

AD. 21.
October 4, 2021.
MNS.

C.R.A. No. 121 of 2019

(Via Video Conference)

Smt. Pramila Singh
Vs.
State of West Bengal

Mr. Diptendu Mandal

...*Amicus Curiae*

Mr. Narayan Prasad Agarwala,
Mr. Pratick Bose

...for the State.

The efforts of the learned *Amicus Curiae* in assisting the Court *pro bono* is much appreciated.

It is contended by the learned *Amicus Curiae* that, although the complaint alleged against the appellant stated categorically that the appellant sought to hit the eyes and throat of the victim on two different occasions, as many as three doctors gave evidence, from which it is at best available that there were marks of incision on the cheek and the forehead of the victim. Moreover, as the Sessions Court itself noted as well, the Doctors were not specific as to the nature of the wound and/or the nature of the weapon, which could have inflicted such hurt.

Hence, it is argued by the learned *Amicus Curiae* that there is patent discrepancy between the complaint and the evidence on record.

Secondly, it is submitted that neither the alleged weapon of offence nor any wearing apparel, of either the victim or the appellant, was recovered.

Thirdly, the 'intention' on the part of the Appellant, which is a necessary ingredient of Section 307, 326, as well as the parent Section, that is, Section 320 of the Indian Penal Code, is not corroborated at all by the evidence of the prosecution witnesses. It is only the statement of the victim where it was iterated that the appellant had an intention to inflict grievous hurt on the victim.

It is further contended that the evidence of the alleged neighbours was mere hearsay.

Learned counsel appearing for the State contends that the nature of the wounds inflicted on the victim, as well as the attending circumstances, as corroborated by cogent evidence, were sufficient to convict the appellant under Section 307 and Section 326 of the Indian Penal Code.

Upon hearing the learned *Amicus Curiae* and learned counsel for the State, it is evident that the allegations as levelled against the appellant were, by no means, proved by the prosecution beyond reasonable doubt, which is a cardinal pre-requisite in criminal cases for convicting a person.

As rightly argued by the learned *Amicus Curiae*, the nature of injuries as alleged in the complaint, that is, on the eyes and throat of the victim, is patently different from the evidence of the Doctors, which indicates that the victim was hit at the side of his forehead and cheek.

Not only was the weapon of the offence not recovered from the spot, but there is also nothing on record to clinch beyond reasonable doubt the intention on the part of the appellant to inflict a grievous hurt on the alleged victim.

The evidences of the alleged neighbours of the victim are all hearsay, as evident from the statements made by the said witnesses themselves.

Moreover, the depositions of the Doctors do not specify the exact nature and location of the wounds or the type of weapon which could have inflicted the wounds-in-question.

Above all else, the learned *Amicus Curiae* is justified in submitting that there is no corroboration between the statements made in the complaint as regards the exact parts of the victim's face, where the attempts to inflict grievous hurt took place, and the evidence of the Doctors, which indicated different parts of the face than the complaint.

In view of the above considerations, it is clearly seen that the Sessions Judge failed to take into consideration the above gross discrepancies in the prosecution case. There are gaping, unexplained gaps in the prosecution evidence. Moreover, the sentence awarded is not commensurate with the offence under Section 326 of the Indian Penal Code, which entails a minimum sentence of ten years of imprisonment, whereas merely three years was awarded against the appellant, although he was convicted also under Section 326 of the IPC.

Merely on the basis of conjecture and preponderance of probabilities, the appellant ought not to have been convicted under Sections 326 and 307 of the Indian Penal Code. As such, the impugned judgment and order are vitiated by errors of law, as well as facts.

Accordingly, C. R. A. No. 121 of 2019 is allowed, thereby setting aside the judgment and order of conviction dated January 25, 2019 and January 28, 2019 passed by the Additional Sessions Judge, Third Court at Hooghly, in Sessions Trial No. 16(04)/2017, arising out of Sessions Case No. 39/2017, and the consequential sentence.

The appellant is hereby acquitted from the charges framed against her and is discharged from all conditions and/or bonds, if any, furnished by the appellant with regard to any bail application at any point of time with regard to the offences-in-question.

(Sabyasachi Bhattacharyya, J.)