

Form J(2)

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

**Present :
The Hon'ble Justice Siddhartha Roy Chowdhury**

**CRA 111 of 2020
Sk. Shahrukh @ Kazi
-Versus-
The State of West Bengal**

For the Appellant : Mr. Debasish Kar,

**For the Opposite Parties : Md. Anowar Hossain,
Ms. Manisha Sharma**

For Amicus Curia : Ms. Jyoti Agarwal

Heard & Judgment On : 5th December, 2022.

Siddhartha Roy Chowdhury, J.

Challenge in this appeal is to the judgment and order of conviction passed by learned Additional District and Sessions Judge , 1st Fast Track Court , Sealdah, 24-Parganas (South) in SC Case No. 10 (3) /2018 and ST No. 14 (7) 2019 arising out of Chitpur P. S Case No. 296 of 2016 dated 7.10.2016.

Briefly stated Shri Sandip Prasad Shaw informed the Officer-in-Charge of Chitpore P.S. that 7th October, 2016 at about 1.45 p.m. keeping his motorcycle in front of Titanic Saloon he was about to enter inside the saloon when Sk.Hafijul demanded the key of the motorcycle for joy ride which he denied, infuriated Hafijur and his associated Sk. Shahrukh, Faruk and Osman restrained the informant, slapped him boxed him and pulled him inside the saloon where Hafijul pricked him with the scissor. He sustained injury on his right thigh and over different parts of body. He went to R.G.Kar Hospital for treatment. As information disclosed offense cognizable in nature Chitpore P.S. Case No. 296 of 2016 dated 7.10.2016 was registered and police took up the investigation which culminated into submission of charge sheet against the accused persons who stood trial after pleading innocence.

Prosecution examined eight witnesses and learned trial Court after considering the evidence adduced by prosecution witnesses was pleased to held that charge under Section 307 of the Indian Penal Code was not proved against any of the accused persons Sk. Osman, Sk.Faruk were found not guilty even to the charge under Section 324 of the Indian Penal Code and as against Sk. Hafijul and Sk.Shahrukh, the learned trial Court recorded an order of conviction for committing offense within the

Section 324 of the IPC and directed them to suffer imprisonment for two years and to pay fine of Rs. 2,000/- each.

Aggrieved by the said judgment and order of conviction Sk. Shahrukh @ Kazi preferred this appeal.

In this matter Ms. Jyoti Agarwal learned Amicus Curiae pointed out that out of 8 witnesses examined by prosecution apart from Sandip Prasad Shaw, the victim, none had direct knowledge about the incident. PW 2 Ravi Kanta Sharma found the victim sitting on a chair with bleeding injury on his face. PW 3 is Dr. Saibal Mishra attended the victim on 17th October, 2016, 10 days after the alleged incident and found an injury on the right ear of the victim. PW 4 and PW 5 expressed their ignorance about the incident. PW 6 is the father of the victim who was not witness to occurrence. PW 7 Dr. Sankar Majumder attended the victim as Medical Officer of R.G.Kar Medical Hospital and found cut injury over his right thigh and over the left button. PW 8 is the investigating officer who submitted charge sheet.

PW 1 the victim set the criminal administration of Justice into motion by saying that Hafijul was responsible for the injury he sustained on the right thigh. There was no whisper about the Sharukh Sk. for committing any overt act. In his oral testimony the victim as PW 1 made an embellishment by saying that all the four accused persons assaulted him by scissor of the saloon. However such embellishment cannot be considered to

have sufficient potential to throw the victim out of ring. In his maiden statement before the police in writing he stated that it was Hafijul who assaulted him with a scissor and Dr. PW 7 found the bleeding injury on the right thigh of the victim. Therefore testimony of PW1 is getting support from the testimony of PW 7 but the evidence of PW 1 as to the role played by the other accused persons does not inspire confidence. In fact, there is no ingredient of offense within the meaning of Section 324 of the IPC to saddle the appellant Sk. Kazi with the criminal liability for committing offense under Section 324 of the IPC. It is rightly argued by the Jyoti Agarwal that PW 3 another doctor, 10 days after the incident found the eardrum of victim ruptured. In absence of any evidence it cannot be said that the injury found on 17.10.2016 had any means with the incident of 7.10.2016.

Mr. Debasish Kar, learned advocate for the appellant submits that the seizure of scissor remains doubtful, particularly when it was not seized from the possession of the accused/appellant and these witnesses expressed their ignorance and they were not examined in the light of Section 154 of the Evidence Act.

When the victim being the informant in his maiden statement did not make any whisper that the appellant landed blow of scissor on his thigh, subsequent embellishment embracing the appellant gives birth to reasonable suspicion and I

am inclined to extend the benefit of doubt. Consequently the appeal is allowed. Appellant /convict Sk. Sharukh @ Kazi is found not guilty to the charge under section 324 of the IPC. He is set at liberty and discharged from bail bonds.

Before concluding I express my sincere thanks to Ms. Jyoti Agarwal , learned Amicus Curiae for her able assistance in disposing of the appeal.

(Siddhartha Roy Chowdhury, J.)