

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION

Present:

The Hon'ble Justice Rabindranath Samanta

C.R.A. 39 of 2010 [via video conferencing]

Tarun Kumar Pandey & Ors.

-Vs-

The State of West Bengal

For the State : Mr. Narayan Prasad Agarwala
Mr. Pratick Bose

Heard on : 28.01.2022

Judgment on: 28.01.2022

Rabindranath Samanta, J. :-

None appears for the appellants.

The respondent, The State of West Bengal is represented by Mr. Narayan Prasad Agarwala, learned advocate with Mr. Pratick Bose, learned advocate.

Their appointments may be regularised in due course.

It appears from the case records that despite issuance of administrative notice and passing necessary orders from time to time for appearance of the appellants before this Court, the appellants failed to appear before the Court to continue with the appeal.

From the conduct of the appellants I feel that the appellants are not interested to proceed with the appeal.

Learned lawyer appearing for the State submits that this Court may pass necessary order as the Court deems fit and proper after going through the evidence.

The instant appeal has been preferred by the appellants being aggrieved by and dissatisfied with the judgment and order of conviction and sentence passed by the learned Additional Sessions Judge, Fast Track Court-II, Howrah in Sessions Trial No. 111 of 2008. By the judgment the appellants were convicted for commission of the offence under Sections 307/34 of the Indian Penal Code and each of them was sentenced to suffer rigorous imprisonment for four years and to pay a fine of Rs.1,000/-, in default, to suffer simple imprisonment for three months. Now the point which falls for determination is as to whether the conviction and sentence passed by the learned trial Judge is sustainable in law and on facts.

In the absence of the appellants for continuous period, I feel that considering the age of the appeal this appeal should be disposed of after scrutinising and assessing the evidence as produced by the prosecution.

To put briefly, the prosecution case may be stated as under :

On 16.07.2007 Arun Seth lodged a complaint at Bantra Police Station on the allegation that on 15.07.2007 at about 11:45 A.M. when his son-in-law, Upendra Roy came to his house at 31/2 Kantapukur, 3rd by-lane, an altercation took place between his son-in-law with Tarun Pandey and his two associates. In the course of altercation, the appellants/convicts brutally assaulted his son-in-law with iron rods and fists and blows and as a result of which he sustained injuries on his person. The appellants assaulted his son-in-law in order to kill him.

On the basis of the FIR one Bantra Police Station Case No.53 of 2007 under Sections 325/307/34 of the Indian Penal Code was registered against the

appellants for investigation. During course of investigation, the Investigating Officer arrested the appellants and forwarded them to court. After completion of investigation, the Investigating Officer submitted charge-sheet against the appellants under Sections 325/307/34 IPC.

Ultimately, charge under Sections 325/307/34 IPC was framed against the appellants who pleaded not guilty to the charge and claimed to be tried. Hence, the trial commenced.

In order to bring home the charge, the prosecution has examined as many as 13 witnesses and admitted some documents in evidence which have been marked as Exhibits 1 to 8.

I have perused the evidence of the informant and the eyewitness, Arun Seth (PW1) and the other witnesses including the medical officer and the Investigating Officer of the case. As I find from the evidence of PW1 Arun Seth, this witness has testified unequivocally that the appellants in order to kill his son-in-law, Upendra Roy brutally assaulted him with iron rods, fists and blows etc. As a result he sustained injuries on his person. He was admitted to hospital for medical treatment. From his cross-examination I find that the evidence as adduced by PW1-in-chief remains unshaken. The medical evidence corroborates the evidence of PW1. I have also gone through the other evidence on record. The medical evidence shows that the injured received fracture in left frontal region of scalp.

On analysing and appreciation of the evidence of the prosecution witnesses and the medical evidence, I find that the learned Trial Judge was justified in convicting and sentencing the appellants, as above.

In view of the above I concur with the conviction recorded by the learned Trial Judge and the sentence as imposed upon the appellants.

From the case records it appears that this Court issued Rule upon the appellants on enhancement of the sentence.

But, I find that the sentence as imposed by the learned Trial Judge is adequate and it does not require any enhancement of the same.

In view of the above, the Rule is discharged.

In view of the findings as above, the appeal is dismissed.

The judgment and the order of conviction and sentence passed by the learned Additional Sessions Judge, Fast Track Court-II, Howrah in Sessions Trial No. 111 of 2008 is hereby affirmed. The appellants are directed to surrender before the learned Court below forthwith to serve out the remaining part of the sentence. If the appellants fail to appear before the learned Trial Judge, the learned Trial Judge is at liberty to issue non-bailable warrant of arrest against the appellants so that they serve out the remaining part of the sentence.

Lower Court records along with a copy of this judgment be sent down at once to the learned Trial court for necessary action.

Photostat certified copy of this judgment, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Rabindranath Samanta, J.)