

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE**

PRESENT:

THE HON'BLE JUSTICE TIRTHANKAR GHOSH

CRA 146 of 2019

With

**IA No. CRAN 3 OF 2020
(Old No. CRAN 498 of 2020)**

Md. Illiyas @ Illu & Anr.

-vs.-

The State of West Bengal

For the Appellant no.1	:	Mr. Pawan Kr. Gupta, Ms. Sofia Nesar, Mr. Santanu Sett
For the Appellant No.2	:	Mr. Shareg Siddique
For the State	:	Md. Anwar Hossain, Mr. Iqbar Kabir,
Heard on	:	19.07.2022 & 03.08.2022.
Judgment on	:	10.08.2022

Tirthankar Ghosh, J:-

The present appeal has been preferred against the judgment and order of conviction and sentence dated 29.01.2019 and 30.01.2019 passed by the Learned Additional District & Sessions Judge, 1st Court, Sealdah, South 24

Parganas, in Sessions Trial No. 4 (9)/2017 arising out of Entally Police Station Case No. 233 dated 02.07.2017 wherein the learned Trial Court was pleased to convict the appellants under Section 307/34 of Indian Penal Code and sentenced both of them to undergo Rigorous Imprisonment for 7 years and fine of Rs.20,000/- in default to undergo Rigorous Imprisonment for 3 months more.

Entally Police Station Case no. 233/2017 dated 02.07.2017 was registered for investigation under Section 307/34 of the Indian Penal Code and Section 25(1B)(a) of the Arms Act on the basis of a statement of Razia Begum recorded by A.K. Choudhury, Sub-Inspector of Police. Razia Bibi (hereinafter referred to as 'the complainant') stated that on 02.07.2017 at about 05.00 pm while his son Sk Amirudding was sitting in front of the gate of Loreto School beside Motijheel Bridge, two local boys namely Md. Illiyas @ Illu and his brother-in-law Sk Saheb rushed towards him and by referring to a past dispute threatened the victim/injured by stating that he was exceeding his limit and tried to project himself as a hero. Immediately thereafter they started assaulting the complainant's son and when he protested the accused Illu took out a small gun from his pocket and said that he would kill him. Seeing such incident the complainant rushed towards his son when Sk Saheb pushed her back and by taking out a chopper he attempted to injure the throat of his son. As the complainant's son shifted his body he was hit on his shoulder and thereafter repeated injuries were inflicted on his arms and wrist. The complainant's son was bleeding profusely, local people thereafter rushed when

the accused persons fled away. The husband of the complainant had taken her son to hospital and she approached the police station for seeking help.

The Investigating Agency on conclusion of investigation submitted charge-sheet under Section 307/34 of the Indian Penal Code and Section 25 (1B)(a) of the Arms Act. After the supply of the documents under Section 207 of the Code of Criminal Procedure the case was committed to the Court of Sessions and finally to the learned Additional District and Sessions Judge, 1st Court, Sealdah, South 24 Parganas and on or about 13th November, 2017 charge was framed against both the accused persons as follows:

“First-

That you on or about 02.07.2017 at about 17.00 hrs beside Motijheel Bridge near Loretto School gate in furtherance of your common intention attempted to commit murder the son of the complainant by brandishing a firearms and assaulted him with a chopper as a result of which the injured sustained bleeding injury on his person and that you thereby committed the offence punishable u/sec. 307/34 of the I.P.C. and within the cognizance of this Court.

Secondly –

That you on or about 02.07.2017 at about 17.00 hrs beside Motijheel Bridge near Loretto school gate were in possession of firearms which is contravention of Arms Act and that you thereby committed the offence punishable u/sec. 25(1B)(a) of the Arms Act and within the cognizance of this Court.”

The charge was thereafter read over to the accused persons/appellants to which they pleaded not guilty and claimed to be tried.

Prosecution in order to prove its case relied upon PW1, Rajia Begum, complainant, mother of the injured/victim; PW2 Sk. Amiruddin, victim/injured; PW3 Md. Sarib, eye-witness; PW5, Md. Nisar, seizure witness; PW6, Md. Tinku Alam, seizure witness; PW7, Parvez Alam, seizure list witness; PW8, Md. Kamal, a local resident; PW9, Subhendhu Modak, Arms Expert; PW10, Dr. Prasanta Kumar Sinha, doctor who treated PW2 and PW11, Investigating Officer of the case.

The prosecution also relied upon 7 documents which included Ext.1, Seizure List dated 09.07.2017; Ext.2, signature of PW5 on label; Ext.3, signature of PW6 on label; Ext.4, signature of PW7 on seizure list dated 13.07.2017; Ext.5, report of the arms expert; Ext.6, label on fire arm and Ext.7, Medical Report of the doctor dated 02.07.2017.

PW1, Rajia Begum, is the mother of the injured Sk Amuruddin (PW2) and the complainant of the case. She deposed that she has three sons and two daughters namely, Sk Hider, Sk. Rahaman, Arju Begum, Sk Amiruddin and Farin Khatoon. According to her on 02.07.2017 at about 05.00 pm she was sitting under bridge no.10 and there was a nearby police camp as well as Loreto School. The accused Illiyas was engaged in abusing and hurling filthy languages and she saw her son Sk Amiruddin was playing and he was assaulted by Illiyas with fist and blows. She thereafter rushed to the spot when

Iliyas brandished a pistol by taking out from his waist and touched the same on the forehead of her son Amiruddin. At that time Amiruddin caught hold of the hand of Iliyas when the other accused Saheb pushed her and he fell down. After that Saheb took out a chopper stating that he would kill Sk Amiruddin and thereafter started inflicting with the chopper at Sk Amiruddin. Her son received injuries on his shoulder and wrist. As public assembled the accused persons fled away. Her husband took her son Amiruddin to hospital and she came down to the police station to lodge the complaint. She also stated that the Officer concerned wrote the complaint where she inserted her left hand thumb impression. She also identified the accused persons Iliyas and Saheb in Court.

PW2, Sk Amiruddin is the victim and the injured person who deposed that on 02.07.2017 at about 05.00 pm an incident took place in front of Loreto School gate when he was engaged in playing and also sitting there. He deposed that Iliyas came there and abused him and thereafter assaulted him with fist and blows and finally took out a pistol stating that 'you have exceeded your limit'. Saheb thereafter rushed and started assaulting him with chopper on his shoulder and wrist. Witness stated that he sustained bleeding injuries, became unconscious and was taken to NRS Hospital and regained his sense at NRS Hospital. He identified the accused persons in Court.

PW3, Md. Sarib, deposed that on 02.07.2017 at about 05.00 pm the incident took place in front of Loreto School gate when he was playing along with the injured Sk Amiruddin (PW2). He deposed that the accused persons

came there and started abusing Sk Amiruddin and thereafter Illiyas assaulted Amiruddin with fist and blows and brandished pistol stating that he would kill him. At that time PW1, mother of Amiruddin rushed when the other accused Saheb pushed her and inflicted chopper injuries on the shoulder and wrist of Sk Amiruddin. Public assembled there and the witness thereafter returned to his house and was later on examined by the police. The witness identified the accused persons in Court.

PW5, Md. Nisar, is a seizure list witness. He identified his signature in seizure list which was marked as Ext.1 and he also identified his signature on label which was marked as Ext.2. However, he was declared hostile by the prosecution as he stated he knew nothing about the case.

PW6, Md. Tinku Alam, is also a seizure list witness who identified his signature on the seizure list which was marked as Ext.1/1 and his signature on the label which was marked as Ext.2/1. However, the witness was also declared hostile as he deposed he knew nothing about this case and he did not know the reason why he signed on the seizure list.

PW7, Parvez Alam, was a witness to the recovery of the chopper and signed in the seizure list which he identified in Court and was marked as Ext.4.

PW8, Md. Kamal, is a hawker by profession who was tendered and stated that he knew nothing about the case.

PW9, Subhendu Modak, was an Arms Expert who examined the arms which was recovered in connection with the Entally PS case no. 233 dated 02.07.2017. He identified the report which was marked as Ext.5. He also put his signature on the label and identified the signature which was marked as Ext.6.

PW10, is Dr. Prasanta Kr. Sinha, who treated the injured Sk Amiruddin at NRS Medical College Hospital on 02.07.2017 in respect of the injuries. He stated as follows:

“On examination I found cut injury over left shoulder measuring 1 inch x $\frac{1}{4}$ inch muscle deep. No.2 one cut injury measuring 1 inch x $\frac{1}{6}$ th inch x skin deep. No.3. one cut injury on left sole measuring $\frac{1}{2}$ x $\frac{1}{6}$ th inch x skin deep.”

The doctor also identified the medical report which was prepared and signed by him and the same was marked as Ext.7.

PW11, Amit Kr. Chowdhury is the Investigating Officer of the case.

Mr. Pawan Kr. Gupta, learned advocate appearing for the appellant no.1 submitted that there was a delay in lodging the FIR and there are major discrepancies in the narration of the evidences of the complainant, the injured and eye-witnesses. According to him the time which has been referred by the doctor in the medical report and the time stated in the FIR regarding the treatment of the injured are completely different. There are no materials in evidences to suggest that the appellant had any intention to kill the injured

and the learned trial Court erroneously convicted and sentenced the appellants. Additionally, it has been submitted that the appellants have been falsely implicated in connection with the instant case out of rivalry and the prosecution failed to prove the case beyond all reasonable doubt thereby warranting interference by this Court.

Mr. Shareg Siddique, learned advocate appearing for the appellant no.2 submitted before the Court that there are hardly any evidence from where the appellant no.2 can be implicated in connection with the instant case. According to the learned advocate the learned Trial Court ignored the contradiction which appeared in evidence and accepted the prosecution story as gospel truth to arrive at its finding. The present appellant has been implicated because he is merely a relation of appellant no.1 and the seizure list witness having turned hostile, dilutes the prosecution case for convicting the appellant no.2. Learned advocate also relied upon a judgment of Karnataka High Court in *Monahar –Vs. – State of Karnataka reported in ILR 1996 KAR 3419* and submitted that in similar circumstances the offences as alleged were converted from Section 307 of the Indian Penal Code to Section 324 of the Indian Penal Code and in the present case also the injuries being simple, the appellant must be granted the same benefit.

Mr. Anwar Hossain learned advocate appearing for the State opposes the contentions advanced by the appellants and submitted that there are overwhelming materials appearing against the present appellants and the

learned Trial Court after assessing and scrutinizing the evidences arrived at its finding of guilt on being satisfied that the prosecution has proved the case beyond reasonable doubt, as such there is no scope for interference in the judgment and order of conviction and sentence passed by the learned Trial Court.

I have considered the evidence adduced by the prosecution, apart from the oral evidences another factor which has to be taken into consideration is regarding the history of the patient in the instant case which has been recorded by the PW10 who treated PW2 at the hospital. Serial no.10 of Ext.4 which is the report of NRS Medical College and Hospital, Kolkata, Emergency Room states *“short history of the case as stated by the patient that one Saheb and Ilu assaulted with chopper and fist and blows”*. The injuries were also stated in the said report which are referred to above. The evidence in this case of PW1, PW2 and PW3 are required to be considered in the background of the medical evidence and the history which have been recorded by the doctor, PW10. Although the evidence of PW1 states that the appellant No.2 stated that he would kill PW2 and started inflicting injury with a chopper but PW2 who is the injured did not state that any words were uttered to kill him rather it was stated that Appellant no.1 brandished a pistol and threatened him as stated that *“you have exceeded your limit”* while the appellant no.2 Saheb assaulted by inflicted injury with a chopper on his shoulder and wrist. The version of PW2 is corroborated by PW3 Md. Sarib.

Having assessed the nature of the oral evidences as well as that of the medical evidence, I am of the considered view that the intention of the accused persons was to inflict injury and not to kill the injured/victim/PW2. However, the deadly weapons so used or which surfaced in course of the evidence of the case do suggest overacts. Divulging the name of both the appellants at the first instance before the medical officer who treated PW2 and the role of the appellants being corroborated by three witnesses including the injured witness, leads to the inference that the accused persons were responsible for the offences as complained of. However, having regard to the fact of the present case emphasis must be on the evidence of PW2 who happens to be the injured witnesses.

Accordingly the conviction of the appellants are converted from that of Section 307 of the Indian Penal Code to Section 326 of the Indian Penal Code. Consequently, the sentence so imposed by the learned trial Court is reduced to a period of five years Rigorous Imprisonment with the fine amount and the default sentence remaining un-altered.

Thus, CRA 146 of 2019 is partly allowed.

Pending Applications, if any, are consequently disposed of.

Department is directed to send back the Lower Court Records and communicate this judgment, so that effective steps are taken by the learned trial Court.

All parties shall act on the server copy of this judgment duly downloaded from the official website of this Court.

Urgent Xerox certified photocopy of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Tirthankar Ghosh, J.)