
(2025) 12 CAL CK 0017

Calcutta HC

Case No: C.R.R. 2027 of 1999

Anowar Mullick

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision: Dec. 12, 2025

Acts Referred:

- Indian Penal Code, 1860- Section 34, 325
- Code of Criminal Procedure, 1973- Section 248(2), 313, 401, 428, 482

Hon'ble Judges: Ajay Kumar Gupta, J

Bench: Single Bench

Advocate: Tanmay Chowdhury, Sulagna Sarkar, Debasish Roy, Koushik Kundu, Jonaki Saha

Final Decision: Dismissed

Judgement

Ajay Kumar Gupta, J

1. This instant CRAN no. 1 OF 2025 is an application filed by the petitioner for restoration/recalling of the order dated 27.11.2018 passed by the co-ordinate Bench, thereby dismissing the criminal revisional application for default, and the petitioner further filed an application, being CRAN 2/2025, praying for condonation of delay of 6 years 9 months in preferring the application for restoration/recalling.

2. With regard to the delay, learned counsel appearing for the State submits that the matter be disposed of on merit, since this case has been filed by the petitioner against the judgment and order of affirmation by the Session Judge of conviction and sentence passed by the learned trial court against the petitioner under Section 325 of the IPC.

3. Having heard the submissions of the parties and considering the grounds set forth in the pleadings, this court is of the opinion that since the matter involves conviction and sentence of the Petitioner, the matter should not be dismissed on

technical grounds. Therefore, the application for condonation of delay is allowed subject to the condition that the matter will be heard on merits.

4. The applications being CRAN 1/2025 and CRAN 2/2025 are, thus, disposed of.

5. With the above facts and circumstances, the revisional application, being CRR 2027 of 1999, is restored to its original file and number.

6. The petitioner has filed this revisional application under section 401 read with Section 482 of the Cr.P.C., challenging the correctness, illegality and propriety of the judgment and order dated 3rd December, 1997, passed by the learned Additional Sessions Judge, 1st Court, Howrah in Criminal Appeal No. 10 of 1996.

7. By the said judgment and order the learned Sessions Judge affirmed the order of conviction and sentenced dated 16.04.1996 passed by learned Judicial Magistrate, 1st Class, Uluberia in connection with GR case no. 107 of 1985 corresponding to TR case no. 124 of 1986.

8. The factual matrix of the case of the petitioner is that one Jahura Khatun had lodged an FIR on 27.02.1985 alleging, inter alia, that there was trouble between her son and the accused persons, and it was alleged that she was assaulted with brick bats when she went to the spot to rescue her son. She further alleged that she was attacked with an iron rod on her leg. She sustained injuries.

9. The police registered Bagnan P.S. case no.9 dated 27.02.1985 and initiated an investigation, which finally culminated in a Charge sheet under section 325/34 of the IPC against the accused persons, including the present petitioner. Accused persons faced trial before the Trial court.

10. To prosecution examined 8 numbers of witnesses to bring home the charges. The accused was examined under Section 313 of the Cr.P.C. However, no defence witness was examined. The trial court, after analysing all the evidence, both oral and documentary as produced by the prosecution, finally concluded that the accused Anowar Mullick, the petitioner herein, was guilty and thereby convicted him in terms of Section 248(2) Cr.P.C. Whereas the learned trial court found the other accused persons not guilty and they were acquitted, Anowar Mullick was sentenced to suffer simple imprisonment for one year and to pay fine of Rs. 600/-, in default to suffer simple imprisonment for 30 days.

11. Being aggrieved by and dissatisfied with the said judgment and order dated 16.04.1996, the petitioner challenged the same before the Sessions Judge. The same was transferred to the learned Additional Session Judge, 1st Court, Howrah, being Appeal No. 10 of 1996. After hearing the parties, the learned Sessions Judge ultimately affirmed the conviction order passed by the learned trial court.

12. Feeling aggrieved with the said judgment, the present application has been filed by way of a revisional application.

13. Learned counsel appearing on behalf of the petitioner submits that both the learned trial court and the session judge overlooked the evidence of the prosecution and wrongly and whimsically held that the petitioner is guilty. Both the courts have failed to assess the evidence of the prosecution witnesses, particularly the de facto complainant who suffered injuries. She did not specifically state who had assaulted her with the iron rod.

14. It has further submitted that other witnesses also did not support the prosecution case. Even the Doctor, who treated the victim, deposed that she suffered a fracture in her leg after falling on the ground. The next ground of challenge by the learned counsel for the petitioner draws the attention of this court to the examination of the petitioner under Section 313 of the Cr.P.C. The questions put to him were not sufficient to explain the circumstances, as such, he was greatly prejudiced.

15. Per contra, learned counsel appearing on behalf of the State submits that the learned trial court as well as the appellate court have thoroughly discussed the evidence of the prosecution witnesses and finally come to a conclusion that the petitioner has assaulted her by an iron rod and caused fracture injuries in her leg. Medical evidence also corroborated the contention of the victim.

16. Having heard the arguments and submission of the Learned counsel for the respective parties and upon perusal of the material available on record, this court is fully satisfied with the concurrent findings of both the courts.

17. The Learned Sessions Judge rightly discussed the evidence of PW 2, PW 3 and PW 4. It is clear from the PW 2s cross-examination that she was assaulted by Anowar Mallick, she sustained injuries in her leg, and was treated in the hospital. It was specifically narrated that Anowar broke down her left leg. The medical document also supported the injuries in her leg.

18. Deposition of the Doctor with regard to the injury that was suffered by the victim may be caused if someone falls on the ground, which is only one suggestion put before him by the defence counsel. PW 3 is the son of the victim, he narrated the whole incident. PW 4 neighbour also specifically stated that the victim was assaulted by the present petitioner. None of the aforesaid witnesses were shaken by the defence rather, P.W. 2 confirmed that Anowar was the person, who assaulted and broke down her left leg.

19. Upon meticulous perusal of the statement of the accused/convict recorded under Section 313 Cr.P.C., this court finds that the circumstances of the injuries suffered by the de facto complainant were clearly asked to the petitioner, who has denied the same. Therefore, the question of prejudice suffered by the Petitioner is baseless and unsustainable.

20. This court does not find any jurisdictional error and/or any perversity in the concurrent sound findings of learned Trial Court as well as the Session Judge. Therefore, the judgment and order dated 3rd December, 1997 passed by the learned Additional Sessions Judge, 1st Court, Howrah in Criminal Appeal No. 10 of 1996 calls for no interference.

21. Accordingly, CRR 2027 of 1999 is dismissed.

22. Consequently, the application being CRAN 3/2025 is, thus, disposed of.

23. Interim order, if any, stands vacated.

24. Let the copy of this order be communicated to the Ld. Court below for information.

25. It was submitted that the petitioner was arrested after the order of dismissed for default and he is now in custody. Let him suffer incarceration as sentence awarded by the Trial court. However, the period of detention, if any, during investigation, enquiry and trial shall be set off from the total period of substantive imprisonment imposed under Section 428 of the Cr.P.C.

26. All parties shall act in terms of the copy of this order downloaded from the official website of this court.

27. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties taking all legal formalities.