

Form No.J(1)

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Tirthankar Ghosh

CRA 102 of 2018

Manik Mondal & Ors.

-vs-

State of West Bengal

For the appellant : Mr. Pratim Priya Dasgupta(For H.C.L.S.A)

For the State : Mr. S. G. Mukherji, Id. PP,
Mr. Sandip Chakraborty

Heard on: 16th August, 2022 & 17th August, 2022

Judgement on: **17th August, 2022.**

Tirthankar Ghosh, J.

The present appeal has been preferred against the judgment and order of conviction dated 16.02.2018 passed by the Learned Additional Sessions Judge (Redesignated) Court, Bankura in Sessions Trial No.06(05) of 2016 arising out of Sessions Case No.03(03) of 2016, wherein the Learned Trial Court was pleased to convict the appellant under Section 325/34 of the Indian Penal Code and sentenced them to suffer R. I. for 3 years each and to pay fine of Rs.2000/- i.d., further S. I. for one (1) year each.

The genesis of the case arose out of Gangajalghati P. S. Case No.113 of 2015 dated 22.07.2015 wherein a case was registered under Sections 447/ 341/ 323/ 325/307/354A/ 354B/34 of the Indian Penal Code. The sum and substance of the allegations made by Fatik Mondal with the Officer-in-Charge was to the effect that on 18.07.2015 at about 4:30 hours in the morning Manik Mondal, Swapan Mondal, Shantimoy Mondal all of them residing at Bankura came into his house with the intention of killing his son Raunak Mondal. The accused persons were armed with lathi, iron bar etc. and had a plan of hitting his son. Accordingly, the accused persons assaulted his son Raunak Mondal on his head and also at other parts of his body. Raunak Mondal became unconscious after sustaining injuries and when the complainant's elder brother, Madhusudan Mondal came to rescue him he was assaulted. The sister-in-law, Aparna Mondal was also assaulted and her clothes were torn for insulting her modesty. Hearing hue and cry the neighbours rushed when the culprits ran away. The victim was taken Kanchanpur B.P.H.C and from there he was shifted to Bankura Hospital. Subsequently, he was also referred from Bankura Hospital to Kolkata for treatment. The complainant requested the Officer-in-Charge to take action against the accused persons.

The investigating authority on completion of investigation submitted charge-sheet against the named four accused persons, i.e., Manik Mondal, Sudan Mondal, Shantimoy Mondal and Swapan Mondal

under Sections 447/ 341/ 323/ 325/ 307/ 354A/ 354B/34 of the Indian Penal Code.

The Learned Magistrate took cognizance of the offence and as the charges complained of were exclusively triable by Court of Sessions, the case was committed by the learned Magistrate to the Learned Sessions Judge which was transferred for disposal before the Learned Additional Sessions Judge (Redesignated) Court, Bankura. The Learned Court after considering the documents relied upon by the prosecution was pleased to frame charges under Sections 448/323/ 325/ 307/ 354B/34 of the Indian Penal Code.

The prosecution in order to prove its case relied upon ten witnesses which included P.W.1-Fatik Mondal, P.W.2 – Anima Mondal, P.W.3 Debjani Basu, P.W.4- Rathin Sarkar, P.W.5- Chayan Pandey, P.W.6 – Biswajit Mondal, P.W.7- Akul Ghosh, P.W.8- Dr. Paran Tudu, P.W.9- Samir Mondal and P.W.10 – Raunak Mondal.

The prosecution also relied upon number of documents which included written complaint, injury certificate, bed head ticket, formal F.I.R., sketch map with index, referral letter of Kanchanpur B.P.H.C., Bankura, outdoor ticket issued by N.R.S. Medical College and Hospital, referral discharge letter issued by B.S.M.C.& H, Bankura, emergency ticket issued by Bangur Institute of Neuroscience. The defence in order to rebut the prosecution case relied upon documents which included certified copy of order-sheet of G.R. Case No.1568 of 2015, certified

copy of formal F.I.R. of G.R. Case No.1568/2015, certified copy of written complaint of G.R. Case No.1568/2015 and certified copy of charge-sheet of G.R. Case No.1568/2015.

P.W. 1 - Fatik Mondal is the complainant who narrated the incident of 18.07.2015 in the same manner as was described in the complaint. The witness identified the complaint which was marked as Exhibit – 1. The witness also narrated regarding the different hospitals where the victim was treated.

P.W. – 2 Anima Mondal, the mother of the injured Raunak Mondal deposited in the same manner as P.W.1.

P.W. 3 - Doctor Debjani Basu deposed that she treated the injured Raunak Mondal at Kanchanpur B.P.H.C. The witness described the injuries over hand, face and chest. The witness emphasized regarding mild odema measuring 3 c.m. X 5 c.m. with pain and tenderness at the parieto occipital scalp. The witness identified the medical report of Raunak Mondal which was marked as Exhibit – 2. The evidence also reflects that the witness also treated Madhusudan Mondal and identified the injury report therein which was marked as Exhibit – 3.

P. W. 4, Rathin Sarkar was posted at Bankura Sanminlini Medical College & Hospital as Associate Prof-in-Charge at the relevant point of time, who admitted the patient i.e., injured Raunak Mondal. He identified the bed head tickets which were marked as Ext – 4 series.

P. W. 5, Chayan Pandey happens to be the scribe of the F.I.R. He identified the complaint and his signature which were admitted in evidence.

P. W. 6, Biswajit Mondal and P.W. 7 Akul Ghosh were declared hostile by the prosecution.

P. W. 8, Dr. Paran Tudu was an Asstt. Professor, Deptt. Of Surgery, B.S.M.C & H, Bakura. He deposed on 18.07.2015 that the injured, Raunak Mondal was admitted under Dr. Rathin Sarkar and he assisted Dr. Sarkar in the treatment of injured, Raunak Mondal who was victim of physical assault.

P.W. 9 is the Investigating Officer of the case who narrated the chronology of events and the manner in which the investigation was carried out.

P.W. 10 is the injured, Raunak Mondal who stated that on 18.07.2015 at about 4.30 hrs., Shantimoy Mondal, Swapan Mondal, Manik Mondal and Sudan Mondal came to their house and assaulted him on his head, as a result of which he lost his senses. The witness stated that he regained his senses at Kanchanpur B.P.H.C, Bankura and was subsequently shifted to B.S.M.C & H., Bankura and from there he was shifted to Bangur Hospital, Calcutta where he was admitted for five days.

The different documents relating to his medical treatment were marked as Ext – 7, Ext – 8, Ext – 9 and Ext – 10.

Mr. Pratim Priya Dasgupta, learned Advocate appearing for the appellants challenged the finding of the learned trial court both on the aspects of 'finding of guilt' as well as the 'sentence' so imposed. It has been submitted by him that in this case the independent witnesses PW.6, Biswajit Mondal and PW.7, Akul Ghosh did not support the prosecution case, further the relations who supported the prosecution version also exaggerated the factual events to such an extent that their reliability is questionable. It has been stressed that there being discrepancies in the version of the witnesses it would not be safe to accept the prosecution story as gospel truth for arriving at a finding of guilt. The trial court's order according to the appellants suffers from serious infirmities thereby warranting interference by this Court.

Mr. Sandip Chakraborty, learned Advocate appearing for the State resisted the submissions of the appellant and submitted that the medical evidence tendered by the prosecution read along with the version of the injured witness PW10, Raunak Mondal do establish the prosecution case beyond reasonable doubt. He further submits that injured witness was cross-examined at length by the appellants and his answers remained unshaken thereby inspiring confidence in the prosecution version of the factual foundation. Additionally he submitted that the trial court judgement having adhered to the basics of law should not be interfered with.

The learned trial court on an assessment of the oral evidence and the documentary evidence relied upon by the prosecution was of the opinion that no case under Section 307 of the Indian Penal Code has been made out and arrived at a finding that an offence under Sections 325/34 IPC have been made out against the accused persons and accordingly, sentenced them R. I. for three years and a fine of Rs.2000/- i.d., S.I for one year.

I have considered the injury reports which are marked as Ext – 2 and Ext – 3 relating to Raunak Mondal and Madhusudan Mondal respectively. I have also considered the oral evidence regarding the complicity of the present appellants and except Sudan Mondal, all the three appellants were named in the letter of complaint which was treated to be the first information report of the instant case. However, the injury certificate of Madhusudan Mondal states regarding the involvement of only two appellants i.e., Sudan Mondal and Shantimoy Mondal.

Having regard to the cumulative assessment of the evidence which surfaced in this case, the involvement of the appellants in the instant case cannot be ruled out. As such, the finding of guilt so arrived at by the learned trial court is hereby affirmed. So far as the sentence is concerned, the same calls for interference. Accordingly, having regard to the complicity of the appellants, the appellant Shantimoy Mondal is directed to undergo sentence of R. I. for 18

months and a fine of Rs.5000/- i.d., S. I for three months. The appellant, Manik Mondal and Swapan Mondal are sentenced to suffer R. I. for one year and a fine of Rs.5000/- i.d., S. I. for two months. The appellant, Sudan Mondal is directed to undergo S. I. for three months and fine of Rs.5000/- i.d., S. I for one month. All the sentences have been imposed for commission of offence under Sections 325/34 I.P.C. The appellants are on bail. Their bail bonds stand cancelled. They are directed to surrender before the learned trial court and to serve out their sentence.

If the appellants do not surrender within a period of 15 days, the learned trial court would issue harsher process of law and enforce the order of sentence as directed above.

Accordingly, the appeal being CRA 102 of 2018 is partly allowed.

Department is directed to send back the lower court records and communicate this order to the learned trial court within a period of seven days from date.

All concerned parties shall act in terms of the copy of the order downloaded from the official website of this Court.

[Tirthankar Ghosh, J]

Subha.