

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

The Hon'ble **JUSTICE BIBEK CHAUDHURI**

C.R.A 8 of 2019

Animesh Bar

Vs.

The State of West Bengal

For the Petitioner: Mr. Angshuman Chakraborty.,
Mr. Sasanka Shekhar Saha.,
Mr. Sandeep Prasad Shaw.

For the State: Mr. Faria Hossain,

Heard on: 17 March, 2021.

Judgment on: 14 June, 2021.

BIBEK CHAUDHURI, J. : –

1. The convict in Sessions Case No.166 of 2015 has filed the instant appeal under Section 374(2) of the Code of Criminal Procedure assailing the judgment and order of conviction and sentence dated 18th December, 2018 and 19th December, 2018 respectively passed by the learned Additional Sessions Judge, Fast Track 2nd Court at Barasat, thereby convicting the appellant for the offence punishable under Section 307 of the Indian Penal Code and sentencing him to suffer simple imprisonment for four years and to pay fine of Rs.5000/-, in default, to undergo simple imprisonment for further period of two years.

2. Baguiati P.S Case No.561 of 2014 dated 25th September, 2014 under Section 341/326/307 of the Indian Penal Code was registered against the appellant on the basis of a written complaint submitted by one Sambhu Nath Mondal stating, inter alia, that on 24th September, 2014 at around 10.30 pm his son Arun Mondal was gossiping with his friend, namely Animesh Bar, son of Sunil Bar at Mission Bazar Playground. In course of their conversation the said Animesh Bar assaulted the son of the defacto complainant Arun Mondal on his throat with some sharp cutting weapon. As a result of assault his son received bleeding injury. The defacto complainant heard the said incident and rushed to Mission Bazar play ground and took his son to R.G Kar Hospital in bleeding condition.

3. On completion of investigation, police submitted charge sheet in the above mentioned case under Section 341/326/307 of the Indian Penal Code against accused Animesh Bar.

4. After the case being committed to the court of sessions and subsequently transferred to the Fast Track 2nd Court of the learned Additional Sessions Judge at Barasat for trial, the learned trial judge framed charge against the accused under Section 341/326/307 of the Indian Penal Code. As the accused pleaded not guilty, trial of the case commenced.

5. During trial, prosecution examined four witnesses. Some documents were marked paper exhibits. The learned trial judge on consideration of evidence on record, both oral and documentary held the

accused person guilty for committing offence under Section 307 of the Indian Penal Code and convicted and sentenced him accordingly.

6. Learned Advocate for the appellant submits that during the trial of the case prosecution hopelessly failed to prove the identity of the accused, place of occurrence and the manner in which the alleged offence was committed, but without considering of such aspect of the matter the learned trial judge convicted the accused for committing offence under Section 307 of the Indian Penal Code. In support of his contention, he first led me to the evidence of PW3 Arun Mondal who is the injured witness. In his examination in chief he stated that before the date of occurrence, Animesh Bar took loan from him to purchase a goods vehicle commonly known as 'Chotohati'. He failed to repay the said money. On the date of occurrence Animesh told PW3 to lend him a gold chain in order to attend a ceremony. PW3 gave him a gold chain. Thereafter both of them sat on a macha beside the bank of a ditch. While they were talking, Animesh Bar told him to look at the moon shining brightly on the sky. When he looks at the moon, the accused suddenly gave a blow with a sharp cutting weapon on his neck and throat. PW3 started to sought saying "Bachao Bachao". The accused then fled away from the spot with his motorbike. Injured Arun also followed him. Then he fell down with his motorbike at Bazar More. Local people apprehended him. The witness took his gold chain which he gave to the accused from his purse. Animesh was assaulted by the local people. Police came to the spot and took him to

custody. Injured Arun was taken to R.G Kar Hospital for medical treatment. The witness identified the accused as Animesh Bar.

7. It is submitted by the learned Advocate for the appellant that PW3 in his cross examination stated that the accused is a resident of village Chakguria. But in the heading of charge framed by the trial court as well as in his examination under Section 313 of the Code of Criminal Procedure, the accused stated that he is a resident of village Hogolkuria within P.S Sonarpur. It is urged by the learned Advocate for the appellant that Animesh of Hogolkuria did not accuse any injury to PW3. The real assailant is a resident of Chakguria but the learned Trial Judge did not consider the said fact and convicted the accused for committing offence under Section 307 of the Indian Penal Code.

8. It is also pointed out by the learned Advocate for the appellant that in the written complaint he stated that the incident took place at Mission Bazar Play Ground. After the incident the defacto complainant who is the father of PW3 rushed to the said playground and took his son to hospital. However, from the evidence of PW3 it is found that the incident took place on the bank of a ditch. He also draws my attention to the sketch map prepared by the Investigating Officer during investigation of the case. As per the sketch map the alleged incident took place on the northern side of Mission Bazar Playground. On the north of the place of occurrence, there is a house of one Sarat Aulia. On both sides of the playground, 12 ft. pucca roads are running from south to north. There is no existence of any ditch or any macha at the place of occurrence referred to by the

Investigating Officer. Therefore the prosecution failed to prove the place of occurrence in the instant case. On this score only the instant appeal ought to be allowed and the appellant should be acquitted.

9. Next he submits that PW2 Sambhunath Mondal is the father of injured Arun and the defacto complainant. He was declared hostile by the prosecution. In his cross examination he admitted that he took his son to the hospital for medical treatment after the incident. PW3, on the other hand stated in his evidence that after assaulting him, the accused tried to flee away with the motorbike but he fell down on the road in front of the market. Local people apprehended him and the injured Arun also followed him, took his gold chain from his purse and informed the local people that it was his gold chain which he gave to the accused. The local people manhandled him. Police came to the said place where the accused was apprehended by local people and arrested him. Local people took the injured to hospital. Surprisingly enough, the Investigating Officer did not examine any local people to ascertain the truth of the matter. No person who apprehended the accused was examined during investigation of the case of the I.O. It is submitted by the learned Advocate for the appellant that the investigation of the case is absolutely perfunctory and on the basis of such investigation, accused should not be committed to the court of sessions.

10. Learned Advocate for the appellant also refers to the evidence of PW1 who was a Medical Officer posted at R.G Kar College and Hospital on the date of occurrence. It is found from the record that on 25th September,

2014 he examined one Arun Mondal with a history of physical assault by one Animesh of Chakguria. Thus it is submitted by him that the accused who is a resident of Hogolkuria is not involved in committing the offence of the physical assault upon PW3. It is also pointed out by the learned Advocate for the appellant the Investigating Officer could not recover and seize the offending weapon.

11. Learned P.P-In-Charge on the other hand submits that the appellant was identified by PW3 in Court in course of his evidence who assaulted him with the help of a sharp cutting weapon. Such identification of the accused by PW3 was not challenged. At this stage the appellant cannot argue that he is not the person who committed offence and faced trial in Sessions Case No.166 of 2015. It is also submitted by the learned P.P-in-Charge that the prosecution might not produce any local witness in support of its case, but on the basis of quality of evidence the trial court came to the finding and convicted the accused. He also submits that the court always seeks for best evidence and quality of evidence that matters, not the quantity. Even solitary evidence of the injured person can be the basis of conviction, if his evidence is cogent, reliable, trustworthy and unblemished. In the instant case, according to the learned P.P-in-Charge, there is no reason to disbelieve the evidence of PW3 and on the basis of the said evidence the accused was rightly convicted by the learned Trial Judge. Having heard the learned Advocates for the appellant and the prosecution, I like to state at the outset that the investigation of this case was carried out not only in perfunctory manner,

but also there was no investigation at all to establish the charge against the accused. When the Investigating Officer found that the injured person made statement before the Doctor that Animesh of village Chakguria assaulted him and Animesh of Hogolkuria was arrested, it was the bounden duty of the Investigating Officer to put the accused in T.I Parade. The Investigating Officer did not hold T.I Parade of the accused. From the evidence of PW3 it is ascertained that the assailant was apprehended by local people when he tried to flee away with his motorbike but fell down at Bazar More. Not a single local witness was examined in the case. It is also found from the evidence of PW3 that local people handed over the accused to the police and police arrested him. However from the evidence of the Investigating Officer it is found that the father of the injured lodged a written complaint on the next day of the occurrence at about 12.15 pm and after receiving such complaint and recording of specific P.S case, the accused was arrested. If the evidence of the Investigating Officer is accepted as truthful, apprehension of the accused by local people immediately after the occurrence and handing him over to the police ought to be treated as false evidence given by PW3. In such event it was the duty of the prosecution to prove from where the accused was arrested but the prosecution remain silent.

12. The Investigating Officer did not take any attempt to recover and seize the offending weapon. Except the injury report no other document was seized from the hospital. The prosecution failed to prove that the accused assaulted PW3 in such a manner and with such intention that

the death of PW3 was attempted and such assault was done with the intention of causing death, or, that it was done with the intention of causing such bodily injury as the accused knew to be likely to cause death, or was sufficient in the ordinary course of nature to cause death, or, the accused attempted to cause death by assaulting PW3 so dangerously that in all probability it would cause death or such bodily injury as is likely to cause death.

13. In the absence of the aforesaid ingredients and proof, the learned trial court committed gross error in appreciating evidence on record and holding the accused guilty for committing offence under Section 307 of the Indian Penal Code.

14. In the light of the above discussion, the instant appeal is allowed on contest, however without cost.

15. The judgment and order of conviction and sentence passed by the Additional Session Judge, Fast Track 2nd Court, Barasat in Sessions Case No.166 of 2015 and Sessions Trial No.1(5) of 2016 is set aside.

16. The accused be released at once if he is in custody.

17. Let a plain copy of this order be sent to the learned court below for issuance of release order in the name of the appellant if he is in custody.

(Bibek Chaudhuri, J.)