2026:CHC-AS:359

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

PRESENT:

THE HON'BLE DR. JUSTICE AJOY KUMAR MUKHERJEE

CRR 3174 of 2018
CRAN 1 of 2019
(Old No. CRAN 709 of 2019)

Goutam Saha & Ors.
Vs.
The State of West Bengal & Anr.

For the Petitioners	:	Mr. Abhimanyu Banerjee Mr. Arghya Mullick
For the State	:	Mr. Anand Keshari Mr. Bikram Mitra
Heard on	:	11.11.2025
Judgment on	:	02.03.2026

Dr. Ajoy Kumar Mukherjee, J.

1. Petitioners herein are aggrieved with the judgment and order dated 10th September, 2018 passed by learned Additional District and Sessions Judge, City Sessions Court, Calcutta, in Criminal Appeal no. 21 of 2018, by which the Court below has affirmed the judgment and order of Conviction and sentence dated 26th February, 2018 in GR Case No. 658 of 2010 for committing offence punishable under section 326/34 of the IPC.

2. One Subir Nag lodged a complaint at Amharst Street Police Station on 21.03.2010 at about 22.25 hrs., where it was alleged that the accused persons/petitioners with common intention at first abused him with filthy languages and thereafter assaulted him physically with bamboo stick and iron rode due to having previous grudge. During such occurrence victim's mother-in-law Kunti, wife Rani came to rescue him but they were also assaulted and they sustained injury. Ultimately his mother-in-law somehow rescued him. As a result of such physical assault victim sustained severe injuries and he was taken to Medical College and Hospital by his relatives for his treatment. On the basis of complain police initiated Amharst Street P.S. case no. 69 dated 21.03.2010 under section 324/34 IPC. After completion of investigation police submitted charge sheet under section 326/34 IPC against all the accused persons/petitioners. Trial Court took cognizance and thereafter the charge was framed against all the accused persons under section 326/34 IPC.

3. Prosecution examined the defacto complainant Subir Nag as PW1 his wife Rani Nag as PW2, his mother in law Kunti Das as PW3 and the Medical Officers were examined as PW4,5 and 6 and the investigating officer was examined as PW7. Accused did not adduce any evidence. But the accused persons were examined under section 313 CR.P.C. and thereafter the trial court by the impugned judgement convicted them under section 326/34 IPC and was sentenced to suffer rigorous imprisonment of one year along with fine of Rs. 5,000/- in default rigorous imprisonment for two months more.

4. Being aggrieved by the said judgment the petitioners preferred aforesaid criminal appeal and the appellate court also affirmed the judgment of conviction passed by the Trial Court and thereby he dismissed the appeal.

5. Being aggrieved by the aforesaid judgment of affirmation learned counsel for the petitioner argued as follows:-

> ***(a)*** *that the investigating officer never identified the place of occurrence and no effort was ever made either to reconstruct the crime scene or to identify the exact place of occurrence of the alleged incident. In fact the victim defacto complaint was never taken to the PO for identification and no sketch map of the PO has been exhibited or marked.*
> ***(b)*** *No one from the locality was ever examined or cited as witness even though the alleged incident took place on the street surrounded by shops and stores*
> ***(c)*** *The doctors were never examined during investigation as the IO did not say that he had examined the doctor.*
> ***(d)*** *No seizure list has been placed to support the seizure of medical report marked exhibit 4 by the investigating officer from the medical college hospital.*
> ***(e)*** *The date time and place of seizure is also not available on record*
> ***(f)*** *The ingredients of section 320 of IPC are not available in the instant case as there was no grievous injury*
> ***(g)*** *No weapon was sized by the investigating officer to substantiate charge under section 326 of IPC.*
> ***(h)*** *The contents of the Medical Report were not lawfully proved and the signature of PW4 was never marked as exhibit. PW4/Doctor also did not speak of any 'fracture' in his deposition or treatment being provided to the alleged victim which were usually provided in case of fracture. The medical report also does not speak of any fracture as the said term is not found anywhere in the report. No X-Ray report either seized or exhibited to prove the factum of alleged fracture near right elbow of the victim*
> ***(i)*** *It is settled law that medical report in itself is not a substantive piece of evidence and it is the evidence of the medical officer testifying regarding its contents that makes it relevant but in the instant case, the medical officer was never put any direct question about the contents of the medical report during his examination in chief. The mere marking of the medical report during his examination in chief cannot prove the contents of such report*
> ***(j)*** *There are several contradictions in the deposition of witnesses regarding place, time, chronology of the occurrence and also concerning place of recording of statement. According to FIR incident occurred at 166/H/12 KC Sen Street whereas in deposition it has been stated that it took place at 125 KC Sen Street and similarly FIR says incident took place at 22.15 hrs. while according to deposition it is 22.45 hrs. to 11 hrs. According to FIR story, while victim was going to mother's house he has assaulted but in his deposition he said that he was taken out from inside house of his mother and thereafter he was assaulted with iron rods and bamboo sticks. Under the FIR the statement of the victim was recorded when he was undergoing treatment upon being brought directly from the Place of occurrence but in the deposition it is stated that he first inform the Amharst Street Police Station and thereafter he was bought to hospital. Similar contradictions are also there in the deposition of PW2 and PW3, who are the wife and mother-in-law of defacto complainant.*

(k) *The Medical Officer did not verify and/or corroborate the contents of the Medical Report and the Medical Report admittedly does not contain the word 'fracture' and during cross examination said Medical Officer admitted such injuries sustained by the victim could have happened from a fall on any hard surface and that he had no personal knowledge regarding the cause of injury.*

(l) *The PW5 who is a Medical Officer and operated victim on 02.04.2010 deposed regarding his diagnosis of the injury after the victim's hospitalization on 29.03.2010 i.e. after eight days of the alleged incident and in his deposition he stated that upon examination he found that injury sustained by the victim was not too old and rather was a new injury*

(m)*Trial Court did not take into consideration as to how the medical repot allegedly obtained from the medical college and hospital turned up in the case diary without there being any seizure list to show it seizure.*

(n) *The appellate Court upheld the conviction order holding that 'the chance of attack by this accused persons cannot be ruled out' which itself suggest that the judgment of conviction and order of sentence are based on surmise and conjectures.*

6. Therefore, the point for determination by this court would be whether the courts below were justified in passing the judgment of conviction and order of sentence against the accused persons/petitioners.

7. Learned Trial Court while passed the judgment have scanned the evidence of all the PWs and the injury report and observed as follows:-

"……in fact by way of cross examinations accused persons miserably failed to shake the evidence of PW1 Subir Nag regarding assault by bamboo, iron rod on 21.03.2010 night at 125, Keshab Chandra Sen Street, Kolkata, by dragging him out from his residence in presence of his family member and parents. Defence also failed to shake his evidence that by such assault his right hand was broken, as they failed to shake evidence of PW2 Rani Das regarding assault on Subir Nag on 21.03.2010 night by these accused persons forcibly bringing him out of the room. Evidence of PW3 Kunti Das has also remained unshakened by Defence cross-examination. Rather in cross examination also she told that these accused persons forcibly took Subir Nag out of the room and assaulted him. Defence also failed to shake her evidence that due to such assault right hand of Subir Nag was fractured and he was treated a Medical College and Hospital and Marwari Hospital. PW5 Dr. Adit Dey and PW6 Aloke Jahuri deposed regarding their treatment of Subir Nag subsequently. By way of cross examination accused persons also failed to create any reasonable doubt or suspicion that they did not treat Subir Nag for such injuries……."

8. Thereafter the trial court came to the following conclusion.

"In this case presence at spot and participation of all the accused persons in the crime is evident from depositions of PW1 Subir Nag , PW2 Rani Das, PW3 Kunti Das. By way of cross examinations defence could not shake the same or could not create ay profuse doubt to such evidence There is also no alibi of accused persons in this context on record. Accordingly, following kind observations of Hon'ble Apex Court in AIR 1994 SC 76 it can be safely hold that applicability Section 34of The Penal Code is also well established against these accused persons. As such, after rejecting the unnecessary

embellishment we are left with a logically complete chain of the incident that on 21.03.2010 accused persons in a joint concert forcibly brought out the victim Subir Nag rom his residence in presence of his family members with assault outside on the road leading to his fracture injury on the right hand elbow and other injuries. Soon after the incident he was treated at Medical College and Hospital and complaint was lodged before Police Station without any unnecessary delay within fifteen minutes of the incident.
The accused persons Goutam Saha, Sukumar Roy Chohwdhury, Bablu Sen, Sumit Majumder, Babu nandy and Bappa Majumder, thus, stand convicted i/s.248(2) of Criminal Procedure Code for violation of Section 326/34 of the Penal Code.

9. When the matter came up before the appellate court he also scanned the evidence and the law and affirmed the judgment by making following observation.

"....Consider the submission of both sides. The documents and the oral testimonies are thoroughly perused. I find that in this case only three witnesses including the victim are produced as ocular testimony. From their evidence it has come out that on that date at around 9.30 to 11.00 PM the victim was called from his mother's home by these accused and thereafter he was assaulted and abused by these accused persons. One injury report was prepared on the self-same day from which I find the history of assault, the name of the assailants and also the nature of injury sustained by the victim. It is true that for his fracture injury he was treated later on at Marwari Hospital but the sustenance of fracture injury on that day cannot be disbelieved., it has also come out from the evidence that he not only sustained fracture injury but also sustained cut injury at his left eye, abrasion at left elbow and tenderness at right elbow along with fracture at right elbow. If the said persons would fall on earth/hard substance it may cause fracture injury or abrasion but his injury below the left eye does not suggest the injury cased due to fall on earth as suggested. So surely the cause of injury was different from what was suggested by the defence to the doctor. It is true that in this case there are no other witnesses of that locality to state in favour of prosecution but at the same time it should not be forgotten the time of such incident and thus I think medical evidence (exhibit 4) is vital one to reach to the conclusion that the said person was attacked by those persons and sustained injuries....."

10. Therefore facts remains that FIR was lodged 55 minutes after alleged occurrence, when name of all the petitioners were mentioned as assailants. Injury report also disclosed the name of assailants. Victims wife, his mother in law are the eye witnesses of the occurrence and who also sustained injury, have corroborated the incidents of causing hurt by the accused persons. Both the courts below after scanning evidence of the victim and

two witnesses came to a finding that the petitioners have caused hurt to the victim due to previous animosity.

11. It is well settled that when hurt are caused in furtherance of common object by all accused persons armed with weapon, then even assuming that particular accused was not the author of the injury, it does not exculpate him or that such assailant(s) cannot expect conviction. When it has come from the evidence of eye witnesses that while the complainant was beaten by the accused persons, said eye witnesses came to his rescue, all the accused persons forming an unlawful assembly are liable to be convicted of the offence of causing hurt.

12. The law of interfering with such judgement of affirmation on scanning evidence is well settled. It is to the effect that only in exceptional cases where there are compelling circumstances and when observations are found to be perverse, the High Court can interfere with such order of affirmation. Interference of routine manner where the other view is possible should be avoided unless there are good reasons to interfere. Therefore, I do not find any reasons to interfere the concurrent findings of both the courts below at least to the effect that all the accused persons/petitioners in furtherance of their common intention have caused hurt to the victim. Though the petitioners tried to point out certain discrepancies in the evidence of PWs with that of contents of FIR in connection with place of occurrence, time of occurrence etc. but such minor discrepancies are not material specially considering the facts that the depositions were recorded after long time of occurrence. Furthermore I find that such points were also agitated before

court below and have already been decided against the petitioners and does not call for interference by this Court.

13. Now the question is whether the hurt suffered by the victim can be called as "grievous hurt" caused by the petitioners in furtherance of common object. Before going further let me reproduce section 319 and 320 of the IPC

> ***319. Hurt.—***
>
> *Whoever causes bodily pain, disease or infirmity to any person is said to cause hurt.*
>
> ***320. Grievous hurt.—***
>
> *The following kinds of hurt only are designated as "grievous":*
> *(First)— Emasculation.*
> *(Secondly)— Permanent privation of the sight of either eye.*
> *(Thirdly)— Permanent privation of the hearing of either ear,*
> *(Fourthly)— Privation of any member or joint.*
> *(Fifthly)— Destruction or permanent impairing of the powers of any member or joint.*
> *(Sixthly)— Permanent disfiguration of the head or face.*
> *(Seventhly)— Fracture or dislocation of a bone or tooth.*
> *(Eighthly)— Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits.*

14. Now in the instant case the petitioners assaulted the victim, which resulted fracture injury and the fact was established by the testimony of injured. There was no possibility of false implication of the accused persons who were held guilty. The injury report written immediate after occurrence at 11 PM on 21.03.2010 by the attending physician clearly reflects that he noted that X-Ray of right elbow shows fracture at right elbow. Said document has been marked as a whole as exhibit 4 without objection. Concerned doctor faced the dock as PW4. Victim thereafter had to undergo surgical operation and was discharged from hospital on 13th April, 2010 as appearing from the evidence of Medical Officer namely PW6. Therefore, from the injury report and evidence of concerned doctor, it is clear that the

present hurt attracts seventh category of grievous hurt i.e. fracture of a bone and also attracts eighth category of grievous hurt which states that any hurt which endangers life or which causes the sufferer to be during the space of 20 days in severely bodily pain or unable to follow his ordinary pursuit. In the instant case the hurt was caused on 21.03.2010 and the victim was discharged on 13.04.2010 and thereby he was unable to follow his ordinary pursuit for more than twenty days. Therefore, there appears to be no scope also to interfere with the observation of the courts below that the hurt caused by the petitioners to the victim was a grievous hurt.

15. Now in order to punish the offenders under section 326 IPC, it is not only sufficient to show that the accused persons caused grievous hurt voluntarily with the knowledge that thereby they were likely to cause hurt or grievous hurt to the victim but also the prosecution is required to show that the assailants has caused grievous hurt by means of any of the following.

(a) By any instrument of shooting, stabbing or cutting;

(b) By any instrument, if used as a weapon of offence likely to cause death;

(c) By fire or heated substance;

(d) By poisonous or corrosive substance;

(e) By explosive substance;

(f) By any substance deleterious to the human body to inhale or swallow;

(g) By means of any animal.

16. In the instant case from the FIR, evidence adduced by the complainant and the eye witnesses, history of assault, it clearly reflects that

prosecution case all along is that the accused persons assaulted the victim by bamboo stick (lathi) rod etc. and the grievous injury i.e. fracture was caused at the right elbow of the victim. From the definition of weapon of offence under section 326 it is clear that the instrument of offence must be one, not which is liable but which is likely to cause death, the instrument uses must be one of which one can predicate that the probable result of its use will be by virtue of its very nature, death. It must be inherent in the nature, of the instrument used, the death is likely to ensue (para 15(b) as above).

17. Here the grievous injury at right elbow of the victim resulted from a blow with a bamboo stick or rod. The blow with the help of bamboo stick or rod causing grievous injury at right elbow can hardly be said to cause death. To attract section 326 the instrument by virtue of its very nature should be such that one should reasonably predicate that by its use as weapon of offence, death would be probable and it is something inherent in the instrument which rendered death probable.

18. That being the true import of the word *'likely'* used in section 326 the bamboo stick or rod said to have been used for assault of the victim at right elbow in the instant case cannot be said to be by its very nature an instrument "likely to cause death" within the purview of that section. That aspect of the matter has not been taken care of by both the courts below, while they had put the law with the facts and circumstances of the case.

19. Therefore, though I am agreeable to the observation made by the courts below that the accused persons/petitioners caused grievous hurt to the victim but such grievous hurt was since not caused by dangerous

weapon, the conviction of the petitioners is altered to one under section 325 of Indian Penal code and thereby they are sentenced to suffer simply imprisonment for six months along with fine of Rs. 5000/- (five thousand only) to each of the convicted persons/petitioners in default another simple imprisonment for two months for each convict/petitioners.

20. The petitioners are directed to surrender before the trial court within a period of 4 weeks from the date of this judgment to serve out the sentence in default the court below will be at liberty to take all necessary steps including issuance of warrant of arrest against petitioner(s). to secure their attendance before the trial court to serve out sentence

21. CRR 3174 of 2018 along with connected Applications are thus stands disposed of.

Urgent Xerox certified photocopies of this Judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(DR. AJOY KUMAR MUKHERJEE, J.)