

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

PRESENT:

HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS)

CRA 573 OF 2010
NABA KUMAR KOLEY
VS
STATE OF WEST BENGAL
With
CRA 588 OF 2010
GUNADHAR KOLEY
Vs.
STATE OF WEST BENGAL

For the appellant : **Mr. Gunjan Kumar Singh, Adv.**
Mr. Prakash Mishra, Adv.

For the respondents : **Ms. Baisali Basu, Adv.**
Mr. Aninda Sundar Chatterjee, Adv.

Heard on : **04.02.2026**

Judgment on : **08.04.2026**

Uploaded On : **08.04.2026**

CHAITALI CHATTERJEE (DAS), J.:-

1. This appeal is against the judgement and order of conviction dated 09.09.2010 and 10.09.2010 passed by the Additional Session Judge, 4th Court, Burdwan in Session Trial No. 29/2006 arising out of Sessions Case No. 106/2006 where by an order of conviction has been passed under Section 307/324/34 of the Indian Penal Code.

Factual Matrix :-

2. A written complaint was lodged by one Shibshankar Koley before the OC, Jamalpur PS on 18.06.2005 alleging that on 18.06.2005 at about 10 o'clock in the morning, two of his younger brothers namely Gunadhar Koley and Naba Kumar Koley was suddenly attacked by their third brother Balai Koley with an intention to kill him at the farm house of their house. It was further alleged that Gondar Kaley hit him repeatedly with his hensua /sickle at different parts of body of Balai Koley causing bleeding injuries to him. The condition of Balai was very much serious. He further averred that two brothers had dispute with Balai Koley over the issue of landed property.

3. On the basis of such complaint Jamalpur PS Case No. 48/05 dated 18.06.2005 under Section 326/307/34 was initiated. On completion of the investigation the charge sheet was submitted against the two accused persons. Since the charge was exclusively triable by the Session Court it

was committed to the learned District Judge and subsequently transferred before the learned Additional Sessions Judge, 4th Court, Burdwan for trial.

4. The learned court on perusal of the materials on record and after hearing the parties framed the charge under Section 307 and 324 IPC against the two accused persons. The prosecution adduced ten witnesses and proved the documents. The learned trial Court on assessment of the evidences adduced, after hearing the arguments advanced by the prosecution as well as the learned defence counsel, passed the order of conviction against both Gunadhar Koley and Naba Kumar Koley for committing an offence under Section 324/307 of the IPC. Challenging the same both Gunadhar and Naba Kumar Koley filed two separate appeals before this Court and the appeal filed by Gunadhar was registered as C.R.A 588 of 2010 and both the matters were heard analogously.

Submissions

5. The learned advocate appearing on behalf of the appellants argued that previously a criminal case was lodged being CRR No.388/2002 under Section 379/325/ 447 of the Indian Penal Code by the present Nabakumar Koley and as a counter blast this complaint was filed by the defacto complainant out of grudge. The prosecution did not examine the witnesses whose houses are shown to be adjacent to the house of the victim. The learned advocate highlighted the political rivalries between the parties which are apparent from the evidence. It is argued that P.W. 1 was not the eye witness and should have informed the police at the first

instance when the incident happened. The evidence of the injured P.W. 2 did not inspire confidence and no controlled earth was sent to FSL. The evidence of P.W. 3, 5 & 8 being hearsay, cannot be relied upon and he did not sign on the seized article. P.W. 4 further admitted that no controlled earth stained with blood was taken as sample. Despite being aware of the incident, he did not inform the police or the doctor. He also denied to put the signature in the seizure list. P.W. 6 had no knowledge. There are glaring inconsistencies found from the evidence of P.W. 7, the village person and an eye witness, from the testimonies of the prosecution witnesses which suggest the injury sustained due to fall of the victim because of a push and is corroborated by P.W. 2.

6. That apart the P.W. 9, the medical officer admitted that the injury cannot be caused due to scuffling. No injury report of Gunadhar was exhibited only the doctor deposed that and he also sustained certain bruises. Therefore it is submitted that the learned Trial court passed the order of conviction on the basis of surmise and conjecture and accordingly prayed for dismissal of the appeal.

7. Per Contra the learned prosecution argued that 10 witnesses were cited on behalf of the prosecution which includes the injured himself who proved the nature of injury sustained and who assaulted him. It is settled law that the testimony of the injured has to be weighed on a higher pedestal especially when the medical evidence corroborates the ocular testimony. In this case the evidence of the injured has inspired sufficient confidence

for which no corroboration is necessary. The medical report supports the case of prosecution as well as the evidence of local witnesses and therefore the learned Court considering all aspect of the matter passed such order of conviction which is not required to be interfered with.

Analysis :-

8. In view of above facts and circumstances considering the arguments advanced by both the learned counsels and going through the materials on record, the moot question falls for consideration is as to whether the learned Court was right in passing the order of conviction against the appellants and whether the prosecution was able to prove the case beyond the shadow of all reasonable doubt.
9. In this case the complaint was lodged on the very date of incident as alleged i.e. on 18.06.2005. The *defacto* complainant Shib Shankar Koley deposed as PW 1 and his specific statement before the Court was that the present appellant assaulted Balai Koley with lathi and Hasua resulting severe injuries on him, the injured was taken to Jamalpur Hospital for treatment. Accused Naba Kumar Koley assaulted Balai Koley with lathi and Gunadhar assaulted him with hensua. The further case was that the dispute cropped up as both Naba Kumar and Gunadhar took away the accumulated untrashed Til plants belonging the Balai Koley which were kept in a Khamar and as Balai raised protest he was assaulted. The complaint was written by Rabindra Nath Das according to his instruction and he signed thereon. On the basis of the complaint police came and

seized blood stained cloths of his brother Balai Koley and the hensua. He also signed in the seizure list. His evidence discloses that P.W. 1 Balai Koley, Gunadhar Koley and his father resided separately in the ancestral house and for last 7/10 years and Naba Kumar was residing at Karalaghat and was carrying business from there. The mother and widow sister used to reside with Naba Kumar Koley. It further transpires a criminal case lodged by Naba Kumar against this PW 1, his wife and his brother Balai Koley under Section 379/325/47 of Indian Penal Code which was also pending. Prior to that in the year 2004 he further lodged a complaint against them for the offence of assault and criminal intimidation which was also pending. His father was residing with him being separated from the mother and a maintenance case was filed against the father which is also pending. He admitted that all the three brothers have their shares in the land where Til were cultivated and he could not say whether any diary was lodged by Gunadhar against Balai for removing such Til plants from the land cultivated by him. He took the name of Mahadeb Koley, Sajal Koley and Kartick Santra and Sakti Koley, Ram Dhara, Kashinath Dhara, Lakshman Dhara, Bidyut Koley, Netai Dhara and others whose houses, cow shed, bamboo shrub, panchayat tube well were situated surrounding his house. His evidence further discloses that once Gunadhar Koley stood as a candidate of panchayat on BJP ticket but he and the wife of Rabindra Nath Das got defeated in such election. He did not lodge any prior complaint before lodging the present

complaint. He could not say when those Til plants were harvested by his brother and stacked there and did not witness taking way those Til plants. He also could not say whether there was heated exchange of words between the accused persons and Balai Koley prior to the incident of assault but found his brother Balai lying on the ground writhing in pain. According to this witness some people including farmers assembled at the PO, but he did not see the assault. One of his villagers took the injured brother in a rickshaw van to Jamalpur PS first and from there, referred to hospital. After getting that news he went to the hospital and found his brother lying there at the hospital at around 10 A.M when he went to hospital. He took the name of Rabindra Nath Das, Iqbal and others who visited hospital to see his brother. After that he came to the police station and on asking by the police he lodged the complaint.

10. P.W. 2 Balai, the injured and most vital witness of this case deposed that at about 9.30 A.M. on 3rd Ashar, Gunadhar Koley struck him with a hensua at the khamar of his cousin brother and Naba Kumar tried to assault with a lathi which he caught hold and due to such assault he sustained cut and bleeding injury on his right hand, belly and left side in between hip and thigh. He was taken Jamalpur where he was treated. According to him as he raised protest against the accused persons who tried to take away his Til plants which were stacked in the khamar and hence he was assaulted. This witness was not examined by the IO in connection with the case. His evidence further discloses that he was

discharged from the hospital in the evening on that day and he regained his sense at about 10:30 A.M. at hospital. He further deposed that there was a heated exchange of word between him and the accused Gunadhar and also accused Naba Kumar and he protested and at that time local people did not assemble there. Such heated exchange continued for five minutes and then Naba Kumar struck with probably a hansua with force. He could not remember how many times he was struck. He described the weapon as a sharp cut hansua and sharp portion is about one cubit. After being struck with hansua he fell down, sustained severe bleeding injuries, was suffering from pain and became senseless. He did not state before the police that he sustained cut injuries on his hand, belly and neck. He also did not state to police when Naba Kumar came to assault with a lathi he caught hold of the same. He did not state to police that said Iqbal of Jankuli village and he stopped by his elder brother and Sajal and took him in that motor cycle.

11. Since the evidence of injure manifest the manner of injury and the graveness of injuries sustained, the medical report is to be examined as to how far it supports the case of the injured .P.W. 9 is the medical officer who examined Shyamapada Koley and Balai Koley. On examination of Balai Koley he found the injuries which are as follows:-

1) Incised wound 5 to 10 CM in length in 1 CM deep on anterior abdominal wall.

2) Another incised wound of 2 CM in length on anterior abdominal wall.

3) Incised wound of 1 CM length on the left hip joint.

12. So the evidence of injured manifest that Nabakumar assaulted him with lathi and Gunadhar assaulted with hensua. According to this witness such type of injury can be caused if a bamboo with sharp edge is connected strongly with one person this in injury number 1 in his report. He did not advice the admission of the patient in their hospital nor referred him to Burdwan Medical College and Hospital. He did not find any hand injury in his report. He also said that if scuffling took place armed with sharp cutting weapon, injury number 1 and 2 may be caused, but injury number 3 cannot be caused and it may be caused if one is contacted with piece of glass or like that. If one is contacted with pointed portion of a sharp cutting weapon, penetrating injury can be caused. He also said that one Gunadhar Koley was examined on 19.06.2005 and he sustained bruise over the scalp. He also said that if one is contacted with hard substance this injury can be caused. On examination of Shyamapada Koley he found one abrasion of 2 CM in length on knee joint. He could not recollect whether police seized the injury report or not and or at all any requisition was sent by police or not.

13. It is a settled law that the evidence of the injured is to be given more weightage and the sole evidence of an injured can be the basis for passing

an order of conviction provided that inspire enough confidence in the mind of court . The evidence of the doctor and the nature of injury sustained canvassed that at least it was not serious to that extent that admission was necessary .More so the case of the injured that he became senseless and regained his sense after 10 a.m., hardly gets support from the injury report which reveals that he himself gave the history of the injury. The opinion of doctor suggests the cause of injury is not due to attack on him with a hansua or a sharp cutting instrument but if someone fell on some sharp objects. The doctor also did not mention in his report the age of the injury .On perusal of the exhibited document being the injury report of Balai Koley it is seen that the doctor took the short history of the incident from the patient who said that two persons namely Gunadhar Koley and Nabakumar Koley assaulted him with a hard object . The doctor also said that hard object means solid substance like iron rod, lathi etc. and Hensua is sharp cutting as well as blunt instrument as the back side of hensua is blunt. According to this witness the patient did not disclose that he was assaulted by hensua.

- 14.** P.W. 4, Shyamapada Koley the father of complainant, the accused and the injured deposed that on 3rd Ashar at about 9 to 9.30 A.M. an incident took place on the back side of the village club at bamboo shrub. On that day accused Gunadhar Koley and Naba Kumar Koley were trying to take away the Til plants of Balai Koley kept there to which Balai protested and Naba Kumar assaulted with lathi and Gunadhar started assaulting with

hansua. When he went to save then Gunadhar also assaulted him by hansua and thereafter fled away therefrom. They were treated at Jamalpur Hospital. He identified the hansua by which Balai and he were assaulted. From his evidence an ongoing dispute between him and the accused persons since long is evident and further that prior to the incident used reside at Ashram at Deoghar for some time. He did not discuss about the incident to anybody else, but he did not state to IO that on 18.06.2005 at 9:00 A.M. Balai brought Til plants from the field and kept in the khamar of Sajal Koley. From his evidence it is further seen that he could not say on how many time Balai was struck by hensua but after that Balai fell down on the ground and become senseless. There were severe bleeding and clothes were soaked with blood and he was also struck with hensua and was hit on the leg. This witness initially said that he was taken in a rickshaw van then said he does not know how he was taken. But he did not go with Balai.

15. P.W. 5 Iqbal Ahmed whose name was taken by the injured as well as the complainant deposed that an incident happened on 18.06.2005 in the khamar of Naba Kumar and Balai Koley and another, but he did not see the incident, but heard from Shyamapada koley and thereafter from Balai Koley. He did not make any statement at the police station before the complaint was lodged. The injury report reveals that the patient was brought by Sk. Iqbal Ahmed. The Injured himself said that he did not say to the I.O. that the elder brother of victim stopped the ongoing motor cycle

and took him in the motor cycle .P.W. 4, the father could not say that whether Shib Shankar and Sajal stopped the motor cycle of Iqbal in whose motor cycle the injured was taken .The elder brother being the defacto complainant on the contrary deposed that he did not accompany his brother to the hospital and also did not inform Iqbal. This Iqbal Ahmed accompanied the complainant from hospital to the police station and he accompanied the police to the village. He belonged to a particular political party .Further interesting fact revealed from the evidence of Sajal that at the police station he found Iqbal, Shyamapada and Rabindranath Das but did not say that he stopped the motor cycle of Iqbal and took the injured in that motor cycle .

16. P.W. 7 being a resident of Deeperman under Jamalpur PS knew both the accused as well as the injured. He deposed that he did not have any knowledge about any incident between accused and Balai Koley and Shyamapada koley excepting that there was a marpit (commotion) over Til plant which happened on 3rd Ashar last year at about 9/10 A.M when Gunadhar was lifting Til plants of Balai which was stacked by him. This witness gave a different version as he saw that Balai came from the field with hensua to assault Gunadhar and Gunadhar pushed him as a result he fell down on the bamboo. This witness was thereafter declared hostile. His demanure was recorded as not good as he was trying to give answer after looking towards the accused and took long time to reply. He gave reply to court that Balai Assaulted Gunadhar by hand. There was heated

exchange of word and thereafter dashing and pushing in between Balai and Gunadhar Koley. Due to that Balai fell down and sustained cut injury on his person and he stated this to the police.

17. Lastly PW 3, Sajal Kumar Koley also a hearsay witness deposed that he heard from Rabiandra Nath Garai that Shayamapada Koley went to save when he also sustained injury on his leg due to assault by Gunadhar with hansua. He identified the hansua and his signature in the seizure list. His evidence discloses that he is a contractor and on most occasions he went out for his work. He admitted that no signature was there on the seized hansua or the wearing apparel. Rabindra nath Das is the scribe who wrote the complaint, deposed as P.W 8 and denied to have any knowledge almost the incident and he also heard about the incident .His wife was nominated in panchayet election on C.P.I (M) party ticket. He did not make any statement before police. However it transpires that the defector complainant mentioned about his presence in the Hospital

18. P.W. 10 is the Investigating Officer, who after being endorsed with the case for investigation visited the PO and drew a rough sketch map along with index. He examined the witnesses, recorded their statement and after completion submitted the charge sheet. He did not seize any blood stained earth from PO and in the seizure list the time of seizure was not mentioned and the place of seizure was not filled up. He did not make any respectable person of village as a witness to the seizure list. He collected the injury report as there is note in the CD to that effect, but he did not

find any report regarding injury report of Shayamapada Koley being collected. He did not send the seized article for FSL for examination and did not consult the doctor in respect of alleged article.

19. In summation of the foregoing discussions ,the entire case reveals that there existed not only a strained and inimical relationship among the brothers but also significant divergence in their political ideologies .Additionally ,their parents were embroiled in marital discord ,resulting in a clear division within the family ,with members living separately in two distinct groups. On the day of incident a heated altercation ensued between the parties, during which they engaged in mutual pushing, and attempted assault upon each other .In course of such scuffle, the injured person fell to the ground and sustained incised wounds however after giving medical treatment without admission was discharged from the hospital on the same date.

20. P.W.3 Sajal Ghosh, a seizure list witness in whose presence the offending weapon and the wearing apparels of Balai Koley were seized. At the time of incident he was at Srikrishnapur near Karalghat since morning as he had a business .After he returned, his business partner Rabindra Garai informed him about the gondogol (skirmish) in between the brothers and asked him to go there. From that place he went to Hospital around noon time and then left for police station. At that time his uncle Shayamapada and brother Shib shankar koley were also present at the police station and the complaint was lodged by Shibshankar .Then he

signed on the seizure list at police station. He also disclosed that before he reached at the police station, the police already visited the village and he did not meet the police at the village. So it is a clear admission that the seizure was not done at the place of occurrence but at the police station. The exhibit 2 being the seizure list the place of seizure is found to be blank, so no place was mentioned in the seizure list. The witness denied to sign on the seized wearing apparel or the Hansua and he saw those at the Police Station. P.W. 1 also could not say wherefrom such Hansua was seized though he signed on the seizure list. He also did not witness the incident as when he reached, found his brother Balai in lying condition writhing in pain. The severe inconsistencies found with regard to the persons who accompanied the injured to the hospital and as discussed lastly it is revealed that Iqbal got him admitted from the medical paper .The de facto complainant did not accompany his brother to hospital but he took the name of one Bharat Dhara who took the injured in a rickshaw van to Jamalpur P.S. first, and then to hospital but this version was not established. In fact P.W 1 found him suffering from pain but did not say he was senseless and before the doctor the patient gave the description who assaulted him .From the evidence of the I.O it could be gathered further that on 18.6.05 at about 9 A.M Balai brought teel plants from the field and kept at the khamar of Sajal koley but the injured Balai said where he stacked the teel plant was by the side of a club and that place did not belong to them. He denied to have stated the I.O that he cut the

teel plant on that day brought at the khamar for drying .The injured deposed that he sustained cut injury in his hand but no injury was found in his hand as per the Doctor's report.

21. Shyamapada the father stated about a cut injury sustained by him in his leg by hansua but the testimony of the doctor speaks about only a small abrasion at his knee joint which shows how exaggerated version is narrated by the father against his son. The father even could not say how his son was taken to hospital .He could not say who informed the police as within 30 minutes police came to their village and he did not discuss the incident with anyone when p.w 5 deposed that he came to learn from Shyamapada.

22. The learned Sessions Court relied upon the evidence of P.W. 2, the injured, P.W. 4 the father and P.W. 5 Iqbal Ahmed despite having glaring inconsistencies in their evidences. The Learned court further relied upon the sketch map and satisfied that the khamar is the place of occurrence when the I.O. during his evidence admitted in the index he did not mention that khamar belongs to whom and also in the charge sheet he did not mention the same. He did not examine the adjoining owner Saktipada koley as shown in the sketch map. That apart the P.W. 4 Shyamapada Koley said that the khamar belonged to Sajal kumar Koley and as per F.I.R the P.O. was khamar of Shib Shankar Koley. The place of occurrence is also not established as the P.W. 1 said it was a Khamar where til plants were stacked .The injured said the Khamar was of his

cousin brother P.W. 4, the father deposed it was at the bamboo shrub on the backside of village club and the I.O. did not ascertain in whose Khamar the incident took place.

Conclusion

23. From the threadbare assessment of the evidences glaring discrepancies are found which creates enough doubt in the case of the prosecution in the manner in which the case has been narrated .The Hon'ble Supreme Court in ***Rai Sandeep @ Deepu vs The State (NCT) of Delhi*** reported in¹ laid down the principles guiding for treating the witness as of sterling quality in paragraph 22 which reads as follows:

In our considered opinion, the "sterling witness" should be of a very high quality and calibre whose version should, therefore, be unassailable. The court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in

¹ (2012) 8 SCC 21

the version of such a witness. The witness should be in a position to withstand the cross examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as the sequence of it. Such a version should have co-relation with each and every one of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other such similar tests to be applied, can it be held that such a witness can be called as a "Sterling witness" whose version can be accepted by the court without any corroboration and based on which the guilty can be punished to be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version material particulars in order to enable the court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged.

24. In the present case the testimony of the injured failed achieve such parameters and hence cannot be said to be of sterling quality and hence his evidence cannot be relied upon solely for passing any order of conviction. More so another version of the incident has been canvassed which described that the injured assaulted Gunadhar by hand in course of heated altercation and then there was jostling and push and the injured fell down which was a bamboo garden having pieces of bamboos scattered and he sustained injuries. Therefore even though it is considered that the injured sustained injuries on that day it is not established beyond doubt that that was due to assault made by the appellants. Accordingly the judgement and order of conviction passed by the learned session judge is liable to be set aside.

25. Hence this CRA 573 OF 2010 is hereby allowed. The Judgement and order passed by the Learned Additional Session Judge, 4th Court, Burdwan is hereby set aside. The appellants be released from their respective bail bond.

26. Copy of the order along with LCR sent down forthwith to the concerned Court for taking appropriate steps.

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

(CHAITALI CHATTERJEE DAS,J.)