



District : Cooch Behar

IN THE COURT OF ADDITIONAL DISTRICT & SESSIONS JUDGE,
2nd COURT, COOCH BEHAR

Present : **Smt. Mandakranta Saha, A.D.J.**
2nd Court (POCSO), Cooch Behar,
JO Code : WB00825

Criminal Appeal No. 08 of 2024
CIS Registration No. 08 of 2024
CNR No. WBCB01-002128-2024

Majnu Haque,
Son of Md. Manchur Ali Mia,
of Kaminirghat, P.S. - Kotwali,
Dist. Cooch Behar,

..... Appellant

Vs.

- 1. State of West Bengal**
represented by District Magistrate, Cooch Behar
2. Dulal Chandra Das (legal heirs of deceased Tarakanta Das)
3. Dipen Chandra Das (legal heirs of deceased Tarakanta Das)

..... Respondent

[Judgment delivered on – 08.07.2026]

J U D G M E N T

This appeal is under section 374 of the Criminal Procedure, 1973 against the impugned judgment dated 19.07.2024 passed by the Ld. Judicial Magistrate, 3rd Court, Sadar, Cooch Behar in G.R. Case No. 50 of 2007.

The Appellant case is, in brief, is that the the defacto complainant (respondent no. 2) of the G.R. Case No. 50 of 2007 has filed a case G.R. Case No. 50 of 2007, being Kotwali PS. Case No.

46/07 dated 29.01.2007 u/s 341/325/326/34 of IPC falsely implicating the present appellant and other five persons. Respondent No. 2 falsely alleging that appellant and other accused persons has attacked at the house of the defacto complainant and when Rajeswar Das and Dharani @ Dhana Das tried to rescue the complainant, the appellant and others attacked upon them by brutal blows of sword and others causing injuries to them. Thereafter, defacto complainant (Respondent No. 2) lodged complaint at Kotwali PS, Cooch Behar. Police after investigation, submitted charge-sheet u/s 341/325/34 of I.P.C. and the case was transferred to the Court of Ld. Judicial Magistrate, 3rd Court, Sadar, Cooch Behar for trial. Prosecution adduced 12 witnesses in support of prosecution case and they were cross-examined by the defence counsel on behalf of accused persons. Thereafter, Ld. Judicial Magistrate, 3rd Court, Sadar, Cooch Behar passed impugned Judgment and Order of Conviction and Sentence dated 19.07.2024 in G.R. Case No. 50/2007 dated 29.01.2007 (arising out of Kotwali PS. Case No. 46/07 3223 dated 29.01.2007).

Being aggrieved by and dissatisfied with the impugned judgment and order dated 19.07.2024, the appellant has preferred the instant appeal.

Point for determination

Whether the impugned Judgment / Order of Conviction and Sentence, dated 19.07.2024, is sustainable in law and facts ?

Decision with reasons

The story of Prosecution case is that the following scuffling during badminton tournament, the house of the complainant has been attacked followed by incidents of assault on the person of Dharani Das @ Dhana, Rajeswar Das resulting into bleeding injuries.

The Ld. Advocate for appellant argued that the Trial Court could not appreciate the oral evidences deposed by the witnesses. There are no independent ocular witness in this case. The injured and complainant are interested witnesses therefore their evidences cannot

be taken into consideration. The Ld advocate further submitted that no persons who have allegedly seen the incident or present at the crowd have been examined as witnesses by the prosecution. Conviction cannot sustain on the testimonies of complainant, injured and medical evidence. He has prayed for acquittal of the accused.

The Ld Advocate has prayed for setting aside of the order of conviction.

The Ld. Special PP submitted that the Ld Trial Judge has right to decided the case but inadequate punishment has been imposed. The Ld. PP has prayed for imposing adequate punishment which would be befitting to the crime committed by the accused.

Perused the Judgment of the Ld. Trial Court as well as Oral and Documentary evidences on record.

The evidence of Complainant(PW1) speaks that the accused persons being armed with lathi and other weapons attacked his residence and damaged the gate of house properties. During the incident Rajeswar Das arrived there, then Majnu Haque with sword assaulted on the shoulder and left hand of Rajeswar Das. To save him Dharani Das @ Dhana came to the spot, the Majnu Haque with the same sword assaulted him for which two fingers of his hand suffered severe injuries. The co-accused persons assaulted Dharani Das. He was taken to hospital for medical treatment.

The cross-examination of PW1 reveals that the badminton tournament took place beside his residence from 9:00 AM till night. The evidence of PW1 further shows that the incident occurred at about 8:30 PM to 9:00 Pm of 28.01.2007. PW1 in cross-examination further shows that the dispute started during the tournament. In course of such dispute, a large chunk of people attacked his residence. During the incident Dharani Das @ Dhana and Rajeswar were at the outer side of the house of PW1. Initially Rajeswar Das was assaulted thereafter, Dhana was subjected to assault. Several

people gathered there. From the place of occurrence both injured were taken to hospital.

The cross-examination of PW1 does not elicit any cogent reliable circumstances showing that these accused persons were never present at the place of occurrence, nor any such incident as deposed by PW1 ever occurred. Furthermore, the cross-examination of PW1 clearly shows the presence Dhana @ Dharani and Rajeswar Das at the outer side of house property of the complainant while the accused persons attacked his residence. The presence of the injured persons and the accused persons at the outer residence of the PW1 are well established by cross-examination of PW1. There is nothing available from the evidence of PW1 to impeach his credibility as witness. No previous enmity or hostility of PW1 with the accused persons are available from oral and documentary evidences.

Rajeswar Das PW2 is one of the injured person. He deposed that on 28.02.2007 at 9:00 PM a dispute started regarding a tournament. However, there was hue and cry at the residence of complainant/PW1. PW2 was then sleeping. On hearing hue and cry, he reached the residence of PW1 and found several persons attacked the house of his brother/PW1. Therefore, PW2 tried to resist the mob for which Majnu Haque with a sword gave a blow on his forehead and left hand. PW2 on receiving assault fell on ground. At the relevant time, Dhana Das, his nephew tried to save him, then Majnu Haque gave another blow on the person of his nephew. The later therefore, suffered injuries on hand and two fingers sustained cut injuries. PW2 further deposed that accused persons assaulted him on the road situated in front of residence of PW1.

In cross-examination, PW2 deposed that his residence is situated adjacent to the house of PW1. The badminton tournament was going on at a distance of 500 meters from his residence. Suddenly, he found 4 to 5 accused persons reached and attacked the residence of PW1. On receiving injuries due to assault by Majnu

Haque PW2 sustained bleeding injuries on his person. He further stated that he woke up from sleep on hearing hue and cry and on reaching the residence of PW1 he found that the accused persons were pelting stones towards the residence of complainant.

In cross-examination, PW2 further deposed that Majnu Haque assaulted Dharani Das with sword.

Dharani Das PW5 is another injured person. He stated that at about 9:00 PM there was hue and cry at the residence of complainant. On hearing such dispute he went to the residence of PW1 and found that the accused persons were pelting stones towards the residence of complainant. PW5 further deposed that he further found that Rajeswar Das was making groaning sound in front of the residence of PW1. Therefore, PW5 tried pickup Rajeswar Das from the ground, then Majnu Haque with a sword assaulted on his hand for which the skin of palm of his hand was about to fell on earth. PW5 therefore, tried to run away then Majnu Haque was chasing him. While running to save himself from Majnu Haque PW5 fell on ground and became unconscious he was taken to MJN Medical College and Hospital, Cooch Behar where a treatment was done at OT. He was referred to Siliguri for further treatment. He was shifted to several hospitals for his treatment. After 20 days since the incident, it was found that palm of his hand has suffered infection, therefore plastic surgery was done for implanting muscles from his waist region to his palm. PW5 was unable to do any work properly with his left hand due to pain. Thereafter, disability certificate was issued in his favour by MJN Medical College and Hospital, Cooch Behar.

In cross-examination of PW5 shows that he has no knowledge of the subject matter of the dispute, however on reaching the residence of PW1, the former found that accused persons have been pelting stones towards the residence of complainant as well as abusing in filthy words. He further stated that before occurrence of the incident, he had good relationship with Majnu Haque.

Oral evidences of PW2 and PW5 thoroughly corroborate each other versions as well as the prosecution case. The testimonies of these two witnesses shows their presence at the place of occurrence during the incident of the attack on the house of the complainant. Testimonies of PW2 and PW5 further show that initially Rajeswar Das suffered assault but once PW5 tried to save him/PW2, Majnu Haque assaulted PW5. The evidence of PW5 further shows that he found PW2 lying on ground and making groaning sound. In other word such evidence of PW5 shows that immediately before the incident of occurred on his person, Rajeswar Das has already suffered injuries and fell on ground. Again the evidence of Rajeswar Das speaks that once Dhana Das tried to rescue him, accused person Majnu Haque gave another blow with his sword on the person of PW5. The cross-examination of these two witnesses fortify the evidences adduced by them in their examination-in-chief. On the contrary, the cross-examinations of PW2 and PW5 show that there was no hostility or enmity with Majnu Haque before the incident. They admitted in cross-examination that till occurrence of the incident, they had cordial relationship with accused Majnu Haque. Thus, the question of existence of previous enmity and hostility is ruled out from their admission in cross-examination. Further more, the cross-examination of PW5 does not revealed any cogent circumstance which would show on that very day PW5 was located at some other place but not at the place of occurrence. There is no iota of material available from the cross-examinations of PW2 and PW5 in order to raise doubt and suspicion with regard to the genuineness of their oral evidences. There is nothing available on record to raise doubt and suspicion of the incident deposed by PW2 and PW5.

Medico-legal evidence as found from testimony of PW11 coupled with the bed head ticket (Ext. P-6) it is found that Dhana Das has sustained cut injury on the wrist with injury on tendon and bones. His injuries were bandaged by Emergency Medical Staff. This piece of Medico-legal evidence show the existence of injury on the wrist region of PW5. Again evidence of PW10 and Exhibit P-5 show that Dhana Das sustained cut injury on right forearm with radial artery injury for which

he was admitted in hospital. The patient suffered bleeding as a result pressure badges were given in the region of cut injuries. Furthermore, PW12 and Ext. P-7 (Medico-legal evidence) shows that Dharani Das was admitted in Ananda Lok Hospital Siliguri on 29.01.2007, PW12 gave treatment for vascular injury of right forearm. Thereafter, surgery of the patient was done at 8:30 AM. There was no major vascular injury on the person of PW5, but the injured suffered fracture of small bones of right forearm as well as tendon injuries. PW12 proved the discharged summary. The patient was referred to hand surgeon for better management of injuries.

Evidence of another medical witness PW9 as well as bedhead ticket Ext. P-6 revealed that on 28.01.2007 Dhana Das was admitted in the male surgical ward of MJN Medical College and Hospital, Cooch Behar under Dr. Tarun Pal/PW9. He adduced that the patient had history of injury in the wrist region with involvement of tendon and bones. The patient was referred to orthopedic surgeon. He was referred to North Bengal Medical College and Hospital, Siliguri. Evidence of PW9 further shows that Dr. D.B., Sarkar, Dr. Sukhdeb Chandra Roy and Dr. Shoba Rani Mondal attended the patient.

The aforesaid medico-legal evidences show that Dharani Das @ Dhana suffered grievous injuries on his wrist of right hand which resulted into fractures of bones as well as tendon injuries. Fracture of bone of the right arm of Dharani Das is proved by medico-legal evidences. There is no iota of material available on record showing that the person named as Dharani Das @ Dhana in medical document is different person from PW5. The existence of grievous injuries on the person of PW5 is well established from above referred medico-legal evidences. Undoubtedly, such medico-legal evidences speak that the injuries of fractures of bones come within the purview of provision u/s 320 of IPC which defines the term grievous hurt.

PW3 stated in evidence that on hearing hue and cry from the residence of complainant, he with his son went towards the residence of PW1. PW3 saw that the accused persons were pelting stones towards the

residence of PW1. He further saw that Dharani Das and Rajeswar Das sustained bleeding injuries during that incident. They fell on road. PW3 later on heard that Majnu Haque, Jamir Ali assaulted them. PW3 also stated that Dharani Das lost capacity to do work.

In cross-examination, PW3 stated that on reaching near the PO he saw gathering of 100 to 150 persons. His residence is situated beside the residence of complainant. Such testimonies of PW3 show his presence at the place of occurrence during the alleged incident. However, the trend of evidences of PW3 show that he is in the nature of avoiding to tell truth before the Court with regard to the incident involved in this case. Despite, such attempt of avoidance of PW3 it clearly available from his testimonies that Majnu Haque and co-accused person were present in front of the house of complainant and both injured persons were found lying in injured conditions on the road in front of the said house. Thus, cross-examination of PW3 prove the place of occurrence as well as presence of injured persons and accused person at the place of occurrence during the incident. There is nothing available from testimony of PW3 showing that Majnu Haque and co-accused persons were mere mute spectators of the incident involved in this case. The credibility of this witness is not shaken during cross-examination.

Tarani Kanta Das PW4 deposed that on 28.01.2007 at about 9:00 PM to 9:30 Pm on hearing hue and cry he went towards the residence of complainant and found suffering of bleeding on hand of Dharani Kanta Das. The wrist portion of Dharani Das suffered bleeding injuries. He was shouting by saying 'Bachao Bachao' therefore, he was taken to hospital. Rajeswar Das was also taken to hospital, because he suffered injuries on forehead and hand. PW4 further stated that he heard that the accused persons attacked the house of complainant and pelted stones.

In cross-examination of PW4 no cogent material is available to controvert the testimonies recorded in examination-in-chief. The veracity of the witness is not under challenged. except, putting denial to PW4. There is no other positive cross-examination to establish that

PW4 was not present at the place of occurrence during the alleged incident.

Gopal Das PW6 deposed that he does not know Majnu Haque, however he stated that in course of dispute in badminton tournament Dharani Das sustained injury on wrist due to assault by Majnu Haque.

Madhab Das PW7 deposed that at about 7:00 PM there was dispute over badminton tournament. Later on he heard that Dharani suffered injuries on his hand for which he was taken to hospital.

These two witnesses are post occurrences witnesses. However, their testimonies shows that in connection with the dispute over badminton tournament Majnu Haque assaulted Dharani Das for which later suffered bleeding injuries, then taken to hospital.

Perused the evidences of investigating officers (PW8). His evidence show some latches committed by him during the course of investigation.

On evaluating the evidences of prosecution witnesses it is clearly proved that during occurrence of incident involved in this case, the injured persons as well as the accused persons were present at the place of occurrence. The Rough Sketch Map with Index (Ext. P-3 and P-4) proved the places of occurrence as well as corroborated the oral evidences of witnesses with regard to the area where the incident occurred. Ext. P-3 and P-4 corroborate oral evidences of PW1, PW2, PW5 and other Public witnesses.

There is no reliable circumstances available from oral and documentary evidence that these witnesses with some ulterior motive deposed false evidence against the accused persons. No case is available to establish that by securing punishment of accused persons, the complainant and the injured persons would acquire financial or other kind of benefit. There is no case found from the evidences of witnesses showing that due to previous hostilities the witnesses have deposed false evidence entangling the accused persons. On the other hand the oral evidence of PW1, PW2, PW5 are clear and direct. The corroborative

witnesses also deposed about the occurrence of the incident of assault resulting into injuries on the persons of PW2 and PW5. Furthermore, oral evidences of these witnesses are duly corroborated by the medico-legal evidences. It is true, that no medico-legal evidence in connection with treatment of PW2 is produced in evidence by prosecution. Despite of non-availability of medical evidence, the oral evidences of Public witnesses are loud and clear that PW2 suffered injuries on his forehead and left hand due to assault with sword by Majnu Haque. It is reiterated that medico-legal evidences established that PW5 suffered grievous injuries on his person which comes within the ambit of section 320 of IPC.

Charge u/s 326/448/34 I.P.C is framed against the accused persons. The Ld. Trial Court rightly evaluated the evidences on record. The presence of accused person namely Majnu Haque at the place of occurrence is available from oral evidences of PW1, PW2, PW5, PW3. However, the presence of each of the accused persons with Majnu Haque is not clearly visible from oral evidences of these witnesses.

The Ld. Trial Judge has rightly decided that lacuna of investigating agency cannot reject or outweigh the oral evidences of ocular witnesses which are found to be direct and reliable.

However, the Ld. Trial Judge has not imposed proper punishment befitting to the injuries suffered by the injured. Moreover, the quantum of punishment is found to be meager. Supreme Court in a decision reported in **(1995) 6 SCC page 230** laid down that *courts have obligation to impose appropriate punishment as to restrain to the cry of society for justice against criminals. Undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence for the efficacy of law. Abhorrence of crime needs reflection through the court's verdict in the measure of punishment. The courts must not only keep in view the rights of criminal but also rights of the injured of the crime and the society at large while considering imposition of appropriate punishment.*

In view of the discussion made above, the impugned judgment/order requires modification.

The appeal therefore fails.

The memo of appeal is sufficiently stamped.

Hence, it is,

ORDERED

That the Criminal Appeal No. 08 of 2024 is, thus, considered and dismissed on contest without cost.

Judgment and Order of Conviction and Sentence, dated 19.07.2024 in G.R. Case No. 50/2007 dated 29.01.2007 is hereby affirmed with modification.

The accused person namely Majnu Haque is convicted u/s 248(2) of Cr.P.C for committing offence u/s 326 of Indian Penal Code. He is sentenced to suffer to rigorous imprisonment for 3 & 1/2 years and to pay fine of Rs 25000/-. In default of payment of fine of Rs 25000/- the convict shall suffer simple imprisonment for 02 months. Out of the total amount of fine, Rs.20,000/- shall be payable as compensation to the injured. The remaining sum of Rs.5000/- shall be applied in defraying the expenses incurred for prosecution.

Convict namely Majnu Haque is directed to surrender before the trial court by 30.08.2026, failing which the Ld. Trial Judge shall issue W/A for securing your appearance.

In case the convict wants to challenge the judgment and order of this court, he may do the same through DLSA Cooch Behar.

Let a copy of this Judgment along with L.C.R. be sent down to the Ld. Trial Court forthwith for information and necessary action.

Typed & corrected by me,

Sd/-

Addl.Dist.Judge,
2nd Court, (POCSO)
CoochBehar.

Sd/-

Additional District Judge,
2nd Court, (POCSO)
Cooch Behar.