

Form J(2)

**IN THE HIGH COURT AT CALCUTTA
Criminal Appellate Jurisdiction
Appellate Side**

**Present :
The Hon'ble Justice Siddhartha Roy Chowdhury**

CRA 159 of 2020

**Jharna Deb @ Jaya
-Versus-
The State of West Bengal**

**For the Appellant : Mr. Prabir Majumder,
Mr. S.Majumder,
Mr. A.Chatterjee**

**For the State : Mr. N.P.Agarwal,
Mr. Pratick Bose**

Heard & Judgment On : 5th December, 2022.

This criminal appeal assails the judgment and order of sentence passed by learned 4th Court of Additional Sessions Judge in Sessions Case No. 499/2013 Sessions Trial No. 16(3)2014. By the impugned judgment learned trial Court was pleased to record an order of conviction against one of the accused persons Smt. Jharna Deb @ Jaya for

committing offence under Section 326/327/120B of the Indian Penal Code together with co-accused persons Dibakar Dey . The appellant was directed to suffer rigorous imprisonment for five years and to pay fine of Rs. 15,000/- for the offence committed under Section 326/120B and rigorous imprisonment for seven years and to pay fine of Rs. 20,000/- for committing offence under Section 307/120B of the Indian Penal Code .

Briefly stated Smt. Jharna Deb @ Jaya set the criminal administration of justice into motion by informing the Officer-in-Charge Englishbazar P.S. in writing about an incident that took place in the evening of 6th October, 2008 in a hotel room known as Sandhya Neer Lodge . According to the informant on 8th October , 2008 at about 11.30 p.m. Dibakar Dey came to that lodge and assaulted her husband with a knife. As alarm was raised he fled away leaving his motorcycle and the weapon of assault at the place of occurrence. Jaya Deb and her son took her husband to the police station. Police came and took the motorcycle as well as incriminating weapon of assault. Her husband was admitted to Malda Hospital. As the information disclosed offence cognizable in nature Englishbazar P.S. Case No. 484 of 2008 was registered. Police took up investigation

and submitted charge sheet against Dibakar Dey as well as the informant Jaya Deb.

Learned trial Court after considering the materials collected in course of investigation was pleased to frame charge under Section 120B of the Indian Penal Code against the appellant Smt. Jharna Deb.

During trial prosecution examined as many as 14 witnesses and after considering the evidence led by prosecution, learned trial Court passed an order of conviction by pronouncing the judgment impugned. Chandan Das PW 1 stated that his friend Haradhan together with his wife Jharna and son came to Malda and put up at Sandhya Neer Lodge. They went see puja. On the night of 6th October, 2008 . Haradhan informed him over a phone call that someone stabbed him and Haradhan asked her to come over. He went there at 4 a.m. in the morning . Haradhan had bleeding injury. He took him to Malda Hospital. Haradahn told him that Dibakar was responsible for the injury. During cross-examination he stated that Haradhan is his close friend who was residing with his wife and son Gourav in a rented accommodation at Dutta Para. Haradhan is a constable of police. PW 2 Dipak Nayak , PW 3 Sk. Samsuddin were examined by the

prosecution in the light of Section 154 of the Evidence Act. Madan Mohan Deb PW 4 stated that Jharna was unwilling to continue her relation with her husband while Haradhan was unwilling to dissolve the relationship. On 6th October, 2008 the couple came to Santi Neer Lodge with their son at about 11.20 a.m. when Haradhan want to bring food for his family then Dibakar was inside the room. Madan Mohan Deb did not have any direct knowledge about the incident. His narrative is based on what he heard from his brother. PW 5 is the victim Haradhan Deb who stated that on the Astami Puja he along with his wife and son came to Sandhya Neer lodge to enjoy the Durga Puja festival. On 8th October, 2008, he went out with his son at about 10.30 p.m. his wife did not accompnay them. He came back and his wife requested him to bring some food . He went to bring food. At about 11.00 p.m. he came back. His wife opened the door then Dibakar stabbed his stomach with a knife. He also made him sustain injury near his eyebrow , right palm, right middle finger by knife. Then both Dibakar and Jharna fled away. PW 5 fairly stood the cross-examination. However he denied to have stated before police that he was taken to hospital by his wife PW 6 Jayanta Kumar

Sarkar, PW 7 Sujan Kumar Sarkar did not support the prosecution case and was examined in the light of Section 154 of the Evidence Act . PW 8 Dr. Pradip Chakraborty found injury over abdomen below the umbilicus. The injury report of the Doctor was admitted into evidence as Ext. 4. There is nothing to approach the impeach the credibility of the said witness. Sumanta Biswas PW 9 is a witness to seizure. PW 10 Fulchand Misra is a record keeper of Malda Medical College and Hospital who produced the bed head ticket which was admitted as Ext. 8, 8/1 and 8/2 . PW 11 Prasad Pradhan is the recording officer. PW 12 intercepted the Dibakar Dey while performing traffic duty in front of Raj Hotel . The man was riding a motorcycle registered as WB 60C/6144. He introduced himself as a police personnel . The witness noticed injury on his right hand blood was oozing out and he was told that the man was clashed with a rickshaw and sustained injury . He was given first aid but he fled away while pretending to wash his hand . He did not seize the motorcycle. During cross-examination he stated that he did not seize any knife also. PW 13 is the investigating officer of this case who after holding investigation submitted charge sheet against the accused persons. He arrested the informant from

Dalkhola . During cross –examination he stated that Haradhan told him that he went to Malda Hospital with his wife and Chandan returned to police station and told that he would lodge a complaint on the following morning . He also told that in the morning at about 3 a.m. when he was feeling unwell he went to hospital with his wife and Chandan and got admitted.

PW 14 is Sankar Sarkar who submitted charge sheet in this case.

Drawing my attention to the order passed by learned trial Court Mr. Prabir Majumder , learned counsel representing the appellant submits that learned trial Court recorded order of conviction under Section 307/326 of the Indian Penal Code against the appellant Jharna Deb @ Jaya without framing any charge. She was directed to stand trial of alleged offence committed within the meaning of Section 120A of the Indian Penal Code punishable under Section 120B of the IPC. The order of conviction as against the appellant should not be maintained because of the fact that no charge was framed against lady under Section 307/326 of the IPC though he was convicted thereunder. Drawing my attention to the examination of Smt. Jharna Deb @ Jaya under Section 313 of IPC Mr. Majumder

submits that the convict/appellant and the victim have been staying together and she did not commit any offence as alleged.

Pursuant to the direction given by this Court Mr. Majumder make the appellant and her husband appear before this Court , Shri Haradhan Deb and Smt. Jharna Deb @ Jaya the appellant is present before this Court together with their son Gourav Dey. Gourav informed this Court his parents are living in peace. Admittedly on the date of incident , victim Haradhan and his son went to see Puja and Jaya @ Jharna , the appellant was in the room. After the victim and his son came back Haradhan went out of Hotel to bring food for his wife and son. After he came back and knocked the door, his wife opened it and Dibakar stabbed him. Son, in a such a situation would have been the best witness to say when Dibakar came, and what was the reaction of his mother, having found Dibakar in the hotel. But Gourab, the son was not examined. Haradhan Deb as PW5 stated that his wife Jharna fled away with Dibakar , but Jharna Deb admittedly informed police about the incident and FIR was registered on 9.10.2008 which fact further indicates that such claim of Haradhan was not correct. Haradhan, however, informed the I.O. that

his wife took him to hospital, though he denied such statement subsequently when he was confronted with such previous statement.

Under such circumstances it cannot be said with certainty the Jharna hatched a conspiracy to cause harm to her husband. Moreover, the appellant has been sentenced to suffer imprisonment for the offence for which she was never charged. Therefore, I am inclined to set aside the order of conviction qua the appellant. She be set at liberty and be released from bail bonds , if any . Application, if any stand disposed of. Interim order of stay , if any stands vacated.

Let a copy of the order be sent to the learned trial Court for information and necessary action.

Urgent photostat certified copy of this order, if applied for, be given to the learned Advocates for the parties on the usual undertakings.

(Siddhartha Roy Chowdhury, J.)