

IN THE HIGH COURT AT CALCUTTA
(Criminal Appellate Jurisdiction)
APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

C.R.A. 165 of 2005

Mujibar Sheikh @ Sk. & Ors.
-Vs-
The State.

For the Appellant : Mr. Debabrata Roy,
Ms. Karabi Roy,
Ms. Sarbani Mukhopadhyay,
Mr. Soumik Mondal.

For the State : Mr. Saibal Mondal,
Ms. Puspita Saha.

Heard on : 01.07.2022

Judgment on : **19.09.2022**

Shampa Dutt (Paul), J.:

This appeal is directed against judgement and order dated February 21, 2005 passed by the Additional Sessions Judge, 4th Court, Nadia, Krishnagar in Sessions Trial No. 5(II) of 2004 convicting the

appellants and sentencing them to suffer R.I. for 2 years each for the offence punishable under Section 148 and 34 IPC and to suffer R.I. for 1 year each for offence punishable under Section 323/34 IPC and further sentenced the appellants to suffer R.I. for 5 years each and also to pay fine of Rs. 5,000/- each i.d. to suffer further one year each for offence punishable u/s. 325/34 IPC. All the sentences to run concurrently. Period of detention, if any to be set off as per Section 428 Cr.P.C.

Prosecution case in short is that a written complaint was made by one Gulnagar Begum, wife of Najrul Islam Mondal to the officer-in-charge, Kaliganj P.S. stating that on 09.05.1999, at about 7 A.M. while her brother Majaffar Hossain was returning home through pucca rasta, at that time near the house of Majaffar accused Hafijul Sheikh abused him in filthy languages and started assaulting with an iron rod. Out of fear Majaffar raised alarm and hearing the same the members of his family rushed to the P.O. and tried to rescue him. On seeing those family members, from the house of Sahabat Sheikh near the P.O. the accused persons namely, Mustakin, Mujibar both sons of Rahamat Sheikh-Anaruddin Sheikh, Hasibur Sheikh, Sahabat Sheikh and his two sons Munirul Sheikh and Sarikul Sheikh attacked Majaffar and his family members being armed with iron rod, lathi, etc. The husband of the defacto complainant sustained grievous hurt on his entire person including head. Majaffar, his father Abu Bakkar Sk. and maternal uncle Amanat also sustained grievous injuries. The local villagers having rushed to the place of occurrence, resisted the accused persons and then

fled away. With the help of local people, the injured persons were at first taken to Mira P.H.C. where mother of the defacto complainant and brother Kadar Ali were released after primary treatment and rest injured persons were referred to Shaktinagar Hospital considering gravity of their injuries.

On the basis of the said complaint Kaliganj P.S. Case No. 96/99 dated 09.05.1999 u/s 147/148/149/323/325/326/308 I.P.C. was started. On completion of investigation, charge sheet was filed against all the appellants. The case was committed to the Court of Sessions and charge was framed. On completion of trial, the appellants were convicted and sentenced as above.

Mr. Debabrata Roy, learned lawyer for the appellants has submitted that it is the case of the appellants that the learned Trial Court erroneously convicted the appellants inspite of the charge not being proved beyond all reasonable doubt. That the appreciation of evidence by the Trial Court is not proper. That the learned Judge wrongly did not hold that the police officer motivatedly manufactured the FIR inspite of the fact that PW 1 categorically stated that she does not know who wrote the FIR. The learned Judge also failed to appreciate that PW-10 has deposed that FIR was written as per the dictation of the police officer. That framing of charge by the Trial Court was improper and serious miscarriage of justice has been caused by the conviction of the appellants. The Trial Court erred both in facts and law and the Trial Judge wrongly relied upon the oral evidence without any corroboration

and that the Trial Court Judge without proper appreciation of evidence and without considering the materials on record in the proper perspective wrongly convicted the appellants and as such the judgement and order under appeal is liable to be set aside.

Mr. Saibal Mondal learned Additional Public Prosecutor appearing on behalf of the State has submitted that the Trial Judge rightly appreciated the evidence before it and on considering the evidence before both oral and documentary and on proper appreciation rightly convicted the appellants and as such the appeal is liable to be dismissed.

Evidence on Record.

Prosecution witness no. 1 Gulnagar Bagum is the complainant. She has corroborated her case as stated in her written complaint. This witness has admitted that she does not know who scribed the complaint (Exhibit 1). On being cross-examined, she reiterated her statement as in her examination in chief.

Prosecution witness no. 2 Faring Sk. heard about the incident and saw the injured being taken to the hospital (hostile).

Prosecution witness no. 3 Imajuddin Sk. heard about the incident.

Prosecution witness no. 4 Mozaffar Hossain is one of the injured.

Prosecution witness no. 5 Abu Bakkar Sk. is the father of the injured Monihara Begum and Humayun and has deposed about the

dispute between them and the accused person. This witness is also an injured.

Prosecution witness no. 6 Amanat Sk. has deposed that he tried to settle the matter but was attacked by the accused persons.

Prosecution witness no. 7 Beauty Hossain is the wife of one of the injured. Her in-laws were also allegedly assaulted by the accused persons.

Prosecution witness no. 8 Nazrul Islam Mondal is one of the eye witnesses who saw the incident. This witness has stated that she was also assaulted and was treated in the hospital.

Prosecution witness no. 9 Basiruddin Ahamed and **Prosecution witness no. 10 Arman Ali Sk.** (hostile).

Prosecution witness no. 11 Reajul Alam is the Investigating Officer in this case.

Prosecution witness no. 12 Pankaj Mondal is the Recording Officer.

Prosecution witness no. 13 is **Doctor Sumit Roy Chowdhury**. He has proved the injury report (Exhibit 6).

The written complaint has been marked as Exhibit 1 series. Formal FIR Exhibit 2, the sketch map-Exhibit 3. Exhibit 4 is the requisite. Exhibit 5 is discharge certificate. Exhibit 6 is the injury report.

Analysis of Evidence

PW 13 Dr. Sumit Roy Chowdhury who examined the injured persons on deposing before the Trial Court stated as follows:

“On 17.05.1998 I was posted at Meera P.H.C. on 09.05.1999. I examined **Najul Islam Mondal** and found the following injuries:-

He came at Meera P.H.C. with lacerated injury at scalp. He was treated accordingly and he was referred to Krishnagar/Berhampur/District Hospital. Although **injury was simple** but it was severe injury in nature.

I also examined **Mojaffar Hossain**, 40 years old, son of Abu Bakkar Sk. of the same village. He came with swelling at left fore-arm, left wrist, bruise at left thigh. Abrasion at right deltoid. He was treated accordingly and later on referred to Orthopaedic, Krishnagar/Berhampur/District Hospital. The **injury was simple** in nature.

I also examined **Abu Bakkar Sk.**, aged 70 years of same village and found the following injuries:-

He came with lacerated injury on scalp, right fore-arm, left hand. He was treated accordingly and referred to Krishnagar/Berhampur/District Hospital. The **injury though was simple** but severe.

On that day I examined **Kader Ali**, 50 years, son of Maharam Sk. of same village. He came with lacerated injury at scalp. He was treated accordingly. The **injury was simple** in nature.

I examined **Humayun Kabir**, 27 years, son of Abu Bakkar Sk. of same village and found the following injuries. He came with lacerated injury on scalp. He was treated accordingly. The **injury was simple** in nature.

On that day I examined **Fatema Bibi**, 60 years wife of Abu Bakkar Sk. of same village came with swelling of left fore-arm. She was treated accordingly. The **injury was simple** in nature.

I examined **Amanat Sk.**, 50 years son of Maharam Sk. He came with lacerated injury at scalp and at the left fore-arm. He was treated accordingly. The **injury was simple** in nature.

The injured persons were not referred by anybody. There is no note in my injury report as to whether the patient came on foot or they were brought by patient party. In respect of the patient namely Nazrul Islam Mondal, Abu Bakkar Sk. Since the injury was severe even death could have been caused if the treatment could not be properly and timely done. It might be that the injuries sustained by the injured were caused by lathi, iron rod etc. I did not find any incised wound i.e. sharp cutting injury over the injuries sustained by the injured persons. The entire injury report containing two pages is collectively marked as Exhibit 6.”

On being cross-examined, this witness has categorically stated that the said injuries have been caused by hard substance during fight and the swelling and abrasion injury and other might be caused by scuffling and blunt weapon. The Doctor has further stated that if any person discloses the history of assault, the same is reduced in writing by

the Doctor and it is mandatory (no such history nor any persons name (accused) has been noted in this case on the injury report). From the oral evidence as recorded by the Trial Court, it is seen that there was a free-fight between the parties. Several persons were injured as seen from the injury report and proved by the Doctor (PW 13). Admittedly there is a dispute between the parties and altercation took place on the date of incident as stated. Whoever had gone to see what was happening or had gone to amicably settle the matter had allegedly also been assaulted. Though it has been states that some of the injured had been referred to Shaktinagar hospital. No Doctor from there was examined nor any such medical papers were produced thus not proved.

Considering the statement of the witnesses before the Court, and the documentary evidence, it is for the court to see as to how far the documents have supported the oral evidence. It is seen from the injury report (Exhibit 6) that Humayun Kabir, Fatema Bibi, Amanat Sk., Majaffar Hossain, Abu Bakkar Sk., suffered **simple injury** only. It has been noted that Abu Bakkar Sk., 70 years old suffered simple injury but severe. **The nature of severity of injury has not been noted in the injury report. And such statement appears to be contradictory.** As such, it is clearly seen that the injuries suffered, was **simple injury** and it has been proved before the Trial Court by way of oral and documentary evidence that there was an altercation and many persons suffered simple injury. The Trial Court accordingly came to its findings to convict the appellants. **The incident occurred on 09.05.1999 (23 years ago).** Now,

it for this court to see as to whether the Trial Court considering the materials on records and the facts and circumstances, rightly sentenced the convicts and as to whether the sentence was proper, considering the offence alleged and the evidence before the Court.

One of the Section for which the appellants have been convicted and sentenced is the charge under Section 325/34 IPC.

Section 325 of the Indian Penal Code lays down as follows:-

“Section 325. Punishment for voluntarily causing grievous hurt.—Whoever, except in the case provided for by section 335, voluntarily causes grievous hurt, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Ingredients of offence.— The essential ingredients of the offence under Section 325 are as follows:-

- (1) Accused voluntarily caused hurt;
- (2) Hurt was grievous within the meaning of sec. 320, I.P.C.”

In order to constitute an offence under Section 325 of the Indian Penal Code the hurt caused must be grievous within the meaning of Section 320 of the Indian Penal Code. Section 320 of the Indian Penal Code describes the kinds of hurt which are designated as grievous.

Section 320 of the Indian Penal Code lays down as follows:-

“Section 320. Grievous hurt.—The following kinds of hurt only are designated as “grievous”:

First.— Emasculation.

Secondly. —Permanent privation of the sight of either eye.

Thirdly.— *Permanent privation of the hearing of either ear,*

Fourthly. —*Privation of any member or joint.*

Fifthly. — *Destruction or permanent impairing of the powers of any member or joint.*

Sixthly. — *Permanent disfiguration of the head or face.*

Seventhly. —*Fracture or dislocation of a bone or tooth.*

Eighthly. —*Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits.”*

As seen from the injury report (Exhibit 6) and the nature of injury sustained by the injured there in and the evidence of the Doctors, it is found that the hurt caused to the injured persons do not come within the description of ‘grievous hurt’ as designated under Section 320 of the Indian Penal Code and as such the ingredient required to constitute the offence under Section 325 of the Indian Penal Code has not been proved before the Trial Court beyond all reasonable doubt.

Accordingly the said conviction and sentence in respect of the charge under Section 325/34 of the Indian Penal Code in respect of all the appellants is liable to be set aside.

Conclusion

Considering the evidence and materials on record and the analysis of evidence as discussed, it is seen that the prosecution has proved the charge against all the appellants under Section 148/34 IPC and Section 323/34 IPC before the Trial Court beyond reasonable doubt and the Trial Court rightly convicted the appellants for the said

offence/charge. But considering the fact that the incident took place about 26 years back and the nature of offence as proved in this case, this Court is of the view that a slight modification of the sentence shall meet end of justice.

The appellants have been sentenced as follows:-

Sl No.	Name	Under Section	Punishment
1	Mujibar Sheikh	148/34	R.I. for 2 years.
2	Mustakin Sheikh		
3	Hafijul Sheikh		
4	Sahabat Sheikh	323/34	R.I. for 1 year.
5	Khalil Sheikh		
6	Habibur Rahaman		
7	Sarikul Sheikh	325/34	R.I. for 5 years and fine of Rs. 5000 i.d. to suffer further R.I. for 1 year each.
8	Manirul Sheikh		
9	Anaruddin Sheikh		

Sentence of the appellants is modified as follows:-

Sl No.	Name	Under Section	Punishment
1	Mujibar Sheikh	148/34	To pay a fine of Rs. 1,000 each i.d. R.I. for 3 months.
2	Mustakin Sheikh		
3	Hafijul Sheikh		
4	Sahabat Sheikh		

5	Khalil Sheikh	323/34	To pay a fine of Rs. 1,000 each i.d. R.I. for 3 months.
6	Habibur Rahaman		
7	Sarikul Sheikh		
8	Manirul Sheikh	325/34	Not proved, thus conviction and sentence is set aside.
9	Anaruddin Sheikh		

Period of detention, if any, undergone by the appellant during investigation, enquiry and trial shall be set off against the substantive sentence in terms of Section 428 Cr.P.C.

All sentences to run concurrently.

Bail bond of the appellants are cancelled. The appellants are directed to surrender forthwith and serve out the remainder of their sentence (if any) within one month from date.

In the event they fail to do so, Trial Court shall take appropriate steps to apprehend them and execute the sentence in accordance with law.

The appeal is allowed to the aforesaid extent. Conviction is thus **upheld** for offence under **Section 148/34 IPC and 323/34 IPC**, but conviction is **set aside** in respect of charge under **Section 325/34 IPC**.

Sentence is modified to the extent stated above.

Let a copy of this judgment along with the lower court records be sent down to the Trial Court immediately.

Urgent Photostat Certified copy of this Judgment, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

(Shampa Dutt (Paul), J.)