

Form No.J(1)

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

Present:

The Hon'ble Justice Tirthankar Ghosh

CRA 352 of 2018

**Gobinda Mondal
-vs-
State of West Bengal**

For the appellant : **Mr. Partha Pratim Das** empanelled in (H.
C. L. A. S. A)

For the State : **Mr. Iqbal Kabir**

Heard on: 18th August, 2022, 22nd August, 2022.

Judgement on: **22nd August, 2022.**

Tirthankar Ghosh, J.

The present appeal has been preferred against the judgment and order of conviction and sentence dated 30.05.2018 and 31.05.2018 passed by the learned Additional District and Sessions Judge, Fast Track Court No.II, Bichar Bhawan, Calcutta in Sessions Trial No. 1(8) of 2014 arising out of Sessions Case No. 41 of 2014, wherein the learned trial court was pleased to convict the appellant under Section 307 of the Indian Penal Code and sentenced him to suffer Rigorous Imprisonment

for seven years and fine of Rs.5000/- i.d., Rigorous Imprisonment for another six months.

The genesis of the case relates to Muchipara P. S. Case No. 477 dated 30.08.2011 under Section 307 I.P.C. The said case was registered on the basis of a statement of Rabin Mondal, P W.1(hereinafter referred to as the complainant). The complainant, it has been stated used to sell vegetables in the morning by the side of Surya Sen Street in front of Bina Sweets. On 30.08.2011, while the complainant like any other day was selling vegetables in the morning, at about 10.15 a.m., the accused, Gobinda Mondal, a co-villager assaulted him on his head with a hammer. After being hit with the hammer on two/three occasions, the complainant in order to save himself put his hands over his head, while the accused struck also on his hands. The complainant suffered severe bleeding injuries and as such he was shifted to Medical College & Hospital by the local people and from there he was admitted to CB Top Ward. Several stitches had been administered during treatment. The complainant alleged that he had previous business rivalry with the accused and prayed before the Investigating Officer to take appropriate steps. The Investigating Agency on conclusion of investigation, submitted chargesheet under Section 307 of the Indian Penal Code.

The case was thereafter transferred by the learned Chief Metropolitan Magistrate, Calcutta to the learned Metropolitan

Magistrate, 19th Court, Calcutta and the order dated 24.02.2014 reflects that the learned Metropolitan Magistrate, 19th Court, Calcutta on receipt of chargesheet no. 372 of 2013 of Muchipara PS filed against the present appellant was pleased to take cognizance of the offence, on perusal of the materials available therein. The learned court on a subsequent date was pleased to commit the case to the Court of Sessions after the documents/statements proposed to be relied upon by the prosecution were served upon the accused/appellants. The case records were finally transmitted to the learned Additional District and Sessions Judge, Fast Track, 2nd Court, Bichar Bhawan, Calcutta.

On or about 18th August, 2014, the learned trial court framed charges against the appellant under Section 307 of the Indian Penal Code and the records reveal that the prosecution relied upon 11 witnesses namely, *PW.1, Rabin Mondal* - injured victim/complainant ; *PW. 2, Kajal Basak* who was present in the market ; *PW 3, Amar Kumar Ghosh*, person attached with sweet meat shop; *PW 4, Mohan Sahoo*, who was also a vegetable seller ; *PW 5, Goutam Basu Mallick* was associated with the market; *PW 6, Sanjay Mondal* who is the brother of the PW 1; *PW 7, Israfir Hazra* was associated with the market who reached the place of occurrence after hearing hue and cry; *PW 8, Surajit Majumder*, the doctor who treated PW1; *PW 9, Basudeb Dolui* was attached with Medical College & Hospital who handed over the bed head tickets to the

Investigating Agency; PW 10, Subhojit Banerjee is the Investigating Officer of the case; PW 11 is Dr.(Mrs.) Sipra Ray, FSL expert.

The documents relied upon by the prosecution included Exhibit 1 and Exhibit I/2 relating to signatures of seizure list dated 30.08.2011; Exhibit 2 signature of P.W 4 on complaint; Exhibit 2/1, signature of PW10 on the complaint; Exhibit 3 medical report; Exhibit 4 Bed Head Tickets; Exhibit 5 and 6, seizure listed dated 30.08.2011; Ext. 7, G. D Entry, Ext. 8, Formal FIR; Ext. 9 FSL report.

Mr. Partha Pratim Das, learned advocate appearing for the appellant submitted that the complainant was unaware regarding the contents of the FIR or the complaint, which is available in his cross-examination. He also stated that the presence of the accused at the spot is doubtful as none of the prosecution witnesses emphasized regarding the presence of the accused at the spot.

So far as the expert evidence is concerned, learned advocate points out that no blood was found in the hammer which was seized by the police authorities and no light could be thrown on the this issue by PW 11.

Additionally, it has been submitted that if the cumulative evidence of the prosecution is accepted, even then it is not possible for the PW 1 to identify the accused as the narration of evidence reflects that PW1 was attacked from behind and so the manner in which the evidence has been portrayed by the prosecution suffers from

inconsistency and thus it would not be safe to rely upon such evidence for arriving at an order of conviction or guilt so far as the appellant is concerned.

Consequently, learned advocate for the Appellant prays for interfering with the order of the learned trial court and setting aside the order of conviction and sentence so passed.

Mr. Kabir, learned advocate appearing for the State submits that the prosecution by cogent and reliable evidence has proved the case beyond all reasonable doubt. He has further submitted that the evidence of the injured Rabin Mondal who was examined as PW 1 is believable and acceptable. The detailed cross-examination by the appellant even could not shake his version. Learned advocate has also pointed out that the evidence on record reflects that the accused/appellant was arrested at the spot with the offending weapon and the medical evidence reflects that PW 1 was severely injured as deposed by PW 8, Dr. Surajit Majumder.

According to the State, there are overwhelming materials against the appellant and the prosecution has proved the case beyond all reasonable doubt as such there is no scope to interfere with the order of conviction and sentence passed by the learned trial court.

I have considered the evidence of the 11 witnesses and the documents which have been admitted in evidence in course of the trial.

There has been a consistent version of PW 1, Rabin Mondal firstly when the statement was recorded by the police authority in the hospital wherein he named the accused Gobinda Mondal who attacked him with the hammer and struck 2/3 times on his head. Such version of the complainant is also available in his examination in chief. In fact, so far this evidence is concerned, the same could not be dislodged in cross-examination even after he has been exhaustively cross-examined on number of dates. Such evidence of the PW 1 is corroborated by the medical officer, Dr. Surajit Majumder who examined him and his report was marked as Exhibit 3. The relevant portion of his evidence is set out as follows:-

“On 30.08.2011 I was posted as emergency officer at Medical College & Hospital. On that day, I medically one Rabin Mondal, aged about 25 years and issued a certificate. This is the said certificate, prepared and signed by me. After examination of his body, I found lacerated injury on his scalp having bleeding injury. It was serious injury.”

So far as the other witnesses are concerned, there is no major discrepancy in their evidence but the evidence of the injured being of absolute importance while considering the case of this nature, the role of the other witnesses particularly, PW 2, PW3, PW4, PW6 and PW7 who reached the spot after hearing the hue and cry are of little importance, although they supported the incident and did not deny the occurrence.

The other issue which requires consideration is the appellant's contention regarding the availability of the appellant.

The Investigating Officer of the case has said that on receiving information, he had been to the place of occurrence when he found that the appellant/accused was surrounded and withheld by the number of persons after he had committed the ghastly incident. To that extent, the evidence of the Investigating Officer regarding the accused who was arrested at the spot could not be dislodged in the cross-examination. Further, the evidentiary value of PW1 is to be considered in the background of the settled proposition of law.

In *Laxman Singh –versus- State of Bihar* reported in (2021) 9 SCC 191 relying upon an earlier judgement of State of Madhya Pradesh –versus- Man Singh reported in **(2003) 10 SCC 414** it has been held by the Hon'ble Supreme Court in paragraph 9 which is as follows:-

9. In *Mansingh [State of M. P., v. Mansihgh*(2003) 10 SCC 414 : (2007) 2 SCC (Cri) 390], it is observed and held by this Court that “the evidence of injured witnesses has greater evidentiary value and unless compelling reasons exist, their statements are not to be discarded lightly”. It is further observed in the said decision that “minor discrepancies do not corrode the credibility of an otherwise acceptable evidence”. It

is further observed that “Mere non-mention of the name of an eyewitness does not render the prosecution version fragile”.

Having regard to the proposition of law that the statement of an injured cannot be lightly considered and is of absolute importance, when an injury has been suffered, more so in a case of this nature when the injury is severe, I am of the opinion that the evidence of PW 1, PW8 is sufficient to arrive at a conclusion regarding the involvement of the present appellant. However, having regard to the manner of attack and the nature of injury, I am of the opinion that this is a fit case for holding the appellant guilty under Section 326 of the Indian Penal Code. Accordingly, the conviction is altered from Section 307 IPC to Section 326 IPC.

Record reflects that the appellant was in custody for about two months during the period of investigation and after conviction he was never granted bail during the pendency of the appeal which takes the total period of detention for about four years six months.

Considering the period of detention of the present appellant, I am of the opinion that the sentence should be reduced to the period which he has already undergone or has been served by him during the pendency of the trial and appeal. The sentence is thus modified to the aforesaid extent. Accordingly, the appeal being *CRA 352 of 2018 is partly allowed.*

Pending applications, if any, are consequently disposed of.

The appellant may be released by the jail authorities if he is not wanted in any other case.

Department is directed to communicate this judgement through the jurisdictional court to the Superintendent of Jail where the present appellant has been detained.

Department is directed to send back the lower court records and communicate this order to the learned trial court within a period of seven days from date.

All concerned parties shall act in terms of the copy of the order downloaded from the official website of this Court.

[Tirthankar Ghosh, J]