

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE
JURISDICTION

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Subhasis Dasgupta

C.R.A. 80 of 2018

Prabir Kumar Dey

-Vs-

State of West Bengal

For the Appellant (amicus curiae) : Mr. Mainak Bakshi

For the State : Md. Kutubuddin

Heard on : 15th October, 2020

Judgment on : 15th October, 2020

Joymalya Bagchi, J. :-

The appeal is directed against the judgment and order dated 12.12.2017 and 13.12.2017 passed by the learned Additional District and Sessions Judge F.T.C 2nd Court, Sealdah, South 24 Parganas, in S.T. No. 01(09)16 arising out of S.C. No. 06(02)14 convicting the appellant under Sections 307 of the Indian Penal Code sentencing him to suffer rigorous imprisonment for ten years and to pay fine of Rs.5,000/-, in default to suffer simple imprisonment for five months more.

Gist of the prosecution case, as alleged, against the appellant is to the effect that he is the brother-in-law of the injured witness, Sikha Dey (P.W. 1). The appellant used to misbehave with Sikha's daughter. As a result, Sikha raised protest and filed a case against the appellant. The appellant was in jail for two months. After returning from jail he demanded Rs.500/- as lawyer's fee from Sikha. As she refused to pay, the appellant assaulted her with a sharp cutting tool (bonti) on her neck. Sikha shouted for help. She was removed to North Suburban

Hospital where she was medically treated. On her written complaint F.I.R. was registered. In conclusion of investigation charge-sheet was filed and charge under Section 307 of the Indian Penal Code was framed against the appellant. Prosecution examined 11 witnesses in support of its case. Defence of the appellant was one of innocence and false implication. In conclusion of trial, Learned trial court convicted and sentenced the appellant, as aforesaid.

Nobody appears for the appellant. Mr. Bakshi, learned Counsel, is requested to appear as amicus curiae. Mr. Bakshi, argued that the evidence of P.W. 1 suffers from various contradictions and inconsistencies. There was prior enmity and there is every possibility of false implication. Apart from P.W. 1 there is no eye-witness to the incident. Medical opinion does not state that the injuries were life threatening. Hence, the appellant may be acquitted.

Learned Counsel appearing for the State argued that the evidence of P.W. 1, injured witness, is corroborated by P.Ws. 2 and 3 who were at the spot. Medical evidence of P.W. 5 also corroborates her version. Accordingly, the appeal is liable to be dismissed.

P.W. 1 is the principal witness in the case. She deposed that the appellant used filthy language against her daughter. She lodged a case against the appellant over this issue. Appellant demanded Rs.500/- and called upon her to withdraw the case. As she refused to do so, the appellant assaulted her with a bonti on her neck. She suffered injuries and was removed to North Suburban Hospital where she was medically treated. Police came to the spot and seized bloodstained wearing apparels. Weapon of offence was seized from a nearby tank. She lodged written complaint.

Her version is corroborated by her mother-in-law (PW 2) and her daughter (PW 3). Both of them deposed upon hearing hue and cry they came out and saw blood was coming out from the neck of the victim and the appellant was standing with a bonti in his hand.

PW 6 and 7 are local witnesses. PW 7 saw the appellant run from the house and throw something into the pond. PW 6 heard someone shout “dhar dhar pukure fele dieche”.

Evidence of these witnesses clearly lend credence and corroboration to the version of the injured witness (P.W. 1) that it was the appellant who struck her on the neck with a bonti and thereafter had fled from the spot.

First Investigating Officer (PW 9) recovered the bonti in the presence of the witnesses. He proved the seizure list as exhibit 5. He has also proved the label fixed on the bonti during investigation.

PW 5, Medical Officer, who examined the injured found the following injuries:-

- “1) one sharp cut injury above the thyroid cartilage involving upto subcutaneous tissue (2.5 cm x 1 cm) with oozing of blood.*
- 2) one sharp cut injury involving only skin (3 cm lateral to thyroid cartilage).*
- 3) one sharp cut injury involving skin (2 cm) below the thyroid cartilage.”*

He deposed that the injuries were serious and recent in nature.

From the aforesaid evidentiary and conspectus it is clear that the version of the injured eyewitness (P.W. 1) not only receives corroboration from other witnesses but also from the medical evidence on record.

It has been argued that the injuries are not grave and life threatening. Hence, the appellant ought not be convicted under Section 307 of the Indian Penal Code. I am unable to accept such contention. Appellant had prior enmity with the victim. Appellant had threatened the victim to withdraw an earlier criminal case. When she refused, he struck her repeatedly on the neck with a sharp-cutting weapon. Gravity of the injury is not the sole determining factor to determine whether the appellant intended to murder the victim or not. Other attending circumstances like motive, situs of injury and manner of assault as narrated hereinbefore are equally relevant to determine the intention of the offender.

Hence, I have no doubt in my mind that the appellant had attempted to murder the victim and assaulted her with a motive to murder her.

Accordingly, conviction of the appellant under Section 307 IPC is upheld.

Coming to the issue of sentence, I note that the appellant does not have criminal antecedent. Injuries were not grave. The incident occurred at the spur of the moment. Balancing the aggravating and mitigating factors, I am of the opinion that interest of justice may be served if the sentence of the appellant is modified and he is directed to suffer rigorous imprisonment for seven years and pay a fine of Rs.5,000/-, in default, to suffer simple imprisonment for five months more.

With the aforesaid modification with regard to the sentence of the appellant, the appeal is disposed of.

The period of detention suffered by the appellant during investigation, enquiry or trial shall be set off against substantive sentences imposed on him in terms of Section 428 of the Code of Criminal Procedure.

I record my appreciation for the able assistance rendered by Mr. Bakshi as amicus curiae in disposing of the appeal.

Copy of the judgment along with LCR be sent down to the trial court at once for necessary compliance.

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

I agree.

(Subhasis Dasgupta, J.)

(Joymalya Bagchi, J.)