

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

PRESENT:

THE HON'BLE JUSTICE SIDDHARTHA ROY CHOWDHURY

CRA 408 of 2015

**Sk. Din Mohammed Naskar @ Bappa
Vs.
State of West Bengal**

For the Appellant : Mrs. Indrani Gupta, Adv.

For the Respondent : Mr. Bidyut Kr. Roy, Adv.
Ms. Sima Biswas, Adv.
Mr. Pratick Bose, Adv.

Hearing concluded on : 4th August, 2022

Judgment on : 5th August, 2022

Siddhartha Roy Chowdhury, J:-

1. This appeal is directed against the judgment and order of conviction passed by the learned 17th Fast Track Court of Additional District and Sessions Judge, Alipore in S.T. No.02(02)2011/S.C. No.23(09)2010.
2. The fact of the case in short is that on 6th June, 2009, one Sk. Asraf Mistri set the criminal administration of justice into motion by informing the Officer-in-charge of Behala Police Station in writing about an incident that took place on 27th May, 2009 in between 10.00 a.m. and 10.30 a.m. at 507/14 Parui Pacca Road, Masjidpara, Kolkata – 61, when his sister Nurangaj Bibi was assaulted by her brother-in-law, Sk. Din Md. Naskar. It was stated

that the victim, Nurangaj Bibi, got involved in quarrel with her mother-in-law when the accused came there, being armed with branch of guava tree and started assaulting the victim. The victim got her right knee fractured due to such assault. It was further stated that the victim was admitted to Vidyasagar Hospital, Female Surgical Ward, bed no.48. The informant further explained the delay caused in informing the police by citing his engagement in the treatment of his sister.

3. As the information disclosed, offence cognizable in nature, Behala P.S. Case No.233/09, dated 06/06/09 was registered under Section 498A/325/308 I.P.C.
4. After compliance of the provision of Section 207 of Cr.P.C., the case was committed to the Court of learned Sessions Judge, 24 Parganas (South) and it was transferred to the learned Trial Court on 2nd February, 2011.
5. After considering the materials on record, learned Trial Court was pleased to frame charge under Section 498A/308 I.P.C. Pleading his innocence to the charges, the accused person claimed to be tried.
6. To bring home charges, prosecution examined nine witnesses including the victim. Sk. Asraf Mistry, the informant, as P.W.1 adduced evidence and his signature on the written information submitted by him was admitted as Exhibit-1/1. From his evidence, I find that he took the victim to hospital and got her admitted. Before going to hospital, police was informed.

7. P.W.2, Israil Mistry is the brother of the victim who stated that on 27th May, 2009, the quarrel took place between his sister and her mother-in-law. Subsequently, the brother-in-law of his sister, Nur Md. Laskar, assaulted Nur Angez Bibi, as a result, she sustained injury over different parts of her body and over her right knee. P.W.2, during cross-examination, stated that he was a resident of Alam Nagar, Mistry Para, Budge Budge. He did not witness the incident. From his evidence, I find that prior to admitting the victim lady to the Vidyasagar Hospital, they informed Police and such information was reduced into writing.
8. P.W.3, Sk. Adut Ali Naskar, is the son of the victim who stated that on 27th May, 2009 in the morning at around 10 a.m., quarrel took place between his mother and his grand-mother, over some issues in the family. Suddenly, his uncle intervened and assaulted his mother by a thick guava branch, his mother sustained injuries and her right knee got fractured. In a bid to save his mother, he also sustained injury being assaulted by his uncle. His mother was taken to local police station and from there to hospital. Her right knee was injured and she was admitted in the hospital for 44 days. During cross-examination, he stated that his brothers, Sk. Sabir Ali Naskar, Sk. Selim Ali Naskar and Namita Bag were present at the time of incident. He denied the suggestion that his mother was not assaulted by the accused person and accused person has been implicated in this case falsely because of the family dispute.

9. P.W.4, Sk. Wahab Ali Naskar, is the husband of the victim who parroted his son. From his evidence, I find that the victim was taken to Vidyasagar Hospital and his son Sk. Adut Ali Naskar lodged a G.D. Entry No.233 at Behala Police Station after 44 days. His wife was discharged from hospital. During cross-examination he stated that he did not witness the incident.
10. P.W.5, Mujibar Rahaman Mallick, stated that his cousin sister, Nurangez Bibi, was assaulted on 27th May, 2009 at about 10/10.30 a.m. He was not present at the time of incident. He got the information over phone. During cross-examination he stated that he heard everything and did not witness anything. He denied the suggestions put to him touching the innocence of the accused person.
11. P.W.6, Dr. Md. Haroon, is the physician who attended the victim. He stated that on 27th May, 2009, as Medical Officer of Vidyasagar S.D. Hospital he attended Noor Angez. She sustained fractured injury on her right patella. As Medical Officer, he operated upon knee of the patient. The medical papers issued by the hospital were admitted into evidence as Exhibits 2/1, 2/2, 2/3 & 2/4. X-ray plates were admitted as Exhibits 2/5 & 2/6. During cross-examination, he stated that there was no record as to who brought the patient to hospital. He did not record the statement of the patient. As disclosed by the patient her injury was caused due to fall.

12. P.W.7, Bikash Kanti Dey, is the recording officer who stated that on 6th June, 2009, he received written information from Asraf Mistri and registered Behala P.S. Case No.233 dated 06.06.2009 under Section 498A/325/308 IPC against the accused, Sk. Din Md. Naskar and mother-in-law of Nurangaj Bibi. The formal F.I.R. is admitted as Exhibit 3. During cross-examination, he stated that he did not have any direct knowledge about the incident.
13. P.W.8, Aloke Paul is the investigating officer who claimed to have visited the place of occurrence, prepared a sketch map with index admitted as Exhibit 4. He examined witnesses and recorded their statement under Section 161 Cr.P.C. and collected bed head ticket, injury report and arrested the accused, Sk. Din Md. Naskar @ Bappa. After completion of investigation, he submitted charge-sheet. During cross-examination he stated that he found the Xerox copies of injury reports annexed with the complaint. He could not say whether any General Diary was recorded upon receipt of information. He could not say if any other General Diary Entry was made before the G.D. Entry No.439 dated 06/06/2009. The I.O. further stated that the incident took place as a fall out of family dispute between the victim and the accused person.
14. P.W.9, Nur Angez Bibi who stated that on 27th May, 2009 in between 9.30 a.m. to 10.00 a.m., quarrel broke out between herself and her mother-in-law over the family issues when her brother-in-law came being armed with a branch of guava tree and assaulted her, she sustained injury on her right knee and over other parts of

her body, she was taken to Vidyasagar Hospital for treatment. Her right knee was fractured. Steel plate was implanted by the Doctor. She was released from the hospital and again on 16th November, 2009 she was admitted when the steel plate was removed. She remained in the hospital for the 72 days. She identified the accused in Court. During cross-examination, she stated that when the accused assaulted her at that point of time, her mother-in-law and her son, Sk. Adut Ali Naskar, were present. After the incident, the neighbouring people came, she told the Doctor of the hospital about the history of the injury, she sustained. She denied the suggestion put to her touching the innocence of the accused person. No other witness was examined.

15. Learned Trial Court after considering the evidence on record came to a conclusion that there was no element of offence within the meaning of Section 498A of the IPC; even there was no evidence to constitute offence under Section 308 of the IPC. But learned Trial Court found the accused person culpable for committing offence within the meaning of Section 325 of the IPC and invoking the provision of Section 222 of Cr.P.C., the learned Trial Court recorded an order of conviction under Section 325 of the IPC and accused person was sentenced to suffer simple imprisonment for one year and to pay fine of Rs.15,000/-; out of which a sum of Rs.10,000/- was directed to be paid to the victim lady upon realization of fine.

16. Being aggrieved by and dissatisfied with such order of conviction, the accused person preferred this appeal.
17. It is contended by the learned Advocate appearing on behalf of the appellant that the learned Trial Court failed to appreciate the evidence on record. The incident took place on 27th May, 2009 while police was informed on 6th June, 2009 and there was no plausible explanation of delay. The son and brother of the victim took the victim to hospital and on their way to hospital, they informed police. The son of the victim, Sk. Adut Ali Naskar, P.W.3, stated that on their way to hospital they went to local police station first and a diary was lodged; but the said diary was not produced before the Court. The victim during her evidence stated that she narrated the incident to the Doctor and P.W.6, the attending physician, stated that the victim told him that she sustained injury due to fall, which belies the case of the prosecution. But learned Trial Court did not rely upon the testimony of the PW 6 in absence of any note on the medical paper. When it appears that the victim sustained injury due to fall, the learned Trial Court had no reason to record an order of conviction; rather the victim should have been given benefit of doubt.
18. Learned Advocate representing the State, however, refuting the contention of the learned Advocate for the appellant, submits that the victim as P.W.9 before the Court stated that she was assaulted by the accused person with a branch of guava tree and sustained injury on her right knee. The Doctor found fracture injury on the

right knee. She was admitted to hospital for 44 days. Therefore, the evidence of victim is getting support from the testimony of the attending physician and the medical report. When Doctor during his evidence stated that he did not record the statement of patient as to the cause of injury; his subsequent statement allegedly made by the patient as to the cause of injury due to fall is of no consequence and should be ignored. The learned Trial Court was justified in recording the order of conviction; though the learned Court took a lenient view in imposing punishment upon the accused person.

19. The best witness of the case is undoubtedly the victim, Nurangej Bibi, she sustained injury. She got her right knee fractured being assaulted by the accused person. Her testimony regarding injury is corroborated by the attending physician of the hospital, P.W.6, the Doctor. True it is, there was acrimony between the parties over their property. On the date of incident, a quarrel took place between the victim and her mother-in-law but with the advent of the accused person, the incident took an ugly shape when the accused person assaulted the victim.

20. It is further adverted by learned Advocate for the State that there was delay of 10 days in informing the police about the incident which took place on 27th May, 2009 and the case was registered on 6th June, 2009. But the delay has been explained as well. In course of argument, the learned Advocate representing the State submits that though the Investigating Officer ought to have collected the

copy of the G.D. Entry No.233, but for inaction on the part of the Investigating Officer, prosecution case should not suffer particularly when there is nothing to impeach the credibility of the victim, P.W.9. According to the learned Advocate for the State, the Court should ignore the said fact and should maintain the order of conviction.

21. Upon perusal of the oral testimony of P.W.3, the son of the victim and P.Ws. 4 & 5, I find that on the date of incident, police was informed and the information was reduced into writing in the form of G.D. Entry No.233. Prosecution, however, did not produce the said G.D. Entry which contained the maiden information regarding the incident. A criminal charge is required to be proved beyond doubt. Here, in this particular case the G.D. Entry made on 27th May, 2009 containing the maiden statement of the alleged incident, was not produced. This is a vital piece of evidence. Police admittedly was informed on the date of incident by the son and other persons accompanying the victim, which was recorded in the G.D. Entry Book. This action of police gives birth to the presumption that at the first instance no cognizable offence was disclosed. Had there been any such disclosure, police would have registered F.I.R. under Section 154 of the Cr.P.C. Section 114 illustration (e) says that Court should presume that official acts have been regularly performed. There is no evidence to rebut such presumption.

22. Delay per se may not render prosecution case doubtful as there may be various reasons for lodging the F.I.R. with some delay. There is no hard and fast rule that any delay in lodging the F.I.R. would automatically render the case of Prosecution doubtful. But in this case delay in informing the police in writing has not been explained properly. Cumulative effect of delay in informing the police about the incident coupled with non-production of document, containing maiden statement of the alleged incident, together with the testimony of the Doctor regarding the cause of injury, as disclosed by the patient and the said Doctor not being declared hostile by the Prosecution, make the case of the Prosecution shrouded with shadow of suspicion and under such circumstances and I do not find any reason be in agreement with the learned Advocate for the State to maintain the order of conviction rather I am inclined to extend benefit of doubt to the appellant/convict.
23. In my opinion, the impugned judgment and order of conviction should not be allowed to remain in force and should be set aside, which, I, accordingly, do.
24. Consequently, the appeal succeeds.
25. The convict/appellant is on bail and he is discharged from the bail bond.
26. The appeal being CRA 408 of 2015 thus disposed of.

27. Urgent Photostat certified copy of this judgment, if applied for, should be made available to the parties upon compliance with the requisite formalities.

(Siddhartha Roy Chowdhury, J.)