

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

PRESENT:

THE HON'BLE JUSTICE TIRTHANKAR GHOSH

CRA 145 of 2018

Sejammul Sk.@ Sujammel Sk. & Ors.

-vs.-

The State of West Bengal

For the Appellants	:	Mr. Niladri Sekhar Ghosh, Ms. Srimoyee Mukherjee, Ms. S. Chatterjee, Mr. Sourov Mondal
For the State	:	Mr. Saswata Gopal Mukherjee, Ld. P.P. Mr. Sandip Chakraborty,
Heard on	:	20.07.2022 & 10.08.2022.
Judgment on	:	26.08.2022

Tirthankar Ghosh, J:-

The present appeal has been preferred against the judgment and order of conviction and sentence dated 15.09.2017 passed by the Learned Additional Sessions Judge, Lalbagh, Murshidabad in Sessions Trial No. 02 of November, 2010 arising out of Sessions Case No. 14 of 2010. Thereby convicting the appellants under Sections 323/325/34 of the Indian Penal Code and sentencing them as follows:

- (a) For the offence under Section 325/34 of the Indian Penal Code the appellants were sentenced to suffer Rigorous Imprisonment of two years and fine of Rs.4,000/- in default to suffer Rigorous Imprisonment for three months each.
- (b) For the offence under Section 323/34 of the Indian Penal Code the appellants were sentenced to suffer Rigorous Imprisonment for six months and pay a fine of Rs.1,000/- in default to suffer Simple Imprisonment for one month each.

Nabagram police station case no.51/08 dated 01.05.08 was registered for investigation under Section 323/325/308/34 of Indian Penal Code against the following persons namely, (1) Toslem Sk, (2) Sejammul Sk, (3) Jannegar Bibi, (4) Khosnu Bibi, (5) Meheubub Sk and (6) Aslem Sk on the basis of a complaint made by Rousan Sk.

The complainant alleged that at about 04.00 p.m. on 30.04.2008 a dispute arose over the issue of a handle of tubewell being broken. Arguments started between Sejammul Sk and Tenu Sk, during such heated argument Sejammul Sk assaulted Tenu Sk with a crowbar when he fell on the ground and became unconscious. The accused continued inflicting violent blows, punched at his right eye then randomly struck with the crowbar. Toslem Sk, Jannegar Bibi and Khosnu Bibi attacked Lajema Bibi and assaulted on her chest, back, hand with a branch of palm tree, as a result of which she lost her senses. When the nephew of the complainant rushed to rescue his parents, he

was assaulted by Meheub Sk and Aslem Sk with branch of palm tree causing serious injuries. The complainant shifted all of them in an unconscious stage to Nabagram Hospital but they were thereafter referred to Berhampore New General Hospital. It has been contended that as the complainant was engaged in the treatment of the three injured there has been delay in lodging the FIR and as such requested the police authorities to take steps against the accused persons.

Investigating Authority after completion of investigation submitted charge-sheet against these accused persons named in the FIR under Section 323/325/308/34 of the Indian Penal Code. The case was thereafter committed to the Court of Sessions and ultimately, the learned Additional Sessions Judge, Lalbagh, Murshidabad was pleased to frame charges under Sections 323/34, 325/34, 308/34 of the Indian Penal Code against five accused persons. Record of the case reflected that an enquiry was conducted and the learned trial Court was pleased to hold that Meheub Sk being a minor, his case should be referred to the Juvenile Justice Board. Thereafter, the learned trial Court was pleased to frame charges.

Prosecution in order to prove its case relied upon 14 witnesses which included PW1, Rousan Sk, complainant; PW2, Abu Jahel, neighbour; PW3, Sagar Sk is the son of Tenu Sk; PW4, Belu Bibi, wife of the complainant; PW5, Lajema Bibi, injured and wife of Tenu Sk; PW6, Ali Sk, co-villager; PW7, Ashir Sk, an eye-witness and brother of Tenu Sk; PW8, Babor Hossain, relation of the

complainant and the injured; PW9, Dr. Prakash Chandra Bagchi who treated Tenu Sk, Lajema Bibi and Sabir; PW10, Dr. Obaidur Rahaman, doctor who treated Tenu Sk; PW11, Investigation Officer of the case; PW12, Sariful Sk, scribe of the FIR; PW13, Tenu Sk, injured and PW14, Dr. Jayanta Biswas, doctor who treated Tenu Sk.

The documents relied upon by the prosecution are Ext.1, injury report of Tenu Sk; Ext.2, injury report of Lajema Bibi; Ext.3, injury report of Sabir Sk; Ext.4, another injury report of Tenu Sk; Ext.5, referral card; Ext.6, bed head ticket; Ext.7, treatment-sheet of Tenu Sk; Ext.8, endorsement of Officer-in-charge, Nabagram Police Station in the written complaint; Ext.9, Formal FIR; Ext.10, rough sketch map with index; Ext.12, prescriptions; Ext.12, Medical Papers of ECG; Ext.13, Ext.14 and Ext.15 are out-door tickets.

PW1, Rousan Sk in his evidence before the Court stated that the incident occurred at about 04.00 pm in front of the house of Tenu Sk. He narrated that the dispute arose over the issue of the handle of the village tubewell being broken by the daughter of the accused Toslem Sk, when Tenu Sk asked the accused Toslem Sk to repair the same, and then quarrel started, as a result of which Sejammul assaulted Tenu Sk on his head with the help of a crowbar and Jannegar Bibi, Khosnu Bibi assaulted wife of Tenu Sk. and accused Aslem and Mahebab assaulted Sagar Sk. The female accused persons were armed with lathi as well as palm stick. Many persons sustained injuries and were treated at Nabagram Hospital. Injured Tenu Sk was referred to Berhampore for better

treatment where he remained for 8 days and thereafter shifted to NRS Medical College and Hospital. He was also treated at Sasti Nursing Home and the total period of his treatment was about one month. The witness identified the five accused persons in Court. The witness also stated that he informed the police station in writing and inserted his left hand thumb impression. Lastly he stated that the complaint was written by one Sarful Sk as per his instruction and Tenu Sk is his cousin brother.

PW2, Abu Jehel is a neighbour who stated before the Court that the incident occurred four years ago at about 04.00 pm, when a quarrel ensued over the issue of the handle of the village tubewell being broken. The witness stated that he rushed to the spot after hearing hue and cry and noticed that during hot altercation suddenly the accused Toslem, Sejammul assaulted Tenu Sk with the help of a crowbar. At that time the wife and son of Toslem Sk also assaulted Lajema Bibi and Sagar Sk with the help of lathi and palm stick. The witness identified all the five accused persons present in Court and stated that after the incident the injured persons were taken to Nabagram Hospital.

PW3, Sagar Sk also known as Sabir Sk is an injured. He stated that the incident took place four years ago at about 04.00 pm and the dispute arose in respect of the handle of the village tubewell being broken by the daughter of the accused Toslem Sk. After Tenu Sk asked Toslem to repair the same, a hot altercation took place and suddenly the accused Toslem Sk and his family members assaulted his father. The witness stated that Sejammul Sk assaulted

his father with the help of a crowbar when he sustained bleeding injury on his head. Thereafter, Toslem Sk, his son, daughter and wife assaulted his father with fist and blows. It was also stated that when the witness reached there to rescue his father, the accused persons assaulted him also with the help of brickbats and palm sticks, when his mother Lajema Bibi reached the spot and tried to save him and his father the accused persons assaulted her mercilessly. She was also assaulted with palm stick. The witness and his parents sustained bleeding injury due to assault inflicted by the accused persons and they were initially treated at Nabagram Hospital from where his father was referred to Berhampore Hospital. His father remained admitted at Berhampore Hospital for about a week and thereafter was referred to N.R.S. Medical College Hospital, Kolkata. Subsequently his father was treated at Sasti Nursing Home for further treatment. Witness identified all the five accused persons present in Court.

PW4, Belu Bibi, wife of the complainant, deposed that the incident occurred four years ago at about 04.00 pm when a hot altercation started between Toslem Sk and her brother Tenu Sk over the issue of village tubewell being broken by the daughter of Toslem Sk. On listening to the hue and cry the witness reached at the place of occurrence and found that Toslem, Sejammul and his son, daughter and wife assaulted Tenu Sk mercilessly. The witness saw that Sejammul assaulted Tenu Sk with a crowbar and the other accused persons assaulted Tenu Sk with lathi and palm stick. The witness also identified all the five accused persons present in Court.

PW5, Lajema Bibi, is an injured and wife of Tenu Sk. She stated that the incident took place four years ago at about 04.00 pm when the handle of the village tubewell was broken by daughter of accused Toslem Sk. Tenu Sk asked Toslem to repair the handle of tubewell and over the said issue altercation started between them, when suddenly Sejammul assaulted Tenu Sk on his head with the help of a crowbar and he sustained serious bleeding injury. At that time her son Sabir Sk reached there when he was also assaulted by Meheub and Toslem with the help of palm stick. The witness was also assaulted and as a result of which sustained injury being inflicted by all the accused persons. She stated that they were treated at Nabagram Hospital and her husband was referred to Berhampore Hospital for better treatment and from there he was shifted to Kolkata for better treatment. The witness identified all the five accused persons present in Court.

PW6, Ali Sk, deposed that the handle of the village tubewell was broken by the daughter of Toslem Sk and accordingly Toslem was asked by Tenu to repair the same, when a hot altercation started between them. At that time suddenly Sejammul Sk assaulted Tenu Sk with the help of a crowbar at his head, for which he sustained head injury. At that time wife of Tenu Sk tried to rescue her husband but she was also assaulted with the help of palm stick by the accused persons. When son of Tenu reached there to save his parents the accused persons assaulted him with the help of palm stick. The witness identified all the five accused persons present in Court.

PW7, Ashir Sk is the brother of Tenu Sk, he narrated the incident in the same manner as PW6.

PW8, Babor Hossain, is the cousin brother of Tenu Sk. He narrated the incident in the same manner as PW6 and PW7.

PW9, Dr. Prokash Chandra Bagchi, treated Tenu Sk, Lajema Bibi and Sabir Sk. In respect of the injuries of Tenu Sk he stated as follows:

“On examination I found the patient drowsy, repeated and continuing vomiting, haematoma on the skull and on forehead. I also found abrasion on the skull and right side eye was black. Type of injury was apparently grievous. Injury was caused by hard and blunt object. He was initially treated at Nabagram BPHC and thereafter he was referred to Berhampore NG Hospital for better management. This is the injury report in this regard prepared and signed by me. Document is marked as exhibit-I.”

In respect of Lajema Bibi the doctor deposed as follows:

“On that day I also examined one Lajema Bibi wife of Tenu Sk and found swelling of her left forearm and tenderness over the upper back. Type of injury was found as simple. This is the injury report prepared to that effect which bears my hand-writing and signature. Document is marked as exhibits-2.”

In respect of Sabir Sk the doctor deposed as follows:

“On that day I also examined one Sabir Sk son of Tenu Sk aged about 20 years and found abrasion over skull and bruise over left leg. Type of injury was found as simple which was caused by hard

and blunt object. This is the injury report to that effect prepared and signed by me. Document is marked as exhibit-3.”

PW10, Dr. Obaidur Rahaman deposed that on 30.04.2008 he was attached at Berhampore General Hospital and on that date Tenu Sk was admitted in the hospital at 07.45 pm. In respect of the injuries the witness stated as follows:

“On examination I found:

- 1. Blunt trauma over head,*
- 2. Haematoma over forehead and right eye lid.*

After initial treatment, the patient was referred to N.R.S. Medical College and Hospital, Calcutta on 02.05.2008.”

The witness also identified the referral card, the bed head ticket and the endorsement of bed head ticket, diet chart and treatment sheet which were admitted in evidence.

PW11, Subrata Bhattacharya is Investigating Officer of the case. He narrated the chronology in which he carried out the investigation of the case, from the stage of the case being endorsed to him till submission of charge-sheet.

PW12, Sarful Sk, is the scribe of the FIR who identified the letter of complaint which was admitted in evidence.

PW13, Tenu Sk is the injured/victim. Who narrated that at about 04.00 pm six years ago the daughter of accused Toslem sk damaged the handle of the tubewell while using the same roughly. On seeing such incident he complained the matter to Toslem when accused Sejammul, son-in-law of accused gave a blow on his head with a stick of palm tree. At that time Mehebab Sk was present with a palm stick on his hand, accused Toslem Sk with a crowbar and accused Aslem Sk, brother of the accused was also with a palm stick in his hand. All of them assaulted the witness mercilessly and stated that he should be beaten to death. Due to such assault he fell down on the ground and even then the accused persons continued their assault. Although the villagers gathered there yet they did not dare to rescue him from the clutches of the accused persons out of fear. Hearing the screaming all the witness, his wife and his son rushed to the spot for rescuing him when the accused persons assaulted them also. Finally the villagers were able to rescue three of them and they were then sent to Nabagram Hospital by two rickshaw vans. After inspecting the condition the attending doctor of Nabagram Hospital referred to Berhampore General Hospital for better treatment where he was treated for 6 days and referred to Kolkata for further treatment where he stayed for a day and then referred to PG Hospital where also he stayed for a day. Doctors of both the hospital refused to admit him as his condition was serious. He was thereafter shifted to a nursing home namely Swastik Nursing Home at Calcutta where he was treated for another 28 days. The witness identified all the five accused persons present and stated that the female accused Janegar Bibi,

instructed Toslem Sk to assault him in such a way that he should not be alive. The other female accused Khosnu Bibi wife of Sejammul also took brickbats at that relevant point of time when he was being assaulted.

PW14, Dr. Jayanta Biswas, deposed that on 27.06.2008 he examined one Tenu Sk who was admitted at Swasti Eye and Super Speciality Nursing Home. The documents according to him were available in the hospital, which reflected that Tenu Sk was admitted in the hospital on 05.05.2008 and was discharged on 28.05.2008. On 27.06.2008 the patient came to the nursing home for follow-up treatment. The witness stated that during the period of admission the said patient Tenu Sk underwent a surgery in his head. The follow-up prescription of the patient was identified by the witness and the same was also admitted in evidence. The documents and result of ECG which was prepared by Dr. B.P. Chakraborty was identified by the witness and the said documents were also admitted in evidence.

Mr. Niladri Sekhar Ghosh learned advocate appearing for the appellants submitted that there are major discrepancies in the evidence of the witnesses particularly the injured witnesses who have differed in the manner in which the incident took place and the mode by which they were assaulted. In fact according to the appellants each of the injured witnesses differed in respect of the version of assault inflicted by the assailants. This according to them would be evident from the deposition of PW3, PW5 and PW 13. This was because of the fact that the story made out by the prosecution is an afterthought and

embellished one and the same would be evident from the version of the investigating officer who deposed before the Court regarding the injury sustained by Toslem Sk (appellant No.3). It has also been contended that the police authorities purposely suppressed the General Diary Entry which was earlier made in respect of a cognizable offence and proceeded to investigate the subsequent information/complaint, which was registered on the basis of complaint of Rousan Sk. PW9, PW10, PW14 being the doctors i.e. Dr. Prakash Chandra Bagchi, Dr. Obaidur Rahaman and Dr. Jayanta Biswas in their evidence nowhere stated that any names were divulged to them by the injured regarding the persons inflicting injuries. Further in the examination under Section 313 of the Code of Criminal Procedure the appellant Sejammul Sk and Toslem Sk categorically stated that they were also victims of assault in the incident which had taken place. There was a deviation in the version of the PW1, who was the complainant and the injured Tenu Sk, PW13 regarding the weapon used, as the complainant stated that PW13 was assaulted by crowbar while the injured PW13 stated that he was assaulted by palm stick. It has been emphasized that the complainant and his family members falsely implicated the appellants in the instant case and the learned trial Court failed to appreciate the case in its true perspective which was never proved beyond reasonable doubt and as such the order of conviction and sentence passed by the trial Court should be set aside.

Mr. Sandip Chakraborty, learned Advocate appearing for the State disputed the contentions advanced by the appellants and submitted that the

prosecution version was consistent. No material surfaced in course of evidence which would dislodge the prosecution version, the minor discrepancies which are bound to happen and which are natural have been blown out of proportion by the appellant which are not acceptable according to the settled position of law. Each of the appellants assaulted the three injured and their role has been described not only by the injured witnesses but also by the eye-witnesses and as such the complicity of each of the accused persons in assaulting and injuring PW3, PW5 and PW13 are beyond any reasonable doubt. Thus, the order of conviction and sentence so passed according to the State do not call for any interference and as such should be affirmed.

I have considered the submissions of the learned advocate appearing for the appellant as well as for the State. On an analysis of the evidence of PW1, PW2, PW4, PW6, PW7 and PW8 it is reflected that appellant no. 1 and appellant no.3 i.e. Sejammul Sk and Toslem Sk aggressively participated in the offence and was a major cause of the injury sustained by PW13, Tenu Sk. Aslem Sk, appellant no.5 and other accused were involved in the assault of Sagar Sk and Lajema Bibi. The injury sustained by these injured witnesses i.e. PW3 and PW5 are simple in nature. However, these three appellants were consistently named and their participation described by the aforesaid witnesses. This is apart from the evidence of the injured witnesses who described the incident and the role of each of the accused persons which included the involvement of appellant no.2 Khosnur Bibi and appellant no.4 Jannegar Bibi. The five appellants taken together assaulted the three injured

persons which has been corroborated by other witnesses apart from the injured witnesses goes without saying that such act of assault was in furtherance of common intention. The injuries sustained by PW13 speak volumes as is evident from the medical reports. The plea of the appellants whether the assault was by way of crowbar or a palm stick is of no relevance in view of the nature of injury sustained by PW13 and the evidentiary value of the injured PW13. It would be apposite to quote paragraph 9 of the State of M.P. –Vs. – Mansingh & Ors. reported in (2003) 10 SCC 414, wherein the Hon'ble Supreme Court has set out the manner in which the evidence of an injured witness is to be appreciated:

“9. The evidence of injured witnesses has greater evidentiary value and unless compelling reasons exist, their statements are not to be discarded lightly. Merely because there was no mention of a knife in the first information report, that does not wash away the effect of the evidence tendered by the injured witnesses PWs 4 and 7. Minor discrepancies do not corrode the credibility of an otherwise acceptable evidence. The circumstances highlighted by the High Court to attach vulnerability to the evidence of the injured witnesses are clearly inconsequential. It is fairly conceded by the learned counsel for the accused that though mere non-mention of the assailants' names in the requisition memo of injury is not sufficient to discard the prosecution version in entirety, according to him it is a doubtful circumstance and forms a vital link to determine whether the prosecution version is credible. It is a settled position in law that omission to mention the name of the assailants in the requisition memo perforce does not render the prosecution version brittle.”

Thus, the minor inconsistencies which have been highlighted by the learned Advocate appearing for the appellants regarding the mode and manner of inflicting injuries, the weapons used or the narration of facts or divulging the name of the appellants before the doctors are of hardly any relevance in view of the injuries sustained by PW13, Tenu Sk, his version before the Court and the other injured witnesses being PW3 and PW6.

The GD Entry no. 1572 dated 30.04.2008 barely reveal any cognizable offence and only an information being lodged. The contents of the said GDE hardly makes out a case for cognizable offence for dislodging the case of the prosecution and the same in all probability was an intimation made to the police Station for the purpose of covering up the misdeed at a time when the injured were being treated in the hospital and there was a delay in filing the complaint. The complicity of the appellant no.1 Sejammul Sk and appellant no.3 Toslem Sk under Section 325/323/34 of the Indian Penal Code is hereby affirmed. So far as appellant no.2, Khosnur Bibi; appellant no.4, Jannegar Bibi and appellant no.5, Aslem Sk are concerned they are acquitted from the charges under Section 325/34 of the Indian Penal Code, however they are convicted under Section 323 of the Indian Penal Code.

The complicity of the each of the accused persons being different, proportionally sentence is required to be imposed.

Accordingly, the sentenced imposed upon the appellant no.1, Sejammul Sk for the offence under Section 325 of the Indian Penal Code is reduced to a

period of 18 months with fine amount remaining unaltered. So far as the sentence imposed under Section 323 of the Indian Penal Code is concerned the same is unaltered. Both the sentences would run concurrently.

The sentence imposed upon appellant no.3, Toslem Sk, for the offence under Section 325 of the Indian Penal Code is reduced to a period of 1 year with the fine amount remaining unaltered. So far as the sentenced imposed under Section 323 of the Indian Penal Code is concerned the same is unaltered. Both the sentences would run concurrently.

The sentence imposed upon appellant no.5, Aslem Sk, for the offence under Section 323 of the Indian Penal Code is reduced to a period of 6 months with the fine amount remaining unaltered.

So far as appellant no.2 Khosnur Bibi and appellant no.4, Jannegar Bibi are concerned they are convicted for the offence under Section 323 /34 of the Indian Penal Code and their sentence is reduced to fine only. The appellants would deposit a sum of Rs.1,000/- as directed by the learned trial Court, in default they would suffer simple imprisonment for one month.

Thus, Criminal Appeal no. 145 of 2018 is partly allowed.

Pending Applications, if any, are consequently disposed of.

The Appellant no.1, 3 and 5 are on bail their bail bonds stands cancelled they are directed to surrender before the learned trial Court within a period of 15 days. The appellant no.2 and 4 are granted time to deposit the fine within a

month from date, in default the learned trial Court will pass direction for implementing the default sentence as directed.

Department is directed to send back the Lower Court Records to the trial Court as well as the Magistrate Court and communicate this judgment for implementing the sentence as directed above.

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.)