

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

**Present :-**

**The Hon'ble Justice Moushumi Bhattacharya.**

**C.R.A. 365 of 1986**

Sujit Kumar Chakraborty @ Bapi

Vs

The State of West Bengal

*As Amicus Curiae* : Ms. Suchismita Dutta, Adv.

Last Heard on : 17.05.2022.

Delivered on : 08.06.2022.

**Moushumi Bhattacharya, J.**

1. The present appeal has been filed under section 374(2) of The Code of Criminal Procedure, 1973. The order under appeal is dated 31.07.1986 and was passed by the learned Addl. Sessions Judge, 14<sup>th</sup> Court, Alipur, 24 Parganas. By the said judgment and order, the appellant, Sujit Kumar Chakraborty @ Bapi, was convicted and sentenced to rigorous imprisonment for a term of five years and a fine of Rs. 2,000/- in default of which the appellant was to suffer rigorous imprisonment for a further term of six months. The charge sheet was filed under section 326 of the Indian Penal Code, 1860 - voluntarily causing grievous hurt by dangerous weapons or means - and a total

of 18 prosecution witnesses were examined in the trial. There was no witness for the defence / appellant. All the charges were framed under Police Station Case No. 68 of 1982 and the charge sheet was submitted under section 326 of the IPC. The complainant was one Sushil Das who was the father of the victim, Utpal Das @ Chottu. The charge was framed under section 307 of the IPC on 27.05.1985.

The gist of the written complaint is as follows :

2. The case was registered on the basis of the First Information Report lodged by said Sri. Sushil Das (complainant), who is the father of the victim, Utpal Das, on 28.05.1982. The incident occurred on 26.05.1982 at around 7 pm and according to the complainant, at the time when the complainant was proceeding towards his house, the complainant heard some boys warning him not to proceed towards his house as his son Utpal Das (Chottu) had been injured. The complainant thereafter states that he found his son Utpal with a ruptured left eye and came to know that his son was returning after bathing when the appellant hit him from behind; when the victim turned the appellant hit him again and the victim fell to the ground. The appellant also kicked the victim and beat him with his *lathi*. The victim Utpal was thereafter taken to the dispensary and then to the hospital. The victim was admitted to M.N. Chatterjee Eye Hospital on 27.07.1982.

3. The list of prosecution witnesses who were examined in the trial are the following :

- a. PW1, Sushil Das, father of the victim.
  - b. PW2, Malati Das, mother of the victim.
  - c. PW3, Sanjib Chakraborty, playmate of the victim and the appellant.
  - d. PW4, Samir Roy, acquaintance of the victim and the appellant. (Hostile Witness)
  - e. PW5, Animesh Ghosh, playmate of the victim and the appellant.
  - f. PW6, Debasish Goswami @ Nanu Da, playmate of the victim and the appellant.
  - g. PW7, Tushar Paul @ Napa Da, playmate of the victim and the appellant.
  - h. PW8, Debaprasad Sinha, Acquaintance of the victim and the appellant.
  - i. PW9, Nripendranath Adhikary, playmate of the victim and the appellant.
  - j. PW10, Sandhya Brahma, neighbour of victim. (Hostile witness).
  - k. PW11, Sushil Kumar Bhar, Radiologist, who conducted X-Ray of victim.
  - l. PW12, Dr. Bimal Sarkar, General Physician, first attended the victim.
  - m. PW13, Kiran Shankar Chakraborty, Sub-Inspector of Police.
  - n. PW14, Dr. Indra Sekhar Roy, Second attending doctor.
  - o. PW15, Dr. R L Saha, final treating doctor.
  - p. PW16, Dr. Sushil Kumar Chakraborty, issued discharge certificate to the victim.
  - q. PW17, Utpal das @ Chotu, Victim.
  - r. PW18, Sushil Mitra, Investigating Officer.
4. No one was examined on behalf of the appellant / accused.

What the evidence reveals :

5. PW1, being the complainant and the father of the victim stated in his cross-examination that his son was assaulted with a stick, but did not mention the name of the assailants before the attending doctor nor before any other doctors who treated his son (victim – Utpal). PW1 also states in his cross-

examination that a person may sustain an injury while playing football and particularly when players fall on the ground. This was corroborated by the mother of the victim (PW2). The deposition of PW1 indicates that PW1 was informed by one Ranjan Das, one Pradip Majumder and one Partha Pratim Das not to proceed towards his house and that Bapi (the appellant) had assaulted his son Utpal. However, none of these three men who were also of the same locality were examined as witnesses in the trial.

6. PW2, the victim's mother, stated that the victim was released from hospital after 22 days of treatment but did not disclose the name of the assailant to any person including the doctors who attended to him.

7. PW5, who was a fellow football player and was present on the day when the football match was held, deposed that the appellant and the victim were playing in opposite teams and the victim jumped to head a ball during a goal and was pushed by the appellant as a result of which the victim fell on the ground. This account was corroborated by PW14 who deposed that the injury sustained by the victim may be accidental in nature. PW5 also states in his cross-examination that such kind of injuries may happen and a person may sustain a fracture in the leg or injury on the head or on face or in the eyes if one is struck by another player. This suggestion is corroborated by the victim himself (PW17). Further, although PW5 claims to be an eye-witness the assailant's name was not taken by the said witness. PW11 also suggested that such an injury may be caused when a person falls on a stone with his eye in direct contact with the stone or with a hard object. No cause of injury has also

been stated by PW12, Dr. Bimal Sarkar or PW14, the attending Doctor. PW14 suggested that the injury may be accidental in nature. It appears from the deposition of PW18, the sub-inspector of the concerned Police Station that there were lapses in the investigation including the recording of the statement of the victim after 2-3 months from the date of the incident. Dr. Hazra whose dispensary the victim was taken to was not examined and the wearing apparels or any blood-stained articles belonging to the victim were also not seized in the investigation.

8. Upon perusal of the impugned judgment and order it appears that the entire case is based on the fact that the victim and the appellant were residents of the same locality and were young men in their teens and hence it is not unnatural for them to play football in the local playground. The judgment records the prosecution witnesses and the undisputed fact that the incident occurred in course of a football match. The judgment does not take into account the contradictions in the evidences of PWs 5, 7 and 17 (the victim himself) about the alleged blows in the eyes of the victim. The learned judge also did not consider the difference in circumstances pointed out during arguments which may have a bearing on the veracity of the prosecution story. The delay in lodging of the FIR should have been given serious consideration particularly where the incident occurred on 26.05.1982 at about 6.30 pm and the FIR was lodged two days later on 28.05.1982 at 7 pm. The evidence of the doctors (PW15 and PW12) shows that the victim did not mention the name of the appellant. According to the learned judge since the victim lost

consciousness and regained consciousness in the hospital, the victim did not have any scope to name the assailant before the doctors. The learned judge therefore, concludes that the omission of mentioning the name of the assailant does not affect the veracity of the prosecution story. The learned judge hence concludes that the prosecution has been able to prove beyond reasonable doubt that the accused / appellant assaulted the victim and the injury was caused by a *lathi* leading to permanent loss of vision of the victim.

9. The impugned judgment does not disclose any basis for coming to the conclusion contained therein. Most important, there is no concrete finding or piece of material as to the commission of the injury by the appellant. This is all the more significant since the victim, Utpal has not named the appellant or any other person as the assailant who caused the injury. The deposition of the doctors did not indicate that the injury was caused by a *lathi* or physical assault. On the contrary, the deposition of several of the witnesses including PW1, PW3, PW5 and the victim himself (PW17) show that such kind of injuries are common during a football match particularly where one player is trying to resist another player. The conclusion that the offence was committed in the heat of the moment has no factual or evidentiary basis at all.

10. In view of the above, after perusal of the written complaint, the charge framed, the deposition of the witnesses and the examination of the accused under section 313 of the Cr.P.C., this court is of the view that the prosecution has failed to prove the charges brought against the appellant beyond reasonable doubt and the impugned judgment and order dated 31.07.1986

cannot be sustained either in fact or in law. This court hence finds no justification to convict and sentence the appellant under section 325 of the IPC. The order of the conviction which is of the same date as the judgment passed by the learned Court is also set aside. The appellant is hereby acquitted of the charges framed against him and is discharged from any bond and / or condition if furnished by the appellant in connection with any bail application in respect of the present conviction at any point of time. CRA 365 of 1986 along with all connected applications is disposed of in view of the above.

11. This court records its appreciation to the learned amicus for her assistance in the matter.

Urgent Photostat certified copies of this judgment, if applied for, be supplied to the respective parties upon fulfillment of requisite formalities.

**(Moushumi Bhattacharya, J.)**