

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE**

PRESENT:

THE HON'BLE JUSTICE TIRTHANKAR GHOSH

CRA 39 of 2017

Selim Sargam @ Tahidul

-vs.-

The State of West Bengal & Anr.

For the Appellant	:	Mr. Uday Sankar Chattopadhyay, Mr. Santanu Maji, Mr. Pronay Basak, Mr. Subhayu Das, Ms. Trisha Rakshit.
For the State	:	Mr. Tanmay Kumar Ghosh, Mr. Arindam Sen.
Heard on	:	20.07.2022, 16.07.2022 & 22.08.2022.
Judgment on	:	24.08.2022

Tirthankar Ghosh, J:-

The present appeal has been preferred against the judgment and order of conviction and sentence dated 21.12.2016 passed by the Learned Sessions Judge, Coochbehar, in Sessions Trial No. 3(11)2014 corresponding to Sessions Case No. 222 of 2014, thereby convicting the appellant under Sections 448/307 of the Indian Penal Code. The learned trial Court after convicting the appellant was pleased to impose sentence as follows:

- (i) Simple Imprisonment for one year and fine of Rs.1,000/- in default Simple Imprisonment for one month for commission of offence under Section 448 of the Indian Penal Code.
- (ii) Rigorous Imprisonment for seven years and fine of Rs.10,000/- in default Simple Imprisonment for six months for commission of offence under Section 307 of the Indian Penal Code.

It was further directed that if the fine is paid the same would be paid to the victim as per Section 357(3) of the Code of Criminal Procedure.

Ghoksadanga Police Station case no. 48/09 dated 21.04.2009 was registered for investigation under Sections 326/307 of the Indian Penal Code pursuant to the a complaint lodged by one Jitendra Nath Barman (hereinafter referred to 'the complainant') with the Officer-in-charge of the said police station. It was alleged that the accused Selim Sargam was acquainted with the complainant's sister, Sabitri Barman as a classmate of the post-graduate class and was visiting their house for last one and a half years. On 20.04.09 at about 7.30 pm when the complainant was having his dinner at the kitchen and his wife and sister were chatting at the bedroom, at that time he heard his wife and sister screaming from the room. The complainant came out and found that the accused/appellant was coming out of his bedroom and was running away with a sharp knife in his hand. The complainant immediately entered the room and found that his sister was lying on the ground with bleeding injuries and came to learn from his wife and sister that when they were speaking with each other

the accused all of a sudden entered the room with a sharp knife in his hand and stabbed his sister with the knife on her abdomen causing serious bleeding injuries, for killing her. The complainant along with his acquaintances shifted his sister to Falakata Hospital for her treatment. Later he came to learn that accused proposed his sister for marrying him, as his sister refused such proposal, the accused became furious and in order to kill her injured her in a pre-planned manner. It has also been contended that the doctors of Falakata Hospital referred her to Coochbehar Hospital. Being involved in the treatment of his sister the complainant states that there was a delay in lodging the FIR. However, the complainant prayed before the Officer-in-charge to take appropriate steps and oblige him.

Investigating Agency on completion of investigation submitted charge-sheet, being charge-sheet no.38/09 dated 11.06.2009 under Sections 326/307 of the Indian Penal Code against the accused/appellant herein. The case was thereafter committed to the Court of Sessions for trial and on 17.11.14 charge was framed against the appellant under Section 448/307 of the Indian Penal Code, the contents of the charge were read over and explained to the accused to which he pleaded not guilty and claimed to be tried.

Prosecution in order to prove its case relied upon 11 witnesses which included PW1, Jitendra Nath Barman, complainant; PW2, Sabitri Barman, victim; PW3, Shila Barman, sister-in-law of the victim; PW4, Mahesh Barman, elder brother of the victim; PW5, Rahamat Ali Miah, neighbour; PW6 Jayanti

Ghosh, neighbour; PW7, Pallab Das, neighbour; PW8, Pramila Barman, sister-in-law of the victim; PW9, Moksedul Islam, driver of a vehicle; PW10 Dr. Nimai Biswas, medical officer and PW11, S.I. Sujan Kr. Kundu, Investigating Officer of the case.

The prosecution also relied upon four documents which included Ext.1, written complaint; Ext.2, Medical Report; Ext.3, Formal FIR and Ext.4, rough sketch of place of occurrence with index.

PW1, Jitendra Nath Barman, deposed before the Court that Sabitri Barman is his sister and the incident occurred on 20.04.2009 when he entered the kitchen for having his dinner and all of a sudden he heard hue and cry raised by his sister and wife, when he came out and saw Selim Sargam with a knife in his hand was running away from his bedroom. He found that his sister was standing on the floor of the room with bleeding injuries on her abdomen just below the naval. Immediately he took her to Falakata Hospital and 27 stitches were administered to the wounds of his sister. She was further referred to MJN Hospital for medical treatment. He came to know that the accused Selim Sargam inflicted injuries on his sister with a knife. The injured was admitted in MJN Hospital for about 15 days. Next he lodged a complaint with Ghoksadanga police station which was registered as FIR. He identified his signature in the FIR. The witness also stated that as his sister refused the proposal of marriage offered by Selim Sargam, he being annoyed inflicted such grievous injury on his sister.

PW2, Sabitri Barman is the victim, she deposed that she completed her M.A. from North Bengal University at Siliguri and the incident occurred at about 7/7.30 pm on 20.04.2009 when she was in her room along with her sister-in-law, Shila Barman. The victim described that Selim Sargam inflicted injury with a knife on her abdomen and the said injury started from the left side of her abdomen and proceeded towards right side just above naval. As a result she suffered severe pain, bleeding injury and leaned towards the bed. She was not in a position to raise voice or shout as such her sister-in-law started crying and raised hue and cry when her elder brother who was in the kitchen came there and the accused fled away holding the knife in his hand. Initially she was taken to Falakata Hospital and from there to MJN Hospital. She remained in the same hospital for some days and thereafter was treated at a private nursing home. She further stated that 27 stitches were administered on her wounds and her treatment continued for a considerable period of time. She further stated that she was acquainted with the accused because when she was pursuing her post-graduate classes and exchanged notes and other study materials with him. After completing M.A. the accused proposed her to marry, as she did not agree, being annoyed the accused assaulted her with knife. She deposed that before the incident the accused threatened her on several occasions that in case she did not marry him he would kill her. She had earlier divulged such fact to her sister-in-law and also to the police personnel who visited her at MJN Hospital, Coochbehar. She identified the accused Selim Sargam in Court.

PW3, Shila Barman, is the sister-in-law of the victim. She narrated the incident in the same manner as PW2. The witness stated regarding the 27 stitches being administered upon the wounds of the victim Sabitri Barman. She also stated the victim divulged to her regarding refusing to the proposal of marriage given by the accused and at the relevant period of time the victim was working at Sahaj Tathya Mitra Kendra.

PW4, Mahesh Barman, is the elder brother of the victim. He deposed that he had constructed a house at Falakata and sometimes he stayed at Falakata and sometimes he stayed at his native home. On 20.04.2009 at about 7/7.30 pm he was at Chandrabandha market and on hearing such news of his sister being injured severely, he reached at the house and found that his sister was lying on the floor with bleeding injures on her abdomen and some other female members of the family/locality were surrounding her and tried to tie one napkin like substance on the wounds of his sister to prevent oozing of blood. He narrated regarding the incident as he heard from the other witnesses and stated that as Falakata Hospital is 5 k.m. away from their house for initial treatment she was taken there and from there she was shifted to MJN Hospital, Coochbehar. He also stated that 15/20 stitches were administered on the wounds of his sister and she was there for 3 days and thereafter her medical treatment was carried on from their residence.

PW5, Rahamat Ali Miah, stated the victim and her family members are known to him as his house is situated at the locality. On 20.04.2009 at about

7/7.30 pm he was at Ramthenga market and heard regarding the incident and on hearing such news he went to the house of the victim and found that Sabitri Barman was lying on the floor with bleeding injuries. He heard from the people who gathered there, that accused assaulted with a knife and fled away.

PW6, Jayanti Ghosh is a neighbour who stated that the incident occurred on 20.04.2009 and on hearing hue and cry from the house of the victim she rushed there and found that the victim Sabitri Barman was lying on the floor and profusely bleeding. In the said room Shila Barman was also present. As the victim suffered bleeding injuries on her abdomen she collected an old cloth and tried to press on the wound to prevent further blood oozing out. She further stated that she along with others took the victim to Falakata Hospital where she was administered 36 stitches on her wound. However, the victim was subsequently referred to MJN Hospital. She stated that she heard that the accused who studied along with the victim inflicted injury with a knife as the victim refused to marry him.

PW7, Pallab Das is an acquaintance who narrated the incident in the same manner as PW6.

PW8, Pramila Barman, is the wife of Mahesh Barman, PW4. She deposed that she was busy in the kitchen when she heard the victim and her sister-in-law screaming and on hearing such shrill she rushed to the room and found that the victim was lying on the floor with bleeding injury in the said room. Victim repeated the word 'Selim'. She further stated that on her way she saw

that Selim was running away from the said room with a knife in his hand and it was said Selim who caused injury on the left side of the abdomen. She collected piece of cloth for pressing the wound and at that time other persons reached but could not get hold of Selim. In a hired vehicle of Moksedul Islam the victim was shifted to Falakata Hospital from where she was further referred to MJM Hospital, Coochbehar. She identified the accused in Court.

PW9, Moksedul Islam is driver of vehicle bearing registration no. WB-74/2733, the said vehicle was parked at Falakata Stand. The witness deposed that on 20.04.2009 Mahesh Barman called him over phone and asked to bring his vehicle as he intended to take a patient suffering serious bleeding injury to the hospital. The witness stated that he found that an injured girl who was ill was boarded in the vehicle and he carried her at a distance of 4 k.m. and he heard from the passengers that the accused assaulted the girl with a knife. He deposed that after the said girl was admitted in hospital he left the said hospital.

PW10. Dr. Nimai Biswas attended the victim when she was taken to Falakata Hospital. The witness stated regarding the history of the patient in respect of the injuries and described the injuries and the stitches administered by him as follows:

“The patient on being asked stated that she was assaulted by Salim Sargam with a knife half hours ago. On examination, I found that she suffered a cutting injury at the junction of thorax of abdomen at left

side (20 cm. X 4 cm. X 4 cm.). Stitches were done and the patient was referred to North Bengal Medical College and Hospital.”

PW11 is the Investigating Officer of the case. Who narrated regarding the chronology of events pursuant to the complaint being lodged with the police station and case being registered and endorsed to him. The witness also stated regarding the chronology of events relating to collection of injury reports, recording of statements of the relevant witnesses including the victim, preparation of the sketch map with index and after completion of investigation submission of the charge-sheet.

Mr. Uday Sankar Chattopadhyay, learned Advocate appearing for the appellant submitted that the appellant has been falsely implicated in connection with the instant case and the prosecution witnesses have exaggerated their versions which would be reflected from the evidence on record. It has also been submitted that as there was difference of religion and the complainant's family was reluctant to give marriage, the appellant has been falsely implicated in the instant case. He further added that the number of stitches which has been stated by each of the witnesses are at variance. Learned advocate also drew the attention to the medical report and stated that although the doctor referred patient to North Bengal Medical College the consistent version of the prosecution witnesses were that the victim was shifted to MJN Hospital, Coochbehar. It was further stated that there is a primary health centre at Ghoksadanga and there is no reason to admit the victim to Falakata Hospital. The prosecution witness no.1 that is the complainant was a

known political leader who had power to get a medical report of his own choice and that is why she had been taken there. Additionally it has been submitted that the appellant is presently about 42 years old having a family of his own and the incident which has been referred to is of the year 2009 as such he may be released on probation or by imposing fine. To that extent learned advocate referred to a decision of the Hon'ble Supreme Court in *Illathody Beeran –Vs. – State of Kerala & Anr.* reported in (2016) 14 SCC 286 and submitted that in similar set of facts the Hon'ble Supreme Court was pleased to grant benefit to the appellant therein.

I have considered the said judgment referred to by the learned advocate appearing for the appellant and it reflects that the Hon'ble Supreme Court was of the opinion that the sentence of 7 years should be reduced to 3 years because of the fact that the case is of the year 1989 and about 27 years old. Paragraph 8 of the said judgment is set out as follows:

“8. Insofar as the sentence awarded to the appellant is concerned, it was submitted by the learned counsel for the appellant that he is now aged about 50 years and is the sole breadwinner of the family. It was also submitted that the occurrence was of the year 1989 and undergoing seven years' rigorous imprisonment at this distant point of time would be too harsh. Having regard to the fact that the occurrence was of the year 1989 and considering the age of the appellant and in the facts and circumstances, we reduce the sentence of imprisonment of seven years to three years.”

Mr. Arindam Sen, learned Advocate appearing for the State opposes the contentions advanced by the learned Advocate appearing for the appellant and submitted that the incident has far reaching consequences and the issues which have been canvassed by the appellant do not refer to any major inconsistency. The learned advocate submitted that the evidence of the injured, the eye-witness PW3, Shila Barman, subsequent conduct of the accused fleeing away as described by the PW1 and the medical evidence proves the prosecution case beyond reasonable doubt and there is no scope for interference in respect of the judgment and order of conviction and sentence passed by the learned trial Court.

In State of M.P. –Vs. – Mansingh reported in (2003) 10 SCC 414 it was held by the Hon’ble Supreme Court that under no circumstances the evidence of any injured victim is to be lightly appreciated and must be considered by the Courts seriously. Paragraph 9 of the judgment which is relevant for the present case is quoted below:

“9. The evidence of injured witnesses has greater evidentiary value and unless compelling reasons exist, their statements are not to be discarded lightly. Merely because there was no mention of a knife in the first information report, that does not wash away the effect of the evidence tendered by the injured witnesses PWs 4 and 7. Minor discrepancies do not corrode the credibility of an otherwise acceptable evidence. The circumstances highlighted by the High Court to attach vulnerability to the evidence of the injured witnesses are clearly inconsequential. It is fairly conceded by the learned counsel for the accused that though mere non-mention of the

assailants' names in the requisition memo of injury is not sufficient to discard the prosecution version in entirety, according to him it is a doubtful circumstance and forms a vital link to determine whether the prosecution version is credible. It is a settled position in law that omission to mention the name of the assailants in the requisition memo perforce does not render the prosecution version brittle.”

On an appreciation of the materials appearing in the evidence, I am of the opinion that the prosecution evidence particularly the evidence of the victim and the doctor, PW10 inspire confidence regarding the injury being sustained by the victim and such injury being inflicted at the instance of the present appellant. In fact, the name of the appellant also was divulged before the doctor at the first instance. I have also considered the injury which has been described in the injury report i.e. 20 cm X 4 cm X 4 cm. The manner in which the appellant entered the house and inflicted the injury in a pre-planned manner do reflect culpability of the appellant in this offence. There is nothing on record to disbelieve the victim. The number of stitches which are at variance cannot be considered to be major discrepancy in a case of such nature. Further on the point of the accused/appellant entering the premises of the victim and injuring no alternative facts could be established by the accused/appellant in course of cross-examination. Neither the version of the prosecution witnesses particularly PW2, PW1, PW3 could be dislodged in any manner as they were present in their house.

Having regard to the facts of the case, I am of the opinion that the finding of guilt and conviction so held by the trial Court do not call for any interference. However, that the appellant at the relevant time of commission of the offence was aged about 28/29 years and that there has been no allegation that he has further disturbed the victim or is involved in any other criminal offence, sentence of five years would sub-serve the ends of justice.

Accordingly, in respect of the offence under Section 307 of the Indian Penal Code Rigorous Imprisonment for 7 years so imposed by the learned Trial Court is reduced to Rigorous Imprisonment for 5 years with the fine amount and other orders of sentencing remaining un-altered.

So far as the offence under Section 448 of Indian Penal Code is concerned the same is not interfered with.

The appellant is on bail, his bail bond stands cancelled. He is directed to surrender before the learned trial Court within a period of 15 days from date.

Accordingly, CRA 39 of 2017 is partly allowed.

Pending Applications, if any, are consequently disposed of.

Department is directed to send back the Lower Court Records to the respective Courts and communicate this judgment, so that effective steps are taken by the learned trial Court.

All parties shall act on the server copy of this judgment duly downloaded from the official website of this Court.

Urgent Xerox certified photocopy of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Tirthankar Ghosh, J.)