability and the evidence does not appear to be clinching on the basis of which an order of conviction can be passed.

10. P.W. 3 Shankar Biswas the son of Ramdhan Biswas on the other hand narrated a different story that incident took place on 05.09.2015 at 12.00 noon at Tengripara when the accused erected Bhara and his father obstructed them and after sometime Ajit and his wife entered in their house and abused his father then his father protested to the same and also told them to lodge complaint the Panchayat and other authority. There was altercation and Ajit pushed his father for which his father fell down and became senseless.

11. The complaint was lodged at Guptipara and he stated about the incident to police. In his cross-examination he could not produce any document to show that Ajit Biswas had any house at Tengripara, but he denied that Ajit did not have any house at Tengripara adjacent to their house. The construction work was going on about 4/5 days but he did not lodge any complaint but orally informed Panchayat. According to his evidence at the time of incident apart from him Probal Biswas was present at the spot and no other person was there. He also admitted that a criminal case is lodged against Sanjiban Biswas and denied that Ajit Biswas is his relative. He also could not say whether there are several litigations over family members between Ajit Biswas and them. He could not say whether there are houses of Nibaran Biswas and Niroshi Biswas to the adjacent eastern of their house but admitted that the adjacent north of their house of Ashalata Biswas and thereafter a road to the southern side of their house the house of Ajit Biswas was situated. Prabal claimed to be the eyewitness who saw from his verandah, so he cannot be present at time in his verandah and with P.W 3. Similarly the question arises whether the accused entered into the house of the deceased and then the incident

happened or they were in the adjacent house and the Ajit pushed Ramdhan while he was standing on the brick wall.

12. Prabal Biswas went along with the victim to the hospital and he said that victim sustained injury on his head he also said about a counter case instituted against Sanjiban Biswas his son of his jethu but could not say whether Ajit was witness to the said criminal case or not . He also reveals pendency of several cases between Ajit and over their family matters and about frequent disturbance in between them.

13. Therefore from the evidence of P.W 1, P.W. 2 and this P.W.3 Shankar Biswas there are apparently glaring inconsistencies found which are as follows:-

1) P.W. 2 Probal Biswas said that he was sitting in his Verandah when he notices the altercation between Ramdhan Biswas and Ajit Biswas when Ajit Biswas was working construction with the help of labourers after erecting Bhara on the land of Ramdhan Biswas.

2) Ajit Biswas pushed on the chest of Ramdhan Biswas when Ramdhan was standing on his land over brick wall so he fell down on his land on the ground of staircase.

3) Shankar Biswas on the other hand said that excepting him and Sanjib Biswas Probal was present with them at the spot when the incident took place.

4) He also said that at that time Ajit and his wife entered in his house and abused his father then Ajit Pushed his father and his father fell down and became senseless.

14. The above inconsistencies demolish the credibility of both these witnesses and adverse inference can be drawn against the testimony adduced by them as

both of them are not stating the correct fact before the court. P.W. 4 Kiran Biswas heard from his brother Probal Biswas about the quarrel and Ramdhan prevented Ajit Biswas from plastering his house after fixing bamboo on their land. He did not state to the police about such hearing from his uncle. However it is admitted that there was bitter relation between Ajit and Ramdhan Biswas because of several litigations pending between them. According to him Ajit Biswas is the maternal brother of Ramdhan by village colony. P.W. 5 Swati Mondal is the Medical Officer of Guptipara P.H.C who held inquest over the dead body of Ramdhan Biswas. P.W. 7 is the constable who brought dead body from Balagarh Police Station to Chinsurah Imambara Hospital and after post mortem he collected viscera and wearing apparels of the victim. P.W. 8 is the ADI of Police who held investigation and from his evidence it can be seen that the witness did not state to him that Ajit Biswas slapped his father or there was scuffling in between his father and accused. He did not state that Ajit Biswas pushed his father or there was scuffling between them, at the time of inquest. The I.O. did not mention in his sketch map that the house of Ajit Biswas is situated to the adjacent North or the house of Nibaran Biswas and Niroshi Biswas to adjacent eastern side of the house of Ramdhan Biswas. He did not say any document relating to ownership of the house. The sketch map as has been prepared shows the house of Babulal Das on the northern side of the house of Ramdhan Biswas, the house of Subhas Roy to the southern side after Guptipara Station Road. The place of occurrence is shown as in the common passage of the house deceased Ramdhan and his elder brother Haradhan Biswas. So there is no sign of house of Ajit.

Conclusion

15. Therefore after considering the entire evidence nothing can be found to substantiate that Ramdhan fell down on his land by the side of the staircase or Bhara was constructed in a boundary wall situated in between both the houses and to which Ramdhan Biswas raised objection standing on common land and then pushed by Ajit and then fell down and died. The post mortem report shows injuries in the skull and the cause of death was due to the effect of head injury. Since the two vital witnesses being P.W. 2 and P.W. 3 who claimed to be the eye witnesses loses their credibility due to glaring inconsistencies regarding their presence at the spot or witnessing the incident, there remain hardly any other sterling witnesses to establish the case of the prosecution. The trial court also found the charge under Section 447 not proved then question of entering into the land of Ramdhan by Ajit and his wife does not arise, and it immediately demolish the prosecution case. The Learned Trial Court also did not consider that the accused pushed the victim but held at best it can be said that offence committed with an intention to hurt the victim and then passed such order of conviction under Section 323 which has no basis.

16. This court therefore does not find any reason to concur with this observation when the charge under Section 447 was not considered and it was not established that the adjacent house was of the appellant or that both the houses were adjacent to each other.

Therefore this court is of the considered view that the said judgement and order passed by the Learned Trial Court against the appellant is liable to be set aside.

- 17.** Therefore this Criminal Appeal stands allowed. The judgement and order of conviction passed by the Learned Additional District and Sessions Judge, 1st Court, Hooghly in Sessions case no. 62 of 2016 under Section 304/34 of the IPC is hereby set aside. All connection applications are hereby disposed of.
- 18.** The appellant be set at liberty forthwith upon execution of bond to the satisfaction of the trial court which shall continue for 6months in terms of Section 437A of Cr.P.C, if not wanted in any other case.
- 19.** The T.C.R along with a copy of the judgement be sent down to the concerned Court.
- 20.** 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.]