

Form J(2)

**IN THE HIGH COURT AT CALCUTTA
Criminal Appellate Jurisdiction
Appellate Side**

**Present :
The Hon'ble Justice Bibek Chaudhuri**

C.R.A. 149 of 2018

***Haripada Sarkar
Vs.
State of West Bengal***

For Appellant: Mr. Tapan Datta Gupta
Mr. Parvej Anam
Mr. Bijay Bag

For the State: Mr. Ranabir Roychowdhury
Mr. Sandip Chakraborty

Heard on : 07.12.2021

Judgment On : 13.12.2021

Bibek Chaudhuri, J.

In the instant appeal the appellant has assailed the order of conviction and sentence passed against him under Section 324 of the Indian Penal Code in Sessions Case No.630 of 2016 corresponding to Sessions Trial No.4(01)/2017 passed by the learned Additional Sessions Judge, Fast Track, Second Court, Malda on 22nd February, 2018. The learned trial Judge sentenced the accused to suffer simple

imprisonment for one year with fine of Rs.1,000/-, in default, to suffer simple imprisonment of one month more for the offence punishable under Section 324 of the Indian Penal Code.

Bamangola Police Station Case No.206 of 2016 was registered on 18th October, 2016 on the basis of a written complaint submitted by Chandmoni Barman (hereafter described as the de facto complainant). It is alleged by the de facto complainant that on 17th October, 2016 at about 10.30 P.M. the accused came in front of the house of the de facto complainant in drunken condition. Then he abused her with filthy language. Hearing such abusing language the son of the de facto complainant, namely Manik Barman came out of the house and requested him to go away. But the accused Haripada Sarkar refused to leave the place and went on abusing the de facto complainant. The de facto complainant pushed him back so that he might leave the place. By this the accused assaulted her on her head with a bamboo causing severe bleeding injury. Seeing the de facto complainant in injured condition, the accused left the place. Subsequently, she was medically treated in the local hospital.

Investigation of the case culminated in filing charge sheet against the accused under Section 448/325/308 of the Indian Penal Code. Since the offence under Section 308 of the Indian Penal Code was exclusively triable by the Court of Sessions, the case was

committed to the Court of the learned Sessions Judge and subsequently it was transferred to the learned trial Court for trial and disposal.

Lower Court record further reveals that the learned trial Judge framed charge against the accused Haripada Sarkar under Section 448/325/308 of the Indian Penal Code. As the accused pleaded not guilty, trial of the case commenced.

During trial prosecution examined seven witnesses to establish the charge. The learned trial Judge on careful scrutiny of evidence on record and the exhibits found the accused guilty for committing offence under Section 324 of the Indian Penal Code and convicted and sentenced him accordingly. Hence the appeal.

It is already recorded that during trial prosecution examined seven witnesses. Amongst them P.W.1 is the de facto complainant. P.W.2 Rina Bibi, P.W.3 Mithibala Barman, P.W.4 Iyub Ali Mondal and P.W.6 Sk. Tujubuddin Sk. are the neighbours of the de facto complainant. P.W.5 Dr. Jagodish Chandra Mondal is the Medical Officer attached to Bamangola Rural Hospital on 17th October, 2016. P.W.7 is the Investigating Officer of the case. Before dealing with the evidence adduced by the witnesses let me adjudicate at the outset the technical objection raised by Mr. Tapan Datta Gupta, learned advocate for the appellant on the issue of error in charge. It is

pointed out by Mr. Datta Gupta that the charge framed by the learned trial Judge does not contain particulars as to time and place which are mandatory to be stated to the accused under Section 212 of the Code of Criminal Procedure.

On perusal of the charge framed by the learned trial Judge this Court is in conformity with the learned advocate for the appellant that the learned trial Judge while framing charge did not mention the name of the place where the incident allegedly took place. However, the charge contains the time of the alleged occurrence and it is also recorded that the incident took place in front of the house of the de fact complainant, namely Chandmoni Barman.

Purpose of framing proper charge as enunciated by the Hon'ble Supreme Court in **Esher Singh versus State of U.P.** reported in **(2004) 11 SCC 585** is as hereunder:-

"It is the precise formulation of the specific accusation against a person who is entitled to know its nature at the earliest stage. A charge is not an accusation made or information given in the abstract but an accusation made against a person in respect of an act committed or omitted in violation of penal law forbidding or commanding it. In other words, it is an accusation made against a person in respect of an offence alleged to

have been committed by him. A charge is formulated after inquiry as distinguished from the popular meaning of the word as implying inculcation of a person for an alleged offence as used in Section 224 of the Indian Penal Code.”

Therefore, plain reading of the above mentioned observation goes to suggest that the charge must contain the details of the time and place of the incident for which the accused is charged so that the accused can understand for what act or omission he is going to face trial.

Coming to the instant case it is found from the charge framed by the learned trial Judge that she stated the date and time of the alleged incident. She also stated the place, i.e., in front of the house of the de facto complainant, where the alleged incident took place. However, the learned trial Judge did not mention the name of the village where the alleged incident took place. This omission to mention the name of the village, in my considered opinion is not an error which would vitiate the trial of the case. Therefore, the initial objection raised by the learned counsel for the appellant cannot stand. Further more, in view of the provision contained in Section 464 of the Code of Criminal Procedure, no final sentence or order by the Court of competent jurisdiction shall be deemed invalid merely on

the ground of any error, omission or irregularity in the charge, unless a failure of justice has in fact been occasioned thereby. In the instant case, I do not find and also it is not agitated by the learned counsel for the appellant that as a result of omission to state the name of the village where the incident occurred a failure of justice had occasioned. So, the above objection is considered and found to be not entertainable.

P.W.1 is the *de facto* complainant and injured of the case. It is found from her evidence that on 17th October, 2016 at about 10:30 p.m. the appellant came in front of their house in drunken condition and abused her with filthy language. Hearing such abusive language, the *de facto* complainant and her son came out of their house. The son of the *de facto* complainant, namely Manik Barman asked him to stop but he did not stop abusing the *de facto* complainant and on the contrary, he assaulted her with a bamboo stick on the head causing bleeding injury. After the incident, she was taken to Mudipukur Hospital for medical treatment. On the next day she lodged complaint against the appellant. The complaint was marked as exhibit-I during trial of the case.

It is pointed out by Mr. Dutta Gupta, learned Advocate for the appellant that Manik Barman, the son of the *de facto* complainant who was the eye-witness of the occurrence, was not examined during trial.

Therefore, the evidence of the *de facto* complainant was not corroborated by any other eyewitness.

P.W.2, Rina Bibi and P.W.6, Tujubuddin Sk. corroborated the evidence of the *de facto* complainant. It is pointed out by Mr. Dutta Gupta that P.W.3, who is the daughter of the deceased husband of the *de facto* complainant having her residence at the same place, did not support the prosecution case. P.W.4, Iyub Ali Mondal was also declared hostile by the prosecution. However, it is ascertained from his evidence that on 17.10.2016, the *de facto* complainant received cut injury on her head.

P.W.5, Dr. Jagodish Chandra Mondal was a Medical Officer posted at Bamangola Rural Hospital on 17th October, 2016. On that day, he medically examined the *de facto* complainant and found small cut injury on the scalp approximately 2 cm length and skin deep on her person. The injury report was marked as exhibit-II during trial of the case.

Mr. Dutta Gupta, learned Advocate for the appellant has pointed out that the *de facto* complainant did not state the name of the assailant before the Medical Officer. On the subsequent date, she filed a complaint in the local police station against the appellant. She got the opportunity to state for the first time before the Medical

Officer, the name of her assailant but non-disclosure of her name casts a doubt in the prosecution case.

Learned Public Prosecutor-in-Charge has supported the impugned judgment with reference to the evidence on record.

I have independently considered the evidence on record. There is no doubt that on 17th October, 2016, the *de facto* complainant received injury on her head at about 10:30 p.m. From the injury report it appears that she was medically examined at about 11:55 p.m. on the same day. The Medical Officer recorded the history of physical assault as the cause of the injury, received by the *de facto* complainant.

P.W.2, Rina Bibi who is an independent witness has corroborated the evidence of P.W.1 in her examination-in-chief. Credibility of the evidence of the *de facto* complainant could not be shaken during her cross-examination.

In my considered view, non-examination of the son of the *de facto* complainant is not fatal for the prosecution because the *de facto* herself is the injured and evidentiary value of an injured person carries much weight. The Court can pass an order of conviction on the basis of the sole testimony of an injured witness. Her evidence was corroborated on all material particulars with the evidence of the Medical Officer (P.W.5).

Therefore, the learned Trial Judge rightly held the accused guilty for committing offence under Section 324 of the Indian Penal Code and the appellant was convicted and sentenced accordingly.

I do not find any reason to interfere with the impugned judgment and order of conviction and sentence.

Accordingly, the instant appeal is **dismissed** and the judgment and order of conviction and sentence passed in Sessions Trial No.4(01)/2017 arising out of Sessions Case No.630 of 2016 is affirmed.

The appellant is directed to surrender before the learned Court below to suffer sentence within 2 (two) weeks from the date of this judgment, failing which, the learned Trial Judge is at liberty to issue warrant of arrest against the appellant.

Let a copy of this judgment be sent to the Court below forthwith along with lower court record.

The parties are at liberty to act on the server copy of the judgment.

Urgent photostat certified copy of this judgment, if applied for, be given to the learned advocates for the parties on usual undertakings.

(Bibek Chaudhuri, J.)

