



IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION

APPELLATE SIDE

Present:-

HON'BLE JUSTICE CHAITALI CHATTERJEE DAS.

CRA 650 OF 2009

HARA SK. & ORS.

VS

STATE OF WEST BENGAL

For the Appellants : Mr. Prabir Majumder, Adv.
Ms. Sangeeta Chakraborty, Adv.
Ms. Anindita Kundu, Adv.

For the State : Mr. Avishek Sinha, Adv.

Last heard on : 14.07.2025

Judgement on : 29.08.2025

CHAITALI CHATTERJEE DAS, J. :-

1. By filing this criminal appeal under Section 374 (2) of the Code of Criminal Procedure challenge has been made against the judgement dated 27th August, 2009 and order of conviction dated 28th August, 2009 passed by the Learned Additional Sessions Judge, Fast Track Court, Krishnanagar, Nadia in connection with sessions trial no Vi (11) 2007 arising out of sessions case no 38 (12) 2006, convicting the appellants for commission of offence punishable under Section 307/34 of the Indian Penal Code and sentencing them to suffer Rigorous Imprisonment for 4 years and to pay a fine of Rs. 500/- each in



default to suffer simple imprisonment for one month for the offence punishable under Section 307 /34 of the Indian Penal Code.

- 2.** The prosecution case was launched on the basis of a complaint lodged by one Islam Mallik, the de-facto complainant against the present appellants alleging that on 26th November, 2005, Saturday at about 5.30 P.M. his son one Samsul Mallik with his brother Manirul Mallik were proceeding towards ferry ghat to call from Akbar's telephone booth. At that point time the present appellants, Khalek Sk., Din Mahammed, Hara Sk., Lalan Sk., Rohit Sk. obstructed the path of his son and Bhaipo near the house of Din Mohammed armed with ramdah a (big chopper) and "hasua (big sickle) (sharp cutting weapon), when his son raised protest the aforesaid persons hacked his son on his neck with the ramdah with an intention to kill him, as a result he sustained a deep cut neck injury as well as bleeding injury. He further alleged that his Bhaipo Manirul Mallick was repeatedly hacked on the neck, head and different parts of the body and was seriously injured. After hearing shouts and screaming the de-facto complainant and some other people rushed over there and the accused persons fled away and then both the injured got admitted at Shaktinagar Hospital in a serious condition. The de-facto complainant also explained the delay in lodging the FIR on 28th November, 2005 as he was busy making arrangement for treatment of the injured. The Chapra P.S. case no 260 dated 29th November, 2005 under Section 341/324/326/307/34 IPC started and after completion of the investigation the I.O. submitted the charge-sheet on 30th December, 2005 against the 5 accused persons. Subsequently, the case was transferred before the Court of Additional District and Sessions



Judge, Fast Tract Court iv, Krishnanagar, Nadia for trial being exclusively triable by a Sessions Court on commitment.

The Learned Court after assessing the evidences adduced by the prosecution witnesses examining the accused persons under Section 313 of Cr.Pc and also the exhibited documents placed before the Court passed the order of conviction against the present appellant namely Hara Sk. Lalon Sk., Rohit Sk. and Khalek Sk. under Section 307/34 IPC and one accused Din Mohammad was found not guilty and was discharged from his bail bond. Being aggrieved thereby the instant appeal has been filed.

Submissions

3. It is submitted on behalf of the Learned Advocate representing the appellants that 5 persons were named in the FIR which was lodged at the instance of the de-facto complainant and after completion of investigation the charge-sheet was submitted against all the five persons for commission of the same offence but the Learned Trial Court passed the order of conviction against 1 to 4 and acquitted Din Mohammad who was absolutely similarly circumstanced with the present accused persons. The first point taken by the Learned Advocate that there cannot be a pick and choose process and if on the basis of certain evidence adduced against all the accused persons 4 accused can be convicted, the order of acquittal cannot be passed against one of the accused and therefore at the outset the said judgement is perverse and is liable to be set aside. In this regard he relied upon a decision reported in¹ **Javed Shaukat Ali Qureshi vs State of Gujrat** where it was held by the Supreme court where

¹ 2023 (9) SCC 164



there is similar or identical evidence of eye witness against two accused by ascribing them same or similar role ,the Court cannot convict one accused and acquit other. In such cases of both accused will be governed by principal of parity. Further argued that the Learned Judge acquitted him with the observation that he is an old man and despite his name being uttered by P.W. 3 being the injured victims as well as 9 witnesses which results in “two views of an incident” and prosecution case cannot have multiple version as was held by Supreme Court in ²**Ram Singh State of UP** (2004) 4 SCC 208, accordingly prayed for setting aside the order of conviction.

4. It is further assailed before this court that date of incident took place as alleged on November 26, 2005 at about 5. 30 P.M. when the FIR was lodged on 30th June.2009. Subsequently there was further delay in sending the FIR to the jurisdictional Court.
5. It is further contended that the ground stated about the delay in lodging the FIR that he was busy with the treatment of the accused persons have got no basis in view of the fact that the injured were brought home and he came to know about the names of the assailants from the injured however P.W1 and P.W. 12 had to wait for 3 days to know the names of assailants .That apart P.W. 9 visited the police station on 27.11.2005 and his statement was recorded where he put his signature but that statement was not treated as an F.I.R. Learned Advocate has relied upon a decision of Supreme Court in ³**Ishwar Singh vs State of UP** paragraph 5 in this regard to substantiate that Section

² (2004) 4 SCC 2008

³ 1976(4) SCC 355



154 of the Code of Criminal Procedure 1973 deals with the information regarding cognizable offence.

6. It is further argued both the Doctors who adduced evidence before the Court have categorically deposed that none of the injured disclosed the name of the assailant before them and there is no document to show the names of the assailant by whom the persons were assaulted as alleged. No offending weapon was recovered and I.O did not find the same. The investigation was purely perfunctory.
7. Lastly it is argued that in examination of the accused person under section 313 of Cr.Pc. the questions must be precise and specific but in this case all the questions were long and reiteration of the depositions. In this regard Learned Advocate relied upon the decision reported in (1) 2023 SCC online SC 609, Raj Kumar vs State of NCT Delhi (2) Asraf Ali vs State of Assam (2008) 16 SCC,328 (3) Harnam Singh vs State (Delhi Administration) 1976 (2) (SCC 819) (4) Om Prakash @ Israyel @ Raju @Raju Das vs Union of India and another (2025) SCC online 47.
8. Learned Prosecution on the other hand supported the conviction of the Appellants and argued that the Learned Trial Court have dealt with the evidences and the arguments and hence do not suffer from any infirmities for which any interference is required.
9. It is further argued that admittedly the delay in lodging the FIR has been duly explained by the de-facto complainant being busy with the treatment of his son who sustained severe injuries on account of the assault by the accused persons. P.W. 1, the de-facto complainant and the injured ascribed the role of each of the accused and the nature of weapon used which fully corroborates



with the Medical Report as proved by the doctors who treated the patient/ injured victims and the nature of injury sustained attracts all the ingredients of section 307 as could have been fatal. So far the acquittal of Din Mohammad total clean cheat was not given but he was only extended with the benefit of doubt for no specific overt act. No appeal has been filed by prosecution against such order of acquittal. It is argued the prosecution that the unimpeached testimonies of the injured together with the medical report is sufficient to prove the case against the present appellant beyond the shadow of all reasonable doubt and the cause of injury was with sharp cutting weapons and hence non recovery of weapon cannot absolve the accused persons from the offence committed by them which is otherwise proved beyond the shadow of all reasonable doubts hence the order of conviction as passed should be affirmed by this Court. The Prosecution relied upon the decisions of the Supreme Court reported in⁴ ***Rohtas and anr vs State of Haryana*** where it was observed that acquittal of co-accused on wrong belief is not necessarily be extended to the rest against whom clinching evidences exists. Further relied upon the decision reported in ⁵***Manjit Singh vs State of Punjab*** where also it was observed that Acquittal of co-accused per se is not sufficient to result in acquittal of other accused. Accordingly prayed for dismissal of the Appeal.

Analysis

10. Having heard both the Learned Counsels and also going through the materials on record the moot question which now falls for consideration is that as to whether the Learned Court rightly passed the order of conviction against

⁴ (2019) 10 SCC 554

⁵ (2019) 8 SCC 529



the 4 accused persons and discharged one accused person when the complaint was lodged against all the accused persons and or whether the prosecution has been able to prove the case beyond the shadow of all reasonable doubt.

- 11.** Since the first point espoused by the Learned Counsel about incorrect and perverse decision taken by court by treating the appellants differently than the accused acquitted, it is necessary to deal with that point at the outset. In this case prosecution has adduced as many as 12 witnesses and proved the document being marked with exhibit 1 to exhibit 6.
- 12.** According to P.W 1/de-facto complainant the occurrence took place on November 26, 2005 at about 5.30 P.M. in the evening on the path near the house of Din Mohammad (the accused got acquitted) at their village Dines Nagar when the accused persons as named in the F.I.R attacked his nephew and son with ramdah and other weapon and it caused serious hurt to his son and nephew. The witness specifically took the name of Hara and Lalon who caused serious injury to his son with ramdah and Khalek and Hara also caused serious wound to his nephew Manirul. He further deposed Lalon and Tinu caused serious injury to his nephew Manirul. They were lying unconscious in Shaktinagar Hospital and after they regain sense the de-facto complainant came to know the name of the assailant from the injured .In his cross-examination he averred presence of many villagers but he failed to recollect all their names however he took the name of Mojammel , Abdul, Panchayat member Tayeb. He came to learn the name of the assailant from his son Msadul.
- 13.** P.W. 3 Monirul one of the injured and victim to the incident and also a close relative of the de-facto complainant deposed that the incident happened near



the house of Din Mohammad on 26th of November, 2005 at 5.30 P.M. when he ,Masadul and Mohidul was going to ferry ghat for the purpose of telephone. They found 5 accused persons sitting near the house of Din Mahammed and then a hot altercation took place over singing a hindi song and after that the 5 accused persons attacked him and Masadul with Hasua. They struck on his left hand, left leg, left wrist and on his neck. He received serious bleeding cut injury. He further deposed that Masadul tried to save him when they also assaulted him on the neck with hasua and dao and as a result Masadul fell down and became unconscious. Farjan and Saidul and others took them to their house in injured condition then both of them were admitted at Shaktinagar Hospital.

14. P.W. 5 the other injured, Masadul Mallick son of the de-facto complainant and brother of Monirul deposed that when he, Monirul and one Mosidul were going towards the ferry ghat for the purpose of telephone in a telephone booth then they found near the house of Din Mohammad accused Khalek, Hara, Lalon Rohit and Din Mohammad sitting there and they rebuked the present witness and others as they were singing a Hindi film song and a hot altercation followed by scuffling took place. After that five accused person started assaulting his cousin Monirul with ram dao and hasua and then this witness tried to save Manirul then Hara caused him serious hurt on his neck with a weapon called (chanch) Dau. Lalom struck on his left ear with hasua and the injury was serious and he fell down and became senseless. It is his testimony that the accused persons attacked him with an intention to commit murder.

15. P.W 6 Mohidul whose name was not mentioned in the F.I.R claimed to be present and injured deposed when he, Masadul and Monirul was proceeding



towards ferry ghat Hara Khalek, Hara, Lalon Sk. and Rohit were standing near the house of Din Mohammad and Monirul was singing a hindi song which was objected to by Hara and then Hara abused with indecent language and started assaulting Monirul and on seeing this this witness ran away from the place . He further deposed that Hara assaulted Mosidul with Dao who also fled away after receiving injury .Later he came to know that Monirul received injury on his left elbow joint . This witness while identifying the accused persons in court said that he did not see Din Mohammad at the spot.

- 16.** The first interesting point which can be found from the above testimonies of the injured cum eye witnesses as well as the de-facto complainant that the de-facto took the name of one Samsul Mallick and Monirul being his son and bhaipo who were injured in the written complaint and in his deposition took the name of his son as Masadul but nowhere stated that Masadul and Samsul was one and same person. The prosecution also did not put any suggestion to that extent. P.W. 3 Monirul said he alongwith his cousin Masadul and one Mohidul were going towards ferry-ghat but the attack was upon him and Masadul by all the accused persons. He also said Din Mohammad was sitting near his house along with other 4 accused persons but did not say any specific overt act against him. P.W 5 Masadul son of the de-facto complainant took the name of all 5 accused persons who were sitting near the house of Din Mohammad and that all five persons assaulted his cousin Monirul with ram dao and hasua . Both Monirul and Masadul though took the name of Mohidul accompanying them but their testimonies remained silent about the injury inflicted upon Mohidul . P.W. 2 the doctor attached to District Hospital Nadia on 26.11.2005 treated one Manirul Mallick aged about



18 years who got admitted under his care with history of assault by a sharp cutting heavy instrument and patient sustained the injuries. P.W. 4 is another Medical Officer cum surgeon of District Hospital Nadia who deposed that on 26th November, 2005 at about 8 P.M. one Masadul Mallick aged about 18 years, was admitted at their hospital with history of physical assault. Therefore the presence of Din Mohammad was denied by only Mohidul who did not sustain injury and fled away seeing the assault made upon Masadul by Hara. In this case P.W 8 one Saiful Mullick deposed and according to his version he heard the hue and cry and came out of his house and found Din Mohammad, Khalek, Hara, Rohit and Lalan striking Monirul and Mosidul and Hara striking on the shoulder of Masidul with Chaanch Dao and rest were causing hurt on Monirul with hasua. He and others took them to the house. In court he identified all the accused persons. This witness though claimed to have witnessed the incident did not take the name of the Mohidul. P.W 7 is Fajjul who took the injured along with one Saiful to their house deposed that Din Mohammad was not seen at the P.O at the time of incident but this witness was declared as hostile as the witness further said after the incident both the injured went to their home and he heard they were shifted to hospital. P.W 8 Saiful on the other hand deposed that he saw Din Mohammad alongwith other accused persons to strike Monirul and Masadul and he corroborates the version of Monirul about taking them to home.

In this contradictory testimonies pertaining to presence of Din Mohammad at the P.O. this Court need to see the reason assigned by the learned court while acquitting said Din Mohammad.



17. The judgement of the learned trial Court reflects that the court doubted the involvement and presence of Din Mohammad as the eye witness Mahidul categorically stated that he was not present though the incident took place in front of the house of said Din Mohammad. The court further took note of the age of Din Mohammad and the other accused persons and observed that he did not belong to the said group of the other 4 accused persons who are much younger than him. More so he was the father of another co-accused and hence benefit of doubt should go in favour of the said accused.

18. In this regard the judgement of supreme court in the case of Javed Shaukat Khan (supra) as has been relied upon by the Mr. Prabir Majumdar the Learned Counsel representing the appellant may be look into . The said case was of unlawful assembly and it was observed by the supreme Court that a “bystander does not make accused member of unlawful assembly unless it is shown by direct or circumstantial evidence that the accused shared the common object of assembly it cannot be presumed that each and every person who has proved to be present near riotous mob at any time or to have joined or left it at any stage during the activities is in law guilty of every act committed from the beginning”. In the instant case the place of occurrence was in front of the house of said Din Mohammad and the version of the injured persons without ascribing any overt act by said Din Mohammad prima facie named as assailants along with all 4 accused persons and also that he was found sitting in front of his house but third eye witness P.W. 6 specifically in his cross denied his presence at the P.O. The version of P.W. 8 did not ascribe a specific role against Din Mohammad excepting that he along with these accused persons were assaulting on the injured. P.W. 7 before he declared hostile also



deposed same as of Mohidul that he was not present at the P.O. These contradictory versions definitely creating a doubt pertaining to his role attributed on the relevant date and time. It is the cardinal principles of criminal jurisprudence that the accused is entitled to the benefit of any reasonable doubt and in such case where possibilities of duality of views arises the possible view in favour of the accused which is nearly probable against him should be accepted .The charge was framed against all the 5 accused under Section 307/34. On perusal of Section 34 of IPC existence of common intention between the participants in a crime is found to be an essential elements and it should be formed during progress of the crime either as a pre- arranged plan or on the spot.

- 19.** On careful consideration of the entire evidence this court also do not find any materials against the said accused to attract Section 34 IPC since the altercation arose over singing a hindi song .Therefore the learned court rightly extended the benefit of doubt and passed the order of acquittal.
- 20.** So far the role of the other accused persons from the evidence of one of the injured /victims and the eye witnesses the specific role is ascribed against the accused which are as follows ;Hara assaulted with chaanch dao on the neck of Masadul ,Lalan struck on his left ear with hasua .Mohidul the eye witness said Hara struck on the shoulder of Masadul with a dao .He came to know later about the injury of Manirul on his left elbow joint .Manirul the injured did not specify the name of assailant who attacked them with which weapon but over all said all the 5 accused persons attacked them with hasua and dao on his left hand and left forearm. So far the other two accused persons are concerned no role is ascribed by any of the witnesses . The defence by way of cross



examination tried to make out a case of political enmity and the also about the teasing of women by the accused persons but failed to establish the same. The incident arose over a very trivial issue of singing of a hindi song but the heated argument between Hara and Monirul turned it into a crime scene with scuffling and assault by sharp cutting weapons. The unimpeached testimonies of prosecution witness being the injured /victim and the other witnesses who witnessed the incident corroborates mostly with the content of F.I.R.

21. The doctor of District Hospital Nadia proved the injury report of Manirul Mallick aged about 18 years who was admitted under his care in the hospital with history of assault by a sharp cutting heavy instrument and patient sustained the injuries which are as follows:

- a) incised injury over thenar eminence of left hand measuring 4 inch x 2inch deep incising skin, muscle and neck of 1st meta carpel bone. Bleeding ++, colour of injury red and injury recent in origine.
- b) Incised injury over middle of left fore arm measuring 6 inch x 2 inch x bone deep incising some extensor tendon; colour of injury was red and was recent in origin.
- c) Incised injury over lateral aspect of left arm measuring 4 inch x 2 inch muscle deep; colour of injury was red and was recent in origin.

According to the testimony of this witness the patient was discharged on December 8, 2005 but this type of injury may cause fatal if the patient is uncared as the injury was grievous with sharp cutting hard substance.



22. The other Medical Officer cum surgeon of District Hospital Nadia who deposed as P.W 4 stated about the injury sustained by Masadul Mallick aged about 18 years who had admitted at their hospital with history of physical assault and then the patient was conscious and he had fresh incised wound over the left side of the neck of 6 inch x 2 x ½, transecting with profuse bleeding and repair was done. He further deposed that injuries were due to sharp cutting weapon and this type of injury may cause fatal to the case of the patient. He further deposed that injuries were due to sharp cutting weapon and this type of injury may cause fatal to the case of the patient. He further found some problem in his left ear and was treated by ENT surgeon. On perusal of bed head ticket of Masadul it is seen that on May 2nd 2005 the injured complained of heaviness in left ear and the doctor did not find any significant abnormality and the patient was discharged on 4th or 5th of December 2005.

23. Therefore from the above evidence the ocular evidence as well as the medical evidence fully corroborates with each other and specially against the accused Hara and Lalon that they assaulted the injured with some sharp cutting weapon but whether they had the intention to kill the injured is to be ascertained from the evidences. Further corroboration can be found from the evidence of P.W.7 Saiful Mullick who saw the accused persons striking upon the injured and Hara caused hurt on the shoulder of Masidul with chaanch dao and rest were causing hurt on Monirul with hasua. This witness along with others took the injured towards home but the credibility of this witness is questionable since he came to the spot after hearing hue and cry and claimed his house near the house of Din Mohammad but in the sketch map the I.O did not show his house either adjacent to the house of Din Mohammad or to the



Place of occurrence. P.W 7 is Faijul whose name was taken by Monirul who took them in their house has been declared as hostile since he deposed that he went near the house of Din Mahammad on the pathway and he found Mosidul and Monirul in injured condition and found blood in the clothes of Manirul, then Then said he did not see Mosidul but later came to know that Mosidul received severe injuries on his neck. This witness identified three accused by name and another by face whom he saw at the P.O. After he declared hostile he denied in his cross examination by prosecution that he was examined by the police. P.W 9 Khadem Mallick the father of Monirul deposed that he got the information about the incident from Faijul and Saidul .

24. In this case no offending weapon was recovered and the I.O only said he searched for the weapon but did not find the same. The seizure list proves the wearing apparel were bloodstained and were handed over to the I.O where the P.W 9 signed. The other infirmities raised by the appellants pertains to lodging of F.I.R. Section 157 Cr.Pc. require the first information report to be sent forthwith to the Magistrate competent to take cognizance of the offence and any delay without an explanation would provide a legitimate basis to suspect the possibilities of embellishment and improvement by the prosecution. In this regard reliance has been placed in the decision of ***Ishwar Singh v State of Uttar Pradesh***⁶. On perusal of the said paragraph 5 of the judgement it transpires that in the F.I.R nothing was mentioned about the settlement to give effect of which Ishwar Singh invited some people to his house which was stated before the court while adducing evidence and the said variations were not considered as minor discrepancies and hence observed that the evidence

⁶ 1976 (4) SCC 355



of eye witness cannot be accepted on the face value .In this case the injured/victim corroborated the prosecution case which further corroborated by the medical evidences and the testimonies of the defacto complainant and the injured could not be demolished.

- 25.** In the case of **Javed Shaukat Ali (supra)** the Supreme Court took note of the decision of 3 Hon'ble judges of Supreme Court in **Vadivelu Thevar vs State of Madras**⁷ where it was observed that as a general rule a court can and may act on the testimony of a single witness though uncorroborated. One credible witness outweighs the testimony of a number of other witnesses of indifferent character. In this case two injured persons and a third eyewitness accompanying the two injured have adduced evidence and further corroborating evidence has come from two other witnesses whose presence at the P.O is not disputed. The lacuna on the part of investigating authority is apparent as the I.O did not make an effort to recover the offending weapon or to send the wearing apparels to the Forensic laboratory but the accused persons cannot expect the benefit of faulty investigation when other trustworthy credible information exists against them.
- 26.** Fact remains there will be variations in the evidence of the witnesses but while analysing the court must not decipher the minor variations on the touchstone of any unrealistic views. So the deficiencies as pointed out by the learned senior advocate Mr. Majumdar appears to be not so significant to reject the credible evidences adduced by the prosecution witnesses.

⁷ 1957 SCC online SCC 13



27. In order to ascertain as to whether the case attracts the ingredients of Section 307 it is necessary to look into the relevant provision. Section 307 reads as follows:-

307. Attempt to murder.- Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life, or to such punishment as is hereinbefore mentioned.

So Section 307 IPC requires that the act must be done with such intention or knowledge, or done under such circumstances that if death be caused by that act the offence of murder will emerge and such intention can be deducted or inferred from the other factors like nature of weapon used, the place where the injuries were inflicted, nature of injury caused.

28. In the instant case the nature of weapon was not recovered but the injury report speaks of sharp cutting weapon. The nature of injury inflicted upon the neck of the injured Masadul alleged to be inflicted with chaanch dao by Hara Sk. The injury report of Msadul describes the injury over left side of neck is 6 inch x 2 x ½ inches transecting other muscles with profuse bleeding and repair was done. The injury report of Manirul shows the injury was on the left arm, forearm but not on neck. Masadul said Lalan hit him in his left ear with



hasua but injury report only said that he felt heaviness in his left ear but on clinical examination nothing significant was found. However Masadul was discharged on December 4, 2005 and Monirul was discharged on 8.12.05 .The witness stated about his difficulty in left side of his forehead and cannot lift left arm comfortably which means the injury was permanent in nature. The clinching evidence are found against the appellant No. 1 Hara Sk. for commission of the offence of voluntary causing hurt and hence found guilty of the offence committed and hence is liable to be convicted as rightly observed by the Learned Trial Court only.

29. The evidence of all the vital witnesses unequivocally portrays the singing of a hindi song triggered the parties to an hot altercation followed by scuffling and assault and all the parties were almost within the age group of either teen age or just crossed such age so it is not proved the incident was pre-planned or rearranged but happened on a spur of a moment but the injury was in the vital part of the body. Hence from careful scrutiny of the evidences this Court is unable to accept that the prosecution was able to prove the ingredients to attract 307 IPC but certainly the hurt was caused by sharp cutting weapon. Therefore and on the basis of the above discussion the same be converted to section 324 IPC.

So far the Appellant No. 2 Lalon Sk. is concerned allegation was to strike in the ear of Monirul which according to the doctor is not so significant and the problem was mentioned later on while he was admitted to the hospital . More so Appellant no. 2 was a juvenile as per the report submitted by the concerned court and the learned trial court overlooked the same but meantime



a period of 19/20 years have passed and no ingredient to attract Section 307 or 34 can be found against him. Hence the charge be converted to Section 324 IPC instead of section 307/34 and his sentence be reduced to 1 year. So far other two accused persons no specific overt act is found excepting the evidences of the injured which shows their participation in the assault. In view of the above discussion the order of conviction is sustained but the charge is converted to section 324 IPC and the sentence is reduced to 6 months.

30. At this stage it is seen that pursuant to the direction of a co-ordinate Bench the report regarding juvenility of the appellant no 2 and 4 were called for and the report of the Learned ADJ Fast Track Court -IV Krishnagar, Nadia (in charge)which discloses X. and Y were aged about 14 years 1 month and 14 days and 17 years 7 months and 16 days at the relevant point of time . The incident took place in the year 2005 and the appeal was pending since 2009 before this Court. The abovenamed accused enlarged on bail and the order of conviction passed for a period of four years. It is settled law that the point juvenility can be raised at any point of time however after more than a decade on that score the matter if remitted back for trial before the concerned court it would cause further delay.

31. The object of the Probation of Offenders Act to prevent the conversion of youthful offenders into obdurate criminals as a result of their association with hardened criminals of mature age in case the youthful offenders are sentenced to undergo imprisonment in jail. . It is the result of the recognition of the doctrine that the object of criminal law is more to reform the individual offender than to punish him. The Probation of offenders Act as observed by the



supreme court in catena of decision that it is a milestone in the progress of the modern liberal trend of reform in the field of penology and the Act distinguishes offenders below 21 years of age and those above that age, and offenders who are guilty of having committed an offence punishable with death or imprisonment for life and those who are guilty of a lesser offence.

32. In the Supreme Court of India Criminal Appellate Jurisdiction, Criminal appeal no 2065 of 2025 [Arising out of SLP (CRL.) No. 368 of 2020] Chellamal and another appellants vs. State represented by the Inspector of Police Respondent paragraph 28 it is observed

28. Summing up the legal position, it can be said that while an offender cannot seek an order for grant of probation as a matter of right but having noticed the object that the statutory provisions seek to achieve by grant of probation and the several decisions of this Court on the point of applicability of Section 4 of the Probation Act, we hold that, unless applicability is excluded, in a case where the circumstances stated in subsection (1) of Section 4 of the Probation Act are attracted, the court has no discretion to omit from its consideration release of the offender on probation; on the contrary, a mandatory duty is cast upon the court to consider whether the case before it warrants releasing the offender upon fulfilment of the stated circumstances. The question of grant of probation could be decided either way. In the event, the court in its discretion



decides to extend the benefit of probation, it may upon considering the report of the probation officer impose such conditions as deemed just and proper. However, if the answer be in the negative, it would only be just and proper for the court to record the reasons therefor.

33. In the light of above decision and considering the role attributed by the appellant Nos 2,3 & 4 and that no criminal antecedent existed during that time and further considering their age this court find it fit and proper to apply the provision of probation of offenders Act and they are released on probation on the condition that they will keep peace and good conduct for 6 months from today and shall file two sureties to the tune of Rs.10,000/- each along-with a personal bond before the Learned Trial Court and also an undertaking to the effect that they shall maintain peace and good behaviour during the period of 6 months from today. All the accused appellants No. 2,3 & 4 No. will also deposit Rs.30,000/- before the Learned Trial Court within two months from today and the Learned Trial Court will release the amount equally in favour of the two injured victim . In case the victims injured are found to be dead or not available, the said amount shall be released in favour of their heirs. In case of breach of any of the conditions mentioned above, is proved, the accused appellant no 3 & 4 will be subjected to undergo the sentence of 1 month of rigorous imprisonment and appellant No 2 will suffer 6 months rigorous imprisonment.

34. So summing the Appellant No. 1 Hara Sk. is hereby convicted for guilty of an offence punishable under Section 324 IPC and is sentenced to suffer 2 years



Rigorous Imprisonment and to pay a fine of Rs. 5000/- i.e. to suffer simple imprisonment for 1 month. The Appellant No. 2 is hereby convicted for guilty of an offence committed under Section 324 IPC and is sentenced to suffer imprisonment for 1 year.

35. So far Appellant No 1 Hara Sk. is concerned he is sentenced to suffer imprisonment for 2 years and to fine of Rs. 5000/- i.e to Simple Imprisonment for 1 month.

36. Hence the order passed by the Learned Additional Sessions Judge, Fast Track Court, Krishnanagar, Nadia is hereby affirmed with the above modification.

37. With the above modification this Criminal Appeal stands disposed of being allowed in part and all the concerned application if only also stands disposed of.

38. Urgent certified copy of this judgement if applied shall be made available upon compliance of all formalities.

(CHAITALI CHATTERJEE DAS, J.)