

AD. 9.
September 15, 2021.
MNS.

C.R.A. No. 549 of 2016
with
IA No: CRAN 1 of 2021

(Via Video Conference)

Mithu Dolai
Vs.
The State of West Bengal

Mr. Soumik Ganguli,
Mr. Sujan Chatterjee

...for the appellant.

Mr. Ritam Chowdhury

...*Amicus Curiae*.

Mr. Narayan Prasad Agarwala,
Mr. Pratick Bose

...for the State.

This appeal has been preferred against a conviction under Sections 323 and 324 of the Indian Penal Code.

Learned counsel for the appellant, at the outset, contends that no weapon found place in the seizure list, nor recovered subsequently in the present case. That apart, the injury report, on which the court below placed reliance, was not even exhibited. Only the Doctor's signature thereon, being Exhibit-3, was there for the Court to come to its conclusion.

However, the alleged victim did not name the accused either before the examining Doctor, that is, PW7 or the first Investigating Officer, being PW6.

It is further contended by learned counsel for the appellant that the victim admittedly rode a bicycle for five minutes, after being allegedly hurt, and reported the incident to others. Moreover, although the initial accusation was that several assailants were there when the alleged offence took place, only the accused was named.

That apart, there is a discrepancy in so far as the alleged weapon is concerned, since the victim mentioned the alleged weapon as an iron rod in the complaint, but only mentioned being hit by a hard substance in his deposition.

Local rivalry cannot also be entirely ruled out, according to learned counsel for the appellant, in view of two of the witnesses being active political persons, one the local Councillor and another a member of the Panchayat, being PW2 and PW9 respectively. Moreover, PW9, it is contended, was not a charge-sheeted witness.

Learned counsel appearing for the State places reliance on a judgment of the Supreme Court rendered on July 26, 2021 in ***Criminal Appeal No. 177 of 2014 (Pruthiviraj Jayantibhai Vanol Vs. Dinesh Dayabhai Vala and others)*** in support of the proposition that ocular evidence is considered the best evidence unless there are reasons to doubt it. In the said case, the Supreme Court observed that the evidence of PW2 and PW10 was unimpeachable. It was further observed that, it is only in a case where there is a gross contradiction between medical evidence and oral evidence, and the medical evidence makes the ocular testimony improbable and rules out all possibility of the ocular evidence being true, the ocular evidence may be disbelieved.

It is further contended that no prior rivalry or enmity between the victim and the accused was made out by the defence at any point of time.

That apart, learned counsel for the State places reliance on the medical report, which is, according to him, a part of the record.

It is further submitted by the State that the judgment of the trial court was well-reasoned and there was sufficient ocular evidence to corroborate the medical report in order to substantiate the charges levelled against the accused, at least on which he was convicted.

Upon considering the submissions of learned counsel and going through the materials on record, the first ingredient which stares in the eye is that the alleged weapon of offence was not seized, nor recovered subsequently. That apart, admittedly, the question of ocular evidence is shrouded by some doubt in view of the place of occurrence being admittedly dark at the relevant point of time, which apparently prevented the alleged victim from naming the other assailants, who were accompanying the accused. All other oral evidences are hearsay.

The Doctor's report was not exhibited in the present case. Merely a signature of the Doctor was exhibited, as Exhibit-3. Although it is well-settled that, merely due to the laches of the prosecution, the victim cannot suffer, in the present case, apart from such injury report, there is nothing to incriminate the accused beyond reasonable doubt on the charges on which he was convicted.

In view of the circumstances discussed above, ocular evidence, *ipso facto*, does not acquire much relevance, even following the proposition laid down in the cited report of the Supreme Court.

Hence, the impugned judgement and order of conviction cannot stand the scrutiny of law.

Accordingly, C.R.A. No. 549 of 2016 is allowed, thereby setting aside the impugned judgement and order of conviction dated July 27, 2016 passed by the Additional District and Sessions Judge, Second Court at Jhargram, District- Paschim Medinipur, in Sessions Trial No.11(9) of 2014 arising out of Sessions Case No.8(8) of 2014, convicting the appellant under Sections 323 and 324 of the Indian Penal Code and the consequential sentence.

The appellant stands acquitted and discharged from any condition and/or bond furnished by the appellant, if any, for obtaining bail at any point of time.

In view of disposal of appeal, the connected application, being CRAN 1 of 2021, is also disposed of.

(Sabyasachi Bhattacharyya, J.)