

IN THE HIGH COURT AT CALCUTTA
(Criminal Appellate Jurisdiction)
APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

C.R.A. 36 of 1999

Nazrul Islam

Vs.

The State of West Bengal.

For the Appellant

**: Mr. Usof Ali Dewan,
Mr. A. Sarkar,
Mr. Asif Dewan.**

For the State

: Mr. A. Ghosh.

Heard on

: 01.07.2022

Judgment on

: 26.09.2022

Shampa Dutt (Paul), J.:

This is an appeal against an order and judgment dated 21.12.1998 passed by the learned Additional Sessions Judge, Murshidabad, convicting the accused/appellant under Section 211 of the Indian Penal Code and accordingly sentencing him to suffer simple imprisonment for one year in Sessions Case No. 100/98.

Suti P.S. Case no. 47 of 1990 relating to which sessions Case no. 51 of 1992 was the basis, the accused had been stabbed from behind as stated in his written complaint and one Mustafa (PW 2), Israfil (PW 3), Ainal and Monsur (PW 8) were present at that time. It is from the evidence of these witnesses that the petitioner had come to know from them that Sadek Sk. had stabbed him from behind. Police had recorded their statements but all those witnesses turned hostile. Considering the nature of injuries sustained by the complainant Nazrul Islam therein, he was in the hospital for two months. Police had gone and had the complaint written by Nazrul Islam in the hospital. PW 11 in the said case was the Investigating Officer and has clearly stated that PW 2, PW 3, PW 4, PW 5, PW 7, PW 8, and PW 9 had all stated about Sadek Sk. stabbing Nazrul Islam from behind, but they turned hostile in Court. As such Nazrul Islam clearly did not implicate Sadek Sk. falsely. He named Sadek Sk. on the basis of the statements of the witnesses who turned hostile but the Investigating Officer on oath corroborated the said statements of the witnesses recorded under Section 161 Cr.P.C.

On completion of investigation chargesheet was filed. Cognizance was taken. Case was convicted to the Court of Sessions. Charge was framed. During trial the present appellant/convict was examined as PW 1. He corroborated the contents in the written complaint marked Exhibit 1 but thereafter in his evidence he stated that he did not see Sadek Sk. assaulting him and that he later came to know the name of the accused from one of his villagers whose name he cannot recollect.

Considering such evidence accused Sadek Sk. was acquitted but the learned Judge directed a proceeding under Section 340 of the Cr.P.C. against the present appellant as an accused. A notice was served upon the appellant and he was directed to show cause. On submission of show cause, the learned Sessions Judge on hearing both sides held that the accused had lodged a false complaint against Sadek Sk. and accordingly the Judge lodged a complaint under Section 211 of the Indian Penal Code before the learned Chief Judicial Magistrate, Murshidabad. The said case was then again committed to the Court of sessions for trial of the present appellant under Section 211 of IPC. Charge was framed on examination of only one witness. Learned Additional Sessions Judge convicted the present appellant for finding him guilty of offence punishable under Section 211 of the Indian Penal Code and sentenced him to suffer simple imprisonment for one year. Hence this appeal.

Mr. Usof Ali Dewan, learned Advocate for the appellant has submitted that there has been a serious miscarriage of justice against

the appellant/convict and the judgment under appeal is bad in law. The Trial Judge without recording any specific findings and without proper evidence being adduced erroneously convicted the accused/appellant. The learned Sessions Judge failed to consider that the ingredients required to constitute an offence under Section 211 of IPC was not proved by the prosecution and without findings on the materials on the record, convicted the accused erroneously.

It is further submitted by the learned lawyer for the appellant that the appellant/convict who was the complainant in Suti P.S. Case No. 47 of 1990 had been stabbed from behind. The said fact is evident from the contents of the written complaint (Exhibit 1) and as such the appellant/convict in the said case had deposed truthfully that he did not see the person who stabbed him.

It is normal that a person may not recollect the name of the person who specifically informed the complainant, the name of the accused.

The complainant in Suti P.S. case no. 47 of 1990 did not deviate from his statement as made in the written complaint.

There was no false evidence given by him and there was absolutely no false information on his part nor did he institute the said criminal proceedings without any just or lawful ground. The charge against the accused Sadek Ali was not false and the appellant had no knowledge of any false statement being made by him.

The appellant/convict/complainant therein never made any charge intending to cause injury to the person against whom the charge was made.

The injury report in the said case will clearly prove that the complainant/appellant herein was stabbed from behind and as such that there is no ingredients to constitute an offence under Section 211 of IPC.

The learned Sessions Judge was wrong in convicting and sentencing the appellant/convict and the judgment under appeal being not in accordance with law is liable to be set aside.

Mr. A. Ghosh, learned lawyer for the State submits that the judgment under appeal is in accordance with law and the learned Sessions Judge passed the said judgment considering the materials on record in accordance with law and rightfully convicted and sentenced the appellant and the appeal is thus liable to be dismissed.

Evidence on record

The only evidence before the learned Sessions Judge was prosecution witness no. 1 being the bench clerk attached to the Court of Additional District and Sessions Judge, 1st Court, Murshidabad. This witness has proved that the present appellant had deposed as PW 1 being the complainant in Sessions Case no. 51 of 1992 in which the learned Sessions Judge filed the complaint against the present appellant/ convict under Section 211 of IPC. The evidence of the appellant/convict as PW 1 in Sessions Case No. 51 of 1992 has been

marked as Exhibit 1 in the present case. The evidence of the other witnesses in the said session case is also on record.

Analysis of evidence

Learned Sessions Judge in his judgment and order under appeal held:-

“The accused Nazrul Islam (appellant/convict herein) in his deposition before the learned Sessions Judge corroborated the incident and proved the FIR which was marked Exhibit 1”.

The learned Sessions Judge further held that the complainant/appellant convict herein stated that:-

“He did not see the accused Sadek Sk. to assault him and later he came to know the name of the accused person from one of his villagers whose name he cannot remember”.

From the judgment under appeal, the only finding of the learned Sessions Judge convicting the present appellant is as follows:-

“It appears that a false allegation was made against accused Sadek Sk. by accused Nazrul Islam and he also gave false evidence before the learned Sessions Judge against the accused Sadek Sk. the accused Nazrul Islam in his examination under Section 313 admits his guilt and states that the matter was settled between the parties and prays for mercy of this Court”.

It is only on these findings that the learned Sessions Judge held the appellant/convict guilty. There being absolutely no

evidence on record in support of the charge under Section 211 of IPC.

Section 211 of the Indian Penal Code lays down:-

“211. False charge of offence made with intent to injure.—Whoever, with intent to cause injury to any person, institutes or causes to be instituted any criminal proceeding against that person, or falsely charges any person with having committed an offence, knowing that there is no just or lawful ground for such proceeding or charge against that person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both; and if such criminal proceeding be instituted on a false charge of an offence punishable with death, imprisonment for life, or imprisonment for seven years or upwards, shall be punishable with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.
Ingredients of offence. — The essential ingredients of the offence under sec. 211 are as follows:

- (1) Accused instituted a criminal proceeding;
- (2) There was no just or lawful ground for such proceeding or the charge was false;
- (3) Accused knew at the time of making the charge that there was no lawful ground;
- (4) He made the charge intending to cause injury to the person against whom the charge was made.”

Exhibit 1 in the present case is the evidence of the appellant/convict as PW 1 complainant in Sessions Case no. 51 of 1992. On perusal of the said evidence this Court finds that the appellant/complainant therein proved his written complaint (Exhibit 1). **It is further seen that the complaint (appellant herein) in the**

said sessions case did not even name accused Sadek Sk. in his evidence as PW 1 in the said case (Session case 51/92) Exhibit 1 herein.

PW 2 Mustafa Sk., PW 3 Israfil Sk., PW 4 Ibrahim Biswas, PW 5 Aliajman Sk. in Sessions Case No. 51 of 1992 **were declared hostile and on being cross examined denied stating to the police that they had seen Sadek Sk. stabbing Nazrul Islam.**

There is absolutely no statement in the evidence of the complainant/appellant herein as PW 1 in Sessions Case 51 of 1992 implicating Sadek Sk.

The learned Sessions Judge without discussing the evidence and without proper appreciation of the evidence in the concerned sessions trial case and without any discussion or findings mechanically convicted the appellant/convict.

From the evidence of PW 6 Dr. Kali Krishna Banerjee in Sessions Case No. 51 of 1992, it is clearly seen that the appellant herein Nazrul Islam was suffered stab injuries (on his back) on 19.03.1990 and this Doctor treated Nazrul Islam. Nazrul Islam was also given stitches over **upper part of the back.**

The evidence of this witness clearly proves that the statement of complainant injured Nazrul Islam (the appellant herein) is true that he was assaulted from behind. **It is the other witnesses who have not admitted their statements before the police against Sadek Sk. before the learned Sessions Judge.** Thus the judgment and order

under appeal in the present case suffers from severe infirmity and is based on absolutely no findings and without any proper appreciation of the materials on record including the evidence.

The prosecution before the learned Sessions Judge thus clearly could not prove any of the ingredients as required to constitute an offence under Section 211 of the Indian Penal Code against the appellant/convict Nazrul Islam.

Conclusion

Considering the discussions above, this Court finds that the prosecution failed to prove their charge under Section 211 of Indian Penal Code beyond reasonable doubt against the appellant/convict before the learned Sessions Judge and the judgment and order under appeal suffers from severe infirmity being without any appreciation and proper consideration of evidence and without any of the materials being properly discussed, in order to arrive at the findings of guilt of the appellant/convict and as such the judgment/order under appeal is liable to be set aside.

The appeal is thus allowed.

The appellant/convict is accordingly acquitted of all charge and discharged/released from his Bail bond.

Let a copy of this judgment along with the lower court records be sent down to the trial court immediately.

Urgent Photostat Certified copy of this Judgment, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

(Shampa Dutt (Paul), J.)