

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

PRESENT:

THE HON'BLE JUSTICE TIRTHANKAR GHOSH

CRA 310 of 2016

Pachanan Dey & Ors.

-vs.-

The State of West Bengal

For the appellants : Mr. Sourav Chatterjee,
Mr. Avik Ghatak,
Mr. Abhinav Rakshit.

For the State : Mr. Avishek Sinha.

Heard on : 04.07.2022 & 12.07.2022.

Judgment on : 15.07.2022

Tirthankar Ghosh, J:-

The present appeal has been preferred against the judgment and order of conviction and sentence dated 05.04.2016 passed by the learned Additional Sessions Judge, 1st Court, Asansol, Burdwan in Sessions Trial Case No.03 of 2012 (corresponding to Sessions Case No.11 of 2012) arising out of Asansol (North) Police Station case no. 104/2011 dated 21.05.2011 under Sections 341/34 of the Indian Penal Code.

The learned trial Court after holding the Appellants guilty was pleased to convict the appellants and sentence them as follows:

- 1) The appellant Nos. 1 to 7 were sentenced to suffer simple imprisonment for one month each for the offence under Sections 341/34 of the Indian Penal Code.
- 2) The appellant No.6, Biswanath Dey was sentenced to suffer simple imprisonment for two years and to pay a fine of Rs.5,000/-, i.d. to suffer simple imprisonment for further period of one month for the offence under Section 325 of the Indian Penal Code.

The case of the prosecution originated from a complaint lodged by one Nirmal Chandra Dey to the effect that on 20.05.2011 at about 12.00 noon altercation and scuffling took place between the informant and his relations, with their neighbour i.e. Purnachandra Dey and his family members over the issue of passage of drainage water and as such, both the parties went to Kanyapur outpost where they were asked to settle the matter. At the time of returning from Kanyapur outpost Karnadhar Dey who was a pillion rider of the informant was intercepted near Durga Mandir at Sudihi village by the accused persons namely; (1)Panchanan Dey, (2) Purnachandra Dey, (3) Ujjwal Dey, (4) Kajal Dey, (5) Naresh Dey, (6) Biswanath Dey and (7) Chanchal Dey. All of them forcibly dragged out Karnadhar from the vehicle and assaulted him, however, Karnadhar managed to run away towards Dakshin Para. The accused persons again intercepted him, when Panchanan Dey hit Karnadhar with a chopper

resulting in bleeding injury and Biswanath Dey hit Karnadhar on his hand with a shovel, as a result of which Karnadhar collapsed on the road. Thereafter all the accused persons jointly assaulted Karnadhar Dey, as a result of which he sustained serious injuries. The villagers thereafter took Karnadhar to Sub-divisional Hospital and admitted him there and as the injuries were grievous in nature he was shifted to H.L.G. Hospital routed through E.S.I. Hospital. It is alleged that Karnadhar was in a critical condition and admitted at H.L.G. Hospital. The informant therefore, requested the Officer-in-charge of Asansol (North) Police Station to take legal action against the offenders.

Pursuant to the aforesaid information being lodged, Asansol (North) Police Station case no. 104/2011 dated 21.05.2011 under Sections 143/341/325/326/307 of the Indian Penal Code was registered for investigation against the seven accused persons named in the letter of complaint. The investigating agency on completion of investigation submitted charge-sheet under Section 143/341/325/326/307 of the Indian Penal Code against all the seven accused persons named in the FIR. After compliance of the provisions of Section 207 of the Code of Criminal Procedure the Learned Magistrate was pleased to commit the case to the Learned Sessions Judge which was subsequently transferred to the Learned Additional Sessions Judge, 1st Court, Asansol and accordingly date was fixed for consideration of charge. Learned trial Court after considering the materials relied upon by the prosecution framed charges under Sections 341,307/34 and 326 of the Indian Penal Code. The prosecution in order to prove its case relied upon 11 witnesses

namely PW1, Prodip Dey; PW2, Muktipada Dey; PW3, Dr. Debasish Ghosh; PW4, Nirmal Chadra Dey; PW5, Dr. Sourav Kr. Chottopadhayay; PW6, Chakradhar Dey; PW7, Ananta Kr. Dey; PW8, Panchanan Dey; PW9, Karnadhar Dey; PW10, SI Sudip Das Gupta and PW11, ASI Shanit Pada Mondal. The prosecution also relied upon five documents, which included Ext.1-Injury Report of Mission Hospital; Ext.2 written complaint; Ext.3 Injury Report of Sub-divisional Hospital; Ext.4 formal FIR and Ext.5 rough sketch map with index.

PW1 and PW2 are local villagers who denied of having seen any occurrence and were declared hostile by the prosecution.

PW3, Dr. Debasish Ghosh, in his examination-in-chief deposed before the Court regarding the observations in respect of the injuries mentioned in this report which are as follows:

“1. One lacerated wound outside the scalp (left side) sutured out side, approx 6” X1”. On x-ray it was detected that second, third and forth metacarpal bone were fractured.

2. There was a fracture on the distal end of ulna on the left side only.”

The doctor also identified his signature in the injury report which was admitted in examination-in-chief which was marked as Ext.1. In cross-examination he stated that such injuries may be caused because of falling

down on hard and blunt substance from height, the doctor also pointed out that there was no note on the injury report regarding the history of assault.

PW4, Nirmal Chadra Dey, deposed regarding the incident as stated in the letter of complaint and specified that all the accused persons assaulted Karnadhar and when he started running towards Dakshin Para the accused persons chased him and on his way Karnadhar (PW9/victim) fell down on the ground and he saw at that time accused Panchanan Dey with the help of a 'katari' struck on the head of Karnadhar Dey and Biswanath Dey assaulted on the hand of the victim with the help of a 'belcha' thereafter the accused persons fled away. Witness, further narrated that the victim was shifted to Sub-divisional Hospital and from there to E.S.I. Hospital and from E.S.I. Hospital he was taken to H.L.G. Hospital and was admitted there. The witness stated that the injuries sustained by the victim resulted in bleeding. The witness also stated that PW8 is the scribe of the complaint and he after reading the complaint signed it. He admitted his signature and the contents of the written complaint, which were marked as Ext.2 and Ext.2/1. The witness also identified the accused persons and stated that they were his co-villagers. He further stated that on 21.05.2011 the victim was admitted at Durgapur Mission Hospital and he stayed there for 12 days for treatment. The witness at the time of cross-examination described the topography of the area. The issues relating to altercations, the manner in which the accused were taken to different hospital for treatment. However, he stated that he could not see 'katari and belcha' inside the Court which were used at the time of offence. The

witness in cross-examination denied the factum of assaulting Arjun Dey by Karnadhar Dey and thereafter fleeing away or having fell down or at the time of fleeing sustaining such injury.

PW5, Dr. Sourav Kr. Chottopadhyay was associated with Asansol SD Hospital. He stated that history of assault as written in the injury report was assault by Biswanath Dey, Panchanan Dey and others with 'belcha' at about 11.00 am on 20.05.2011. The witness stated that the patient was conscious and his pulse rate as reflected from the report is 80 beats per minute. The witness stated the contents of the injury report as follows:

"One lacerated injury left side of scalp 4" X 1".

The injury was fresh and there was active bleeding.

Abbreasion and Hematoma i.e. swelling on the right elbow."

The injury report of the Sub-divisional Hospital was identified by him as having been signed and prepared, the same was marked as Ext.3.

PW6, Chakradhar Dey a co-villager has stated before the Court that he heard about the incident and did not see the same.

PW7, Ananta Kr. Dey, is a shop owner who identified the accused persons on dock and stated that he saw the incident with his own eyes and narrated that the accused persons surrounded the victim and assaulted him when the victim started fleeing away towards Dakshin Para and also deposed in Court that few minutes later he saw that the accused persons were passing

by the side of his shop and uttering that they have finished the victim Karnadhar Dey. Thereafter, the witnesses rushed towards Dakshin Para and found that the victim was lying in an injured condition with bleeding injuries from his head. Witness arranged a vehicle for taking the victim to Sub-divisional Hospital for treatment. The witness also stated that in front of Durga Mandir Biswanath Dey assaulted Karnadhar with the help of a belcha. In cross-examination the witness stated that the victim was his cousin brother and the accused persons are also his relations. Further in his cross-examination he stated that after being injured Karnadhar was not in a position to stand on his own legs. The witness denied all the suggestions advanced by the defence and stated that it could have been the victim fell down on the ground after being chased by the accused persons and there were stones available at the place where the victim was lying.

PW8, Panchanan Dey, is the scribe of the FIR.

PW9, Karnadhar Dey, is the victim who narrated the occurrence and post-occurrence as follows:

“On our way back to village by riding a motor cycle when we reached near Durga Mandir we are detained by Purna Chandra Dey, Panchanan Dey, Ujjal Dey, Kajal Dey, Naresh Dey, Biswanath Dey and Chanchal Dey. They dragged me down from the bike and started beating me. They were not ready to hear me. I found that they were armed with Bhojali, shovel, lathi etc. I ran towards Dakshin Para. They were chasing me. They caught me and again started beating me. Purna Chandra Dey struck me on

my head with a Bhojali. I fell down in injured condition. Biswanath struck me on both of my hands with shovel. There were fracture in both of my hands. Other accused persons hurt me on my chest with a chak of stone. I was lying in a pool of blood. Pradip Dey and Chakradhar Dey were also present there. Thereafter accused persons fled from the spot.

Nirmal and others thereafter brought me to government hospital. I was in my senses. There were several stitches on my head. I am entitled to be treated in E.S.I Hospital. I was then taken to E.S.I Hospital. From E.S.I Hospital I was taken to H.L.G Hospital at Asansol for better management. My condition was deteriorating. On the following day I was referred to Mission Hospital, Durgapur.

On 22-05-11 I got myself admitted in Durgapur Mission Hospital. I have to undergo treatment as an indoor patient there till 04-06-11.”

The witness was cross-examined exhaustively by the defence who remained firm on his version and was not shaken with the questions he had to confront from the side of the defence.

PW10, S.I. Sudip Das Gupta, police Officer who received the written complaint and endorsed the case to ASI Shanti Pada Mondal for investigation. The endorsement/signature in the FIR was marked as Ext.2/3 and the formal FIR which was prepared by him was marked as Ext.4.

PW11, ASI Shanti Pada Mondal, is the investigating Officer of the case.

Mr. Sourav Chatterjee learned advocate appearing for the appellants submitted that if the prosecution witnesses are segregated the same would reflect that the independent witnesses being PW1, PW2 and PW7 did not support the prosecution case, although they were co-villagers. According to the learned advocate the prosecution case rests on the statement of PW4 and PW9 and the doctors who treated the victim, although whole of the medical evidence were not relied upon by the prosecution. It is also argued that PW3 stated in his cross-examination that the patient was brought by Mrinal Kanti Dey, elder brother of the patient but the said Mrinal Kanti Dey was never examined. It has also been pointed out that the injuries described by the two doctors i.e. PW3 and PW5 do not match. Further, both the doctors have confessed that the injuries sustained by the victim could have been caused by falling upon hard and blunt substance. Much emphasis was laid on the issue that there were previous cases where the appellants were victim and the same was engineered by PW9 who is now acting as a victim after suffering a road accident. The learned Advocate submitted that the learned trial Court ignored the evidence in its entirety and erroneously arrived at the finding of guilt thereby convicting the appellants which cannot be sustained in law and as such should be set aside.

On the other hand Mr. Sinha learned advocate appearing for the State submits that the prosecution stand has been substantiated not only by documentary evidence but by overwhelming corroborative oral evidence. Learned advocate has drawn the attention of the Court to both the injury reports marked as Ext.1 and Ext.3 and also pointed out the evidence of PW4

and PW9, its consistent and corroborative version and the support of the same from the independent witness PW7, Ananta Kr. Dey. Learned advocate was very emphatic in his submission that the genesis of the incident is the initial assault, fleeing away of the victim towards Dakshin Para which was seen by his own eyes by the independent witness PW7 and the subsequent utterances of the accused persons after sometime being heard by him, followed by the witness seeing the injury of the victim with his own eyes, prove the case beyond reasonable doubt and as such there cannot be any interference with the order of conviction and sentence passed by the learned trial Court.

I have considered the evidence particularly the letter of complaint wherein version of the incident regarding PW9 being intercepted when the complainant was plying the motorcycle, his assault at the hands of the accused persons, he being chased by the appellants when trying to flee away towards Dakshin Para. Thereafter, the injured/victim being struck with a chopper on his head by Panchanan Dey and being assaulted with shovel on his hand by Biswanath Dey. The said version remained un-shaken when PW4 Nirmal Kr. Dey and PW9/injured victim was cross-examined in Court. Further Ext.3 which is an injury report prepared by PW5 Dr. Sourav Kr. Chattapadhyay reflects that the patient was brought by Nirmal Dey and the history of assault as narrated therein is as follows: *“assault by Biswanath Dey, Panchanan Dey and others with belcha at about 11 am on 20-05/2011.”* The argument advanced by the appellants that as Panchanan Dey has been acquitted from the charges under Section 325 of the Indian Penal Code, Biswanath Dey is also

entitled to such benefit do not seem to be inspiring in view of the fact that the information of chopper which was there in the FIR or the deposition of the witnesses PW4 and PW9 but the same was not stated before the doctor, although there was injury sustained by the victim/injured on his head, to that extent the benefit granted by the trial Court seems to be justified, however, the belcha/shovel which was used by Biswanath Dey has been consistently stated in the letter of complaint marked as Ext.2, version of PW4 and PW9 and the injury report Ext.3.

I have considered the cumulative effect of the evidence brought on record and the plea advanced by the appellants, on an appreciation of the same, I am of the considered view that there is no scope for interfering with the order of finding of guilt and conviction as held by the learned trial Court. So far as the subject matter of the sentence is concerned I find that the incident was of the year 2011 i.e. more than 11 years have passed and 7 of the appellants have been convicted under Section 341/34 of the Indian Penal Code for a period of 1 (one) month. On this count, so far as these appellants are concerned, namely, Panchanan Dey, Purnachandra Dey, Ujjwal Dey, Kajal Dey, Naresh Dey, and Chanchal Dey. I am of the opinion that as the prescribed punishment under Section 341 of the Indian Penal Code refers to substantive sentence of one month or with fine which may extend to Rs.500/- or with both. The sentence should be modified to fine and compensation.

Accordingly aforesaid 6 appellants are directed to pay compensation (which is inclusive of fine of Rs.500/-) of Rs.5,000/- each as prescribed under the statute and the same should be paid by each of them within a period of four weeks from the date of this order, in default they should be directed to serve out sentence of one month simple imprisonment.

So far as the appellant No.6, Biswanath Dey is concerned his sentence under Section 325 of the Indian Penal Code is reduced/modified to 3 months simple imprisonment with fine of Rs.5,000/- i.d. to suffer simple imprisonment for one month more. The sentence under Section 341 of the Indian Penal Code, so far as this appellant is concerned would run concurrently, the appellant is also directed to deposit a sum of Rs.10,000/- as compensation, in default the Learned trial Court would recover the same by exhausting process of law.

The appellant No.6, Biswanath Dey is directed to surrender before the Learned Chief Judicial Magistrate, Asansol immediately. His bail bond stand cancelled.

All payments/deposits relating to fine/compensation should be made before the Learned Chief Judicial Magistrate, Asansol, out of the aggregate sum of Rs.45,000/- paid by way of fine and compensation a sum of Rs.35,000/- should be paid to PW9, Karnadhar Dey by way of compensation. Learned Chief Judicial Magistrate, Asansol is directed to issue notice upon the injured Karnadhar Dey (PW9) after such deposit is made by the appellants.

The criminal appeal being CRA 310 of 2016 is partly allowed.

Pending Applications, if any, is consequently disposed of.

Department is directed to send back the Lower Court Records and communicate this judgment, so that effective steps are taken both by the learned trial Court being Learned Additional Sessions Judge, Paschim Bardhaman and the learned Chief Judicial Magistrate, Paschim Bardhaman, Asansol.

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.)