

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Bivas Pattanayak

C.R.A. 200 of 2005
With
CRAN 2 of 2019(Old CRAN 1861 of 2019)
Rajdulal Sarkar
-Vs-
State of West Bengal

For the Appellant : Md. Phiroze Edulji, Adv.
Mr. Somnath Banerjee, Adv.
Mr. Saryati Dutta, Adv.
Mr. Pinaki Ranjan Bhattacharya, Adv.
Ms. A. Chatterjee, Adv.
Ms. Samima Crewal, Adv.

For the State : Ms. Amita Gaur, Adv.

Heard on : 02.03.2022

Judgment on : 02.03.2022

Joymalya Bagchi, J. :-

Appeal is directed against judgment and order dated 24th February, 2005 and 25th February, 2005 passed by the learned Additional Sessions Judge, Fast Tack-III, Nadia, Krishnagar in sessions Trial No. V. Sept., 2004 in Sessions case No. 84(8) 2004 convicting the

appellant for commission of offence punishable under Section 448/326 of the Indian Penal Code and sentencing him to suffer rigorous imprisonment for ten years and to pay fine of Rs. 5,000/-, in default to suffer rigorous imprisonment for one year more for the offence under Section 326 of Indian Penal Code. No separate sentence was awarded in respect of the offence punishable under Section 448 of the Indian Penal Code.

Prosecution case, as alleged against the appellant is to the effect that appellant had disputes with his cousin Prafulla Sarkar (P.W. 1). Due to such dispute, on 16.04.2004 around 1 a.m. he trespassed into their house and threw acid on the face of Mamata, daughter of Prafulla and his wife, Abala. Hearing hue and cry, Prafulla woke up and saw the appellant. He and his wife tried to catch hold of the miscreant but he fled away. Victims were initially taken to Tehatta B.P.H.C. and treated. Mamata was taken for better treatment to Saktinagar hospital and thereafter she was treated at N.R.S. Medical College and hospital. Apart from burn injuries on her face and body she suffered injuries in her eyes and was under treatment for a protracted period of time. On the written complaint of Prafulla (P.W. 1), First Information Report came to be registered being Tehatta P.S. Case No. 80 of 2004 dated 17.04.2004 under Section 326 of the Indian Penal Code against the appellant. Appellant was arrested in course of investigation. In conclusion thereof, charge-sheet was filed against the appellant. Charges were framed under

Sections 448 and 307/34 of the Indian Penal Code. Appellant pleaded not guilty and claimed to be tried. In course of trial, prosecution examined 11 witnesses and exhibited number of documents.

In conclusion of trial, the trial Judge by impugned judgment and order dated 24th February, 2005 and 25th February, 2005 convicted and sentenced the appellant, as aforesaid.

Mr. Edulji, Mr. Banerjee and Mr. Dutta learned Advocates appearing for the appellant argue that the prosecution case is riddled with contradictions and inconsistencies. In the First Information Report it is claimed that the victim and her mother were sleeping in a room but in Court they deposed they were sleeping in the verandah. Injury report of mother of the victim, Abala has not been produced. Police also did not seize the broken jute sticks and lantern from the place of occurrence. Wearing apparels of the victim and her mother, pillow and other articles were also not seized. Though Abala (P.W. 7) claimed acid bottle was seized, her version is not corroborated by Investigating Officer, P.W. 10. Sketch map also does not indicate the verandah in the house of Prafulla. P.W. 4 was examined after a considerable period of time. Her deposition and that of her mother Abala (P.W. 7) suffers from gross embellishments. Hence, prosecution case has not been proved and the appellant is entitled to an order of acquittal.

On the other hand, Ms. Gaur, appearing for the State submits evidence of the injured witness, P.W. 4 and her mother, P.W. 7 is

corroborated by P.W. 1, the father of the victim and the informant. Their depositions receive support from neighbours as well as doctor who treated P.W. 4 at Saktinagar Hospital. Hence, acid burn injuries suffered by P.W. 4 is proved beyond doubt. Presence of appellant at the place of occurrence has also been established. In this backdrop, remissness in investigation would not affect the intrinsic truth of the prosecution case. Thus, appeal is liable to be dismissed.

P.W. 1 (Prafulla Sarkar) is the informant and father of the victim. He deposed on the fateful night he was sleeping in a cot in his room and his wife and daughter were sleeping in another cot in the verandah. The appellant entered the house by cutting the jute stick wall and after crossing his room entered the verandah. He threw acid on the face of his daughter and some acid also fell on the hand of his wife. His daughter cried for help. He tried to catch hold of the appellant but the latter kicked him and ran away through the broken jute stick wall. He chased the appellant but could not catch him. He took his daughter and wife to Tehatta hospital. His wife was given primary treatment and released. His daughter was referred to Saktinagar hospital for better treatment. He lodged written complaint which was scribed by P.W. 11.

In cross-examination, he stated four/five months ago dispute cropped up between himself and the appellant. He admitted pillow cover and bed cover had got burnt but the I.O. did not seize them. He also did

not seize broken jute sticks, burnt pillow cover, wearing apparels of the victim and saree of his wife.

P.W. 4 (Mamata Sarkar) is the injured victim and most vital witness. She deposed on the night of the incident she was sleeping with her mother in the verandah. Her father was inside the room. All of a sudden she woke up and found acid thrown on her face. Appellant was standing near the cot. She identified the appellant in the light of the lantern. She shouted taking the name of the appellant. Her mother and father caught hold of the appellant but he ran away. His father chased the appellant. She lost her senses and on the next day she found she had been admitted at Saktinagar hospital. She remained in the hospital for ten to twelve days. Her entire face and shoulder had been burnt upto abdomen below her left breast. She was treated at N.R.S. Medical College and hospital. She continued to be treated at Barrackpore and Krishnagar for injuries in her eyes.

P.W. 7 (Abala Sarkar) mother of the victim corroborated her version and stated she woke up hearing the cries of her daughter. She shouted for help and caught the appellant. Her husband also caught the appellant. But the appellant ran away. Her husband chased the appellant. She along with her daughter went to Tehatta hospital in a trecker. She had sustained burn injury on the right side of her back. She was treated at Tehatta hospital.

P.W. 8, Dr. Joydip Roy, is the doctor who treated Mamata Sarkar (P.W. 4) at the District Hospital, Krishnagar. He deposed on 17.04.2004 he treated Mamata Sarkar, daughter of Prafulla Sarkar, who was referred to the District Hospital, Krishnagar from Tehatta B.P.H.C. Mamata received acid burn injuries over face, neck and chest and minor area of lower limbs. About 15% of her body was burnt. She had suffered conjunctival interaction and was referred to Eye Specialist. She was discharged on 25.04.2004 with advice to attend Plastic Surgeon O.P.D. at N.R.S. Medical College and Hospital. He proved the bed-head ticket as Exhibit- 3. In cross-examination, he stated that he had not stated the name of the accused who caused such assault in the medical papers.

In addition to the support from the version of the aforesaid medical witness, depositions of Mamata (P.W. 4) and her mother, Abala Sarkar (P.W. 7) are corroborated by neighbours namely P.W. 2 (Paresh Biswas), P.W. 3 (Kamal Mondal) and P.W. 6 (Niranjan Biswas). All of them stated hearing hue and cry they had gone to the house of Prafulla Sarkar who told them that the appellant had thrown acid upon his daughter.

P.W. 5, Jadav Sarkar, brother-in-law of Prafulla Sarkar also came to the place of occurrence and was informed about the incident.

From the aforesaid evidence I find place of occurrence as well as manner of assault on Mamata and her mother have been fully

established. They were sleeping in the verandah of the house on the fateful night. Her father was sleeping in the room. Appellant, who had prior grudge with the father of the victim, trespassed into the house at around 1 a.m. by breaking the jute stick wall and threw acid on Mamata Sarkar (P.W. 4). Some acid also fell on her mother, Abala (P.W. 7). Mamata woke up and saw the appellant. She cried out for help. Her parents accosted the appellant but he managed to flee away.

Mr. Edulji, contends the place of occurrence has not been fixed. In F.I.R., it is stated that the victim and her mother were sleeping in the room while in Court they claimed they were sleeping in the verandah. Sketch map prepared by I.O. does not disclose verandah in the house of Prafulla.

From the evidence of P.W. 7, mother of the victim, it appears that verandah is a covered one with a door. Hence, P.W. 1 described the covered verandah as a room in the F.I.R. Such minor variation in the description of place of occurrence in the F.I.R. does not affect the credibility of the prosecution case which is clearly established through the consistent deposition of the victim (P.W. 4) and other witnesses in Court. Failure of the I.O. to prepare a detailed sketch map also does not erode the prosecution case. Sketch map made by I.O. is not substantive evidence. On the other hand, topography of the house is established by the evidence of its inmates, namely, P.W. 1, 4 and 7. It is also argued there was delay in examining the victim (P.W. 4). Neither Mamata (P.W.

4) nor her mother (P.W. 7) had stated Mamata had shouted the name of the appellant after the incident or that her parents had caught hold of the appellant but he fled away. In the present case, we note that the I.O. had not conducted the investigation in proper earnest. He did not collect the medical papers of Mamata (P.W. 4) and her mother, Abala Sarkar (P.W. 7) from Tehatta Hospital. Hence, it is most likely he recorded their statements in a most cryptic manner. Absence of minute details of the incident in their earlier statements recorded by I.O. does not affect the intrinsic truth of their version in Court. Every omission in a previous statement of a witness does not amount to a material contradiction unless such omission is so material and significant it destroys the credibility of her version in Court. On the other hand, presence of the appellant at the place of occurrence has been clearly disclosed by Prafulla Sarkar in the F.I.R. F.I.R. was lodged soon after the incident and, therefore, possibility of false implication of the appellant is clearly ruled out. Crux of the prosecution case as narrated by the victim (P.W. 4) and her mother (P.W. 7) in Court is consistent with their earlier statements before police. Their versions receive corroboration from the deposition of independent witnesses, that is neighbours who rushed to the place of occurrence and were informed by P.W. 1 that the appellant was the assailant. In this backdrop, failure to record name of the appellant in the medical papers loses significance. Medical personnel as well as father of the victim were more eager to

save her life than to record the name of the assailant in the injury report. Injury report proved by P.W. 8, treating doctor, shows extensive acid burn injuries on the victim. All the witnesses stated Abala Sarkar, mother of the victim (P.W. 7) had also suffered acid burn injuries on her body and was treated at Tehatta Hospital. I.O., for reasons best known to him, failed to collect the injury reports from Tehatta Hospital. Such failure, on his part, discloses a casual approach in the investigation in a case involving acid attack upon the victim and her mother. It cannot be a ground to disbelieve their convincing and corroborated versions of the victims in Court. Similar glaring lapses in investigation are noted in this case. I.O. did not seize the wearing apparels of the victim and her mother. Acid bottle, though taken custody by the Investigating Officer, was not produced in Court. He also did not seize the burnt pillow and bed cover from the place of occurrence. As I find versions of the victim (P.W. 4) and her mother (P.W. 7) convincing and corroborated by other independent witnesses including medical evidence, I am of the opinion these remissness in the investigation in a case involving acid attack on a young lady, though appalling and deplorable, does not affect the credibility of the prosecution case. I.O. ought to have investigated the crime with more diligence and dedication. Much is left to be desired in the role played by the investigating agency. However, in the light of the evidence of the victim (P.W. 4) and her parents which is corroborated by

independent witnesses and medical evidence, I am of the opinion prosecution case against the appellant is proved beyond doubt.

Conviction of appellant is, accordingly, upheld. He is directed to surrender forthwith and serve out remainder of his sentence in accordance with law.

Coming to the issue of sentence, it is argued by the learned Counsel appearing for the appellant that the incident occurred 18 years ago. Hence, sentence of the appellant may be reduced.

I find victim Mamta barely 18 years of age when she had suffered acid burn injuries on her face and body. Her face was disfigured and she suffered grave injuries in her eyes. No mitigating factor with regard to the appellant is evident from the materials on record. He was a relation of the victim and threw acid at her due to previous grudge. In view of gravity of the offence causing indelible injuries on the face and eyes of the victim, I am of the view merely lapse of time would not mitigate its impact which would justify reduction of the proportionate sentence imposed on the appellant. Sentence of the appellant is, thus, upheld.

Hence, the appeal being CRA 200 of 2005 is dismissed.

Accordingly, connected application being CRAN 2 of 2019 (Old CRAN 1861 of 2019) is also dismissed.

Period of detention suffered by the appellant during investigation, enquiry and trial shall be set off against the substantive sentence imposed upon him in terms of 428 of the Code of Criminal Procedure.

Bail bonds of the appellant are cancelled and he is directed to surrender forthwith and serve out the remainder of the sentence in accordance with law. If he fails to do so, trial Court shall resort to appropriate processes to execute the sentence in accordance with law.

Let a copy of this judgment along with the lower court records be forthwith sent down to the trial court at once.

Photostat certified copy of this judgment, if applied for, shall be made available to the appellant within a week from the date of putting in the requisites.

I agree.

(Bivas Pattanayak, J.)

(Joymalya Bagchi, J.)