

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

The Hon'ble Justice Bibek Chaudhuri

C.R.A. 161 of 2018

Gouranga Maity
-Vs-
State of West Bengal & Anr.

For the Appellant: Mr. Jayanta Narayan Chatterjee
Mr. Somnath Bhattacharya
Ms. Sreeparna Ghosh
Mr. Subhradeep Koley
Ms. Sharmistha Pal

For the State: Ms. Debjani Sahu

Heard on: 04th March, 2022

Judgement on: 07 March, 2022.

BIBEK CHAUDHURI, J:-

This is an appeal at the instance of the convict in Sessions Trial No. 4(3) of 2016 against the judgment and order of conviction and sentence dated 30th January, 2018 and 31st January, 2018 respectively.

The appellant was convicted for committing offence under Sections 341/186/332/333/353/506 of the Indian Penal Code for short.

The learned Trial Judge sentenced the appellant to pay fine of different amounts for the offences under Sections 186/333/341/506 of the I.P.C. The learned Trial Judge also handed down punishment for rigorous imprisonment for

three years with fine for the offence under Section 333 of the I.P.C.

The appellant being aggrieved against the aforesaid judgment and order of conviction and sentence has preferred the instant appeal.

Chandipur P.S. Case No. 188/2014 was registered on 14th October, 2014 on the basis of a written complaint of one Tanmoy Saha, Assistant Engineer and Station Manager, Chandipur Customer Care Centre under WBSEDCL, a Government undertaking.

It is found from the record, specially the written complaint submitted by the said Tanmoy Saha to the Officer-In-Charge of Chandipur P.S. that the said complaint was lodged on the basis of a written allegation submitted by one Rabindranath Jana, Senior Sub-Assistant Engineer, Subhojit Mondal, Dipak Kumar Sinha and Harekrishna Das all employees under WBSEDCL informing him, inter alia, that the above named persons went to village Purusattampur for electric meter checking and meter reading, while they were checking electric meter in the house of appellant Gouranga Maity and demanded yellow card, said Gouranga Maity became excited and tried to assault Rabindranath Jana on his head with the help of a piece of wood "Chela Kat" .

The said Rabindranath Jana turned his head aside and the blow of the wood fell on his chest. As a result of such assault, Rabindranath Jana fell down on the ground

and became senseless. The other employees of WBSEDCL rescued him and brought into Erashol Primary Health Centre for medical treatment.

The investigation of Chandipur P.S. Case No. 188 of 2014 culminated in filing charge-sheet against the appellant under the aforementioned penal provisions. The case was committed to the Court of Sessions, Tamruk, Purba Medinipur who transferred the same to the Court of the learned Additional Sessions Judge, 3rd Court at Tamruk for trial and disposal.

The learned Trial Judge on conclusion of trial held the accused guilty for committing offence under the above mentioned charges and convicted and sentenced them accordingly.

In appeal it is submitted at the outset by Mr. Jayanta Narayan Chatterjee, learned advocate for the appellant that the trial of the case was vitiated for wrong framing of charge. The appellant, Gouranga Maity was charged for causing wrongful restrain, obstruction to a public servant in discharging his public function, voluntarily causing hurt and grievous hurt to a public servant, causing assault to a public servant and threatened him to cause injury. The name of the public servant was clearly stated in the form of charge as Tanmoy Saha, the defacto complainant. However, the prosecution case is that Tanmoy Saha, Assistant Engineer and Station Master of Chandipur Customer Care Centre was never assaulted or in other words, no such

offence was committed upon him. The offence was allegedly committed upon Rabindranath Jana. Therefore, the accused pleaded not guilty. Had it been a case that the charge was framed properly, the accused might have pleaded guilty for committing such offence. The accused was not given opportunity to explain the charge framed against him stating as to whether he committed the offence or not. In order to substantiate his argument, Mr. Chatterjee draws my attention to Sections 211 and 212 of the Code of Criminal Procedure. It is submitted by him that the charge serves the purpose of notice or intimation to the accused giving clear and unambiguous and precise notice of the nature of acquisition that the accused is called upon to defend in the course of trial. In the instant case, the heading of charge shows that the accused was called upon to defend commission of certain offences upon Tanmoy Saha, the defacto complainant herein.

Thus, according to Mr. Chatterjee the defect in the charge is incurable and the accused cannot be held to be convicted on the basis of the charge framed against him.

Mr. Chatterjee fairly submits that the Court of Criminal Procedure provides in Section 464 that omission or error in charge is not always fatal of the prosecution if the accused understands the nature of the charge which he requires to defect.

According to Mr. Chatterjee the said provision is not applicable in the instant case because the appellant was not

given the opportunity to explain while framing charge against him as to whether he obstructed Rabindranath Jana and others in committing the offence charge or not.

On this singular ground he invites the court to alter the order of conviction passed against the appellant.

It is on record that in the heading of charge the name of the injured person was stated as Tanmoy Saha. Admittedly Tanmoy Saha was not the injured. He at the relevant point of time was the Assistant Engineer and In-Charge of Chandipur Customer Care Centre, WBSEDCL. Section 464 of the Code of Criminal Procedure deals with the effect of omission to frame of absence or error in charge. The said provision runs thus:-

“464. Effect of omission to frame, or absence of, or error in, charge-(1) No finding, sentence or order by a Court of competent jurisdiction shall be deemed invalid merely on the ground that no charge was framed or on the ground of any error, omission or irregularity in the charge including any misjoinder of charges, unless, in the opinion of the Court of appeal, confirmation or revision, a failure of justice has in fact been occasioned thereby.

(2) If the Court of appeal, confirmation or revision is of opinion that a failure of justice has in fact been occasioned, it may-

(a) in the case of an omission to frame a charge, order that a charge be framed and that the trial be recommenced from the point immediately after the framing of the charge;

(b) in the case of an error, omission or irregularity in the charge, direct a new trial to be had upon a charge framed in whatever manner it thinks fit.

Provided that if the Court is of opinion that the facts of the case are such that no valid charge could be preferred against the accused in respect of the facts proved, it shall quash the conviction”.

Plain reading of Section 464 shows that a failure in framing charge is not fatal if no failure of justice is occasioned because of such error. Thus, it is to be looked into as to whether there was failure of justice as a result of error in the charge before commencement of trial. In Sessions Trial No. 4(03) of 2016, though in the charge it is stated that the accused person allegedly obstructed and caused grievous hurt to one Tanmoy Saha but all through in the evidence the witnesses on behalf of the prosecution stated on oath that Rabindanath Jana, Subhojit Mondal and two other employees of WBSEDCL went to village of Purusattampur on 14th October, 2014 and the alleged incident took place at the time of inspection of electric meter in the house of appellant Gouranga Maity. The de facto complainant of the case is Tanmoy Saha. From his evidence, it is ascertained that he lodged the complaint on the basis of a written complaint submitted by Rabindranath Jana and others to him. In his evidence in chief he narrated the said fact. In cross-examination it was specifically taken by the defence that he met Rabindranath Jana at Erashal Block Primary Health Centre at about 5.30 p.m. All the witnesses on behalf of the prosecution stated that

Rabindranath Jana was assaulted allegedly by the appellant. The witnesses were cross-examined by the defence and during cross-examination the learned defence Counsel in the Trial Court tried to disprove the allegation of assault and causing obstruction to Rabindranath Jana by Gouranga Maity. No plea was taken during trial of the case that due to error in the charge, the appellant was prejudiced or there were failure of justice prejudicial to the accused the person. Therefore, with regard to the objection in respect of error in charge, argued by Mr. Jayanta Narayan Chatterjee cannot be considered to be a ground for altering the order of conviction against the appellant.

On factual course, the submission made by Mr. Chatterjee may be summarized as hereunder:-

- 1) The evidence of the defacto complainant is of no importance because of the fact that he was not a member of inspecting team who went to village Purusattampur on 14th October, 2014. He only lodged FIR on the basis of a complaint submitted before him by Rabindranath Jana and others.
- 2) P.W.2, Subhojit Mondal was a member of the inspecting team. It is found from his evidence that they inspected the electric meter of Gouranga Maity and he asked Gouranga Maity to produce the yellow card at this the appellant became excited and assaulted Rabindranath Jana on his left chest “under the arm” and he fell down on the ground.

Mr. Chatterjee also draws my attention to point out the contradiction in the evidence of the said

Subhojit Mondal and the Investigating Officer, PW10 who clearly admitted in his cross-examination that Subhojit Mondal did not tell him that he asked Gouranga Maity to produce yellow card.

3) It is also submitted by Mr. Chatterjee that from the cross –examination of almost all the witnesses, it is ascertained that when the inspecting team went to the house of Gouranga Maity and called him, one lady came out of the house of Gouranga Maity. She was also present when the inspecting team examined the electric meter. According to Mr. Chatterjee the said lady would have been the best witness to the actual incident that took place on 14th October, 2014. The prosecution did not take any step to examine the said witness. For withholding best witness, an adverse presumption ought to have been taken against the prosecution case under Section 114(g) of the Evidence Act.

4) PW-3, Rabindranath Jana is the injured Sub-Assistant Engineer of WBSEDCL. From his evidence, it is ascertained that when Subhojit Mondal asked the lady who was present at the time of meter inspection to produce the yellow card, accused Gouranga Maity came out from his house and abused them with filthy languages. When they protested, the accused assaulted Rabindranath Jana with the help of wooden stick aiming his head. He somehow saved his head and the blow of the said wooden stick fell on his left chest. He suffered tremendous pain on his left arm and chest and taken to Erashol Block Primary Health Centre. The Medical Officer referred him to Tamluk hospital for better treatment but the injured went to CMRI, Kolkata for treatment and was admitted there. It was learnt from medical report that the fourth rib of his chest was fractured.

- 5) According to Mr. Chatterjee, the prosecution hopelessly failed to prove that one of the ribs of PW-3 was fractured. The prosecution proved only the injury report by the Medical Officer of Erashal Block Primary Health Centre. The Medical Officer was examined during trial as PW-6, Dr. Priyanka Mondal, PW6 stated in her evidence that she found pain and tenderness on the left arm with mild tenderness on the left chest and the patient had no problem in movement and otherwise he was stable. The patient was referred to Tamluk Hospital for better treatment. However, PW-3 did not attend Tamluk Hospital. He went to CMRI, Kolkata and stated that he suffered fracture injury of one rib of his left chest. No Medical Officer of CMRI, Kolkata was examined to prove any injury report or medical report prepared by CMRI, Kolkata hospital. No X-Ray plate was exhibited. The Investigating Officer produced the bed head ticket of CMRI Hospital in the name of Rabindranath Jana. The Investigating Officer is not a competent person to state the contents of the bed head ticket. Therefore, the allegation of having grievous hurt was not proved by the prosecution.
- 6) It is further submitted by Mr. Chatterjee that PW-7 Subhas Chandra Bera and PW-8, Anjan Maity were declared hostile by the prosecution. It is found from their evidence before the witnesses were declared hostile that the inspecting team under the leadership of Rabindranath Jana misbehaved with the wife of the appellant which caused the appellant excited against the members of the Inspecting Team. A scuffling ensued between the inspecting team and Gouranga Maity. In course of such scuffling, Rabindranath Jana fell down on the ground and sustained injury on his left arm. The above incident

was taken affirmatively by the prosecution in course of their evidence. No cross-examination was made against the above statement made by the above named witnesses after declaring them hostile. When two contrary stories about the incident that took place on 14th October, 2014 are coming in evidence, the Court ought to have accepted the version that helped the accused.

Last but not the least, Mr. Chatterjee submits that the investigation of the case was absolutely perfunctory the Investigating Officer filed charge-sheet against the appellant only to please the officers of WBSEDCL. He could not seize the “Chela Kat, Chera Kat or Wooden Stick or Wooden Block”. On the contrary, he produced a branch of tree stating to be the weapon of assault.

Learned P.P.-In-Charge, on the other hand has supported the prosecution case and submits that there is no reason to interfere with the judgement and order of conviction and sentence passed by the learned Trial Court against the appellant.

Be that as it may, I am in agreement with Mr. Chatterjee that from the evidence on record two parallel stories of the incident are forth coming. The first story is supported by the witnesses on behalf of the prosecution to the effect that on 14th October, 2014 at about 4.40 p.m. employees of WBSEDCL under the leadership of Rabindranath Jana went to the house of appellant Gouranga Maity to inspect the electric meter when they inspected the meter, a lady of the said house was present.

After inspection they wanted yellow card. At that time, Gouranga Maity obstructed them discharging from their public duty and caused grievous hurt to him by assaulting him with the help of “Chera Kat” or “Wooden Stick”.

A parallel story is coming from the evidence of so-called independent witnesses. At the time of inspection of electric meter the inspecting team abused the said lady who was present in the house of the appellant. When she was abused the appellant became excited. Both of them abused each other. A scuffle took place between them and during scuffle of Rabindranath Jana failed on the ground and received injury on his left arm. The so-called independent witnesses were declared hostile by the prosecution. But before declaring them hostile they led the above evidence on oath. Therefore, their narration of incident stands in the evidence on record.

The learned Trial Judge did not consider the question as to whether the parallel account of the story had some grains of truth or not.

It is needless to say that the evidence of hostile witness cannot be brushed aside altogether because they did not support the prosecution case. On the contrary, the evidence of a hostile witness is also admissible when it discloses the time, place and the manner of the incident that took place.

It is no longer *res integra* that when two views of incident are forthcoming, the view that helps the accused should be taken into consideration.

On perusal of the impugned judgment, I am astonished to note that the learned Trial Judge held the appellant guilty in committing offence under Section 333 of the I.P.C. holding, inter alia, that one of his left side ribs was fractured. I do not find as to how the learned court below came to such finding when no Medical Officer of CMRI Hospital, Kolkata was examined by the prosecution. The bed head ticket of CMRI Hospital shows that Rabindranath Jana was admitted as indoor patient at CMRI Hospital. But there is no evidence whatsoever that he fractured one of his ribs of chest case.

For the reasons stated above, I am of the view that the prosecution evidence is not sufficient to uphold the conviction under Section 333 of the Indian Penal Code. With regard to other charges, I am of the view that the appellant is entitled to benefit of doubt because of the existence of an alternative story as to the happenings of the incident.

Accordingly, the instant appeal is allowed and judgement and order of conviction and sentence is set aside. The appellant is acquitted from the charge and discharge from his bail bonds.

Let a copy of this judgment be sent to the court below along with the lower court record.

(Bibek Chaudhuri,J)