

Form J(2)

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

**Present :
The Hon'ble Justice Bibek Chaudhuri**

CRA 78 of 2016

**Yeakub Mondal & Ors.
-Vs.-
The State of West Bengal**

**For the appellants : Mr. Arindam Jana, Adv.,
Mr. Asraf Mondal, Adv.**

**For the State : Mr. S. G. Mukherjee, Ld. P.P.,
Ms. Faria Hossain, Adv.,
Mr. Anand Keshari, Adv.**

Heard & Judgement on : 28.04.2022

Bibek Chaudhuri, J.

This is an appeal filed by the Convicts of Sessions Case No. 56(4)/2007 assailing the order of conviction under Sections 325/34 of the Indian Penal Code and consequent sentence of rigorous imprisonment for three years with fine of Rs.1,000/- each, in default, to suffer further rigorous imprisonment for one month each for the offence punishable under the above penal provisions.

One Jahangir Mondal lodged a written complaint to the Officer-in-Charge, Tehatta Police Station on 12th May, 1999 alleging, *inter alia*, that on 12th May he went to his mango grove at village Digbareya at about 6.00 A.M. At about 8.00 A.M. his son, Kedi Rahaman informed him that a number of people illegally trespassed into his house and caused assault to his family members. It was stated by the *de facto* complainant that at the southern side of his house, he stacked straw and his younger brother was raising a fencing around the heaps of straw. His avuncular brothers, namely Asbar, Nasir and Delwar Mondal used the said place as a pathway. They restrained the younger brother of the *de facto* complainant to raise a fencing around the said area and over the said issue a dispute cropped up between them, there was altercation and quarrel between the above-mentioned two groups for few days. On the date of occurrence, the said Asbar, Nasir and Delwar Mondal with 20/25 persons being armed with 'lathi', 'dagger', 'bomb', 'crowbar', 'pipe gun' etc. entered into the house of the *de facto* complainant and assaulted his father, Hekmat Mondal, Kanu @ Mahiruddin and one Aroj Ali. The father of the *de facto* complainant received bleeding injury on being hit with the help of a 'crowbar'. After assaulting the father of the *de facto* complainant they trespassed into the house of his uncle, Nefajuddin Mondal and Manoj Mondal and also assaulted them with 'lathi', 'iron

rod', 'hashua' etc. Accused Delwar Mondal, Bashed Mondal, Ajid Mondal, Akem Sk. and Abdul Sk. also hurled 'bombs' in order to frighten the *de facto* complainant and his family members. They also committed theft of one television set and kitchenware from the house of Nafajuddin Mondal and one table fan and a television set from the house of Abdul Kalam. As a result of assault Aroj Ali, Hekmat Mondal, Patu Mondal, Hajera Bibi, Kanu @ Mahiruddin, Abdul Kalam and Anwara Bibi sustained serious injury on their persons and they were medically treated. Abdul Kalam suffered injury when the accused persons threw bomb towards him. Patu Mondal sustained fracture in his hand. The injured persons were taken to local hospital. Thereafter, they were referred to Shaktinagar hospital.

On the basis of the said written complaint, Police registered Tehatta Police Station Case No. 81/1999 under Sections 147/148/149/447/379/325/326/307 of the Indian Penal Code and Sections 25/27 of the Arms Act along with Sections 3/4 of Explosive Substance Act.

On filing of the charge-sheet the case was committed to the Court of Sessions, Nadia. Subsequently, the trial of the case was taken up by the Learned Additional Sessions Judge, 1st Fast Track Court, Krishnagar. Charge was framed against 15 accused persons under Sections 447/34 of the Indian Penal Code, Section 379 of the

Indian Penal Code, Sections 326/34 and Sections 307/34 of the Indian Penal Code. As the accused persons pleaded not guilty the Learned Trial Judge commenced trial of the case. During trial, prosecution examined in all 15 witnesses. Some documents were also marked exhibits. On the basis of the evidence-on-record, both oral and documentary, the Learned Trial Judge convicted the appellants for committing offence under Section 325 read with Section 34 of the Indian Penal Code. In respect of other charges the appellants were acquitted. After convicting the accused persons in the manner stated above, the Learned Trial Judge handed down the sentence as stated above. The instant appeal has been filed by the convicts/appellants assailing the judgment and order of conviction and sentence. It is urged by the Learned Advocate for the appellants that from the FIR it is absolutely clear that a pervious dispute was going on between the *de facto* complainant and the accused persons over landed property. It appears from the evidence-on-record that civil suit was also pending over the issue of right of possession and ownership of a piece of land. Therefore, there is every possibility that the accused persons might be falsely implicated or that the incident was exaggerated by the *de facto* complainant in the FIR. It is also submitted by Mr. Jana, Learned Advocate for the appellants that the Trial Court convicted 13 accused persons for committing offence under Section 325/34 of the

Indian Penal Code. He then draws my attention to the nature of injury sustained by each of the injured persons in the alleged incident. According to Mr. Jana, all the convicts cannot be held to be guilty for committing offence under Section 325 of the Indian Penal Code even with the aid of Section 34 of the Indian Penal Code because it has not been proved that all the accused persons actually assaulted the injured persons. In other words, the witnesses failed to prove the specific role of the accused persons in committing the offence. It is also pointed out by Mr. Jana that offending weapons were also not seized by the Investigating Officer. In view of such circumstances, the Court below ought not to have convicted the appellants.

Mr. Jana also submits that the *de facto* complainant who can be said to be the author of the case was declared hostile by the prosecution at the time of his evidence. The *de facto* complainant was examined in the Trial Court as P.W. 4. Admittedly, at the time of occurrence he was not present at the place of occurrence. Therefore, the fulcrum of the prosecution case was not proved during trial. From the evidence of P.W. 7, Aroj Ali Mondal, P.W. 8, Sirajul Islam, P.W. 9, Narsida Bibi, P.W. 10, Abul Kalam Mondal, P.W. 11, Mahiruddin Mondal, P.W. 12, Anowara Bibi and P.W. 13, Patu Mondal it appears that the appellants in a group entered into the house of the *de facto* complainant and his uncle and assaulted Aroj Ali Mondal and Patu

Mondal. They were medically treated in the hospital. P.W. 7, Aroj Ali Mondal and P.W. 12, Anowara Bibi are the injured persons who stated that the appellants assaulted them and they sustained grievous injury on their person. From the evidence of P.W.15, Dr. Kalikrishna Banerjee, it appears that one Hazira Bibi, suffered injury over her left leg and it was stitched up at the time of medical examination by P.W.15. He also medically examined one Aroj Ali with the history of cut injury over his scalp and left lower leg. One Maniruddin Mondal was also admitted to Berhampore State General Hospital with injury on his person. The nature of injury received by the injured persons is gathered from the evidence of P.W.1, Dr. N. C. Kundu, P.W.2, Dr. A.K.Bera and P.W.15, Dr. K. K. Banerjee.

Thus, from the evidence on record, it appears that the prosecution successfully proved that P.W.7 and P.W.12 received grievous injury on their persons while other eyewitnesses received simple injury. Involvement of the accused persons were also corroborated by the witnesses. It is true that there are small discrepancies and minor contradictions in the evidence of the witnesses but such contradictions in the evidence of the witnesses but such contradictions tend to support the prosecution case. It also proves that the witnesses on behalf of the prosecution were not tortured.

Therefore, on careful consideration of entire evidence-on-record afresh, this Court is of the view that in course of trial, the prosecution was able to prove charge against the appellants under Sections 325/34 of the Indian Penal Code. So, they were rightly convicted by the Trial Court.

Now comes the question as to sentence. The appellants were sentenced to suffer rigorous imprisonment for 3 years each with fine of Rs.1,000/- each, in default, to suffer further simple imprisonment for one month each for commission of the offence punishable under Sections 325/34 of the Indian Penal Code. This should not be lost sight of the Court that the incident took place on 12th May, 1999. The accused persons are facing trial for almost 23 years. The accused persons are also members of greater family of the *de-facto* complainant. This may be the reason why the *de-facto* complainant turned hostile. The learned Advocate for the appellant as placed reliance on a decision of the Hon'ble Supreme Court in ***Lakhanlal alias Lakhan Singh Vs. State of Madhya Pradesh*** reported in **(2021) 6 SCC 100** where the Hon'ble Supreme Court passed an order of release of the appellant on probation of good conduct for a period of one year under Section 360 of the Code of Criminal Procedure on the ground that the appellant was facing trial for more than 30 years. Considering the nature of the dispute between the

parties, existence of civil suits amongst them dispute relating to landed property between them as well as the fact that the accused persons are relatives of both the *de-facto* complainant and injured. This Court is of the view that this is a fit case where the Court should apply Section 4 of the Probation of Offenders Act. It is needless to say that in view of the applicability of the Probation of Offenders Act with effect from 16th May, 1958 in the State of West Bengal Section 360 of the Code of Criminal Procedure has no manner of application. Section 4 of the Probation of Offenders Act runs thus:-

4. Power of court to release certain offenders on probation of good conduct.-(1) *When any person is found guilty of having committed an offence not punishable with death or imprisonment for life and the court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it is expedient to release him on probation of good conduct, then, notwithstanding anything contained in any other law for the time being in force, the court may, instead of sentencing him at once to any punishment direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period, not exceeding three years, as the*

court may direct, and in the meantime to keep the peace and be of good behaviour.

Provided that the court shall not direct such release of an offender unless it is satisfied that the offender or his surety, if any, has a fixed place of abode or regular occupation in the place over which the court exercises jurisdiction or in which the offender is likely to live during the period for which he enters into the bond.

(2) Before making any order under sub-section (1), the court shall take into consideration the report, if any, of the probation officer concerned in relation to the case.

(3) When an order under sub-section (1) is made, the court may, if it is of opinion that in the interests of the offender and of the public it is expedient so to do, in addition pass a supervision order directing that the offender shall remain under the supervision of a probation officer named in the order during such period, not being less than one year, as may be specified therein, and may in such supervision order, impose such conditions as it deems necessary for the due supervision of the offender.

(4) The court making a supervision order under sub-section (3) shall require the offender, before he is released, to enter into a bond, with or without sureties, to observe the conditions specified in such order and such additional conditions with respect to residence,

abstention from intoxicants or any other matter as the court may, having regard to the particular circumstances, consider fit to impose for preventing a repetition of the same offence or a commission of other offences by the offender.

(5) The court making a supervision order under sub-section (3) shall explain to the offender the terms and conditions of the order and shall forthwith furnish one copy of the supervision order to each of the offenders, the sureties, if any, and the probation officer concerned.

This Court is of the opinion that it is expedient to release the offenders on probation for his good conduct considering the long pendency and overall circumstances of the case.

Therefore, this Court is inclined to release the appellants on probation for two years. The appellants are directed to appear before the Court below and the learned Trial Court is directed to hand over the appellants under the control of the Probationary Officer for a period of 2 years. The Probationary Officer shall submit quarterly reports before the Trial Court in respect of good behaviour of the appellants. On expiry of 2 years, the appellants shall be released from the control of the Probationary Officer. The Probationary Officer is directed to submit his periodical reports before the Trial Court for consideration and acceptance by the Trial Court.

Let a copy of this judgment be sent down to the Court below forthwith along with lower court record.

Urgent certified copy, if applied for, be handed over to the learned Advocate for the appellants and the appellants are directed to act upon the certified copy of this judgment and surrender before the Court below within 3 weeks from the date of receipt of the certified copy of this judgment.

The appeal is, thus, **disposed of** on contest.

[Bibek Chaudhuri, J.]

**Srimanta/Mithun
A. Rs. (Court)**