

Form No. J(1).
Item No.21

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

THE HON'BLE MR. JUSTICE TIRTHANKAR GHOSH

C.R.A. No. 451 of 2018

Smt. Anita Adak

-VERSUS-

The State of West Bengal & Ors.

Appearance:-

Mr. Tapan Datta Gupta
Mr. Parvej Anam
Mr. Taraknath Sarkar

.....For the Appellant

Mr. Tanmoy Chowdhury
Ms. Ritoprita Ghosh

.....For the Respondent Nos. 2 to 5

Mr. Avishek Sinha

..... For the State

HEARD ON: --28.07.2022, 10.08.2022, 26.08.2022

DELIVERED ON: --26.08.2022

JUDGMENT

(Judgment of the Court was delivered by TIRTHANKAR GHOSH, J.)

Mr. Datta Gupta, learned advocate appears on behalf of the appellant and submits that the judgment and order of acquittal dated 01/05/2018 passed by the Learned Judicial Magistrate, Ghatal, Paschim Medinipur in connection with G.R. Case No.197/2005 (T.R. No.98/2007) suffers from serious infirmities and as such calls for interference of this Court.

The genesis of this case relate to Daspur Police Station Case No.77/2005 dated 13/07/2005 under Sections 448/ 323/ 379/ 34 of the India Penal Code. The said case was registered pursuant to the letter of complaint addressed by Anita Adak to the Officer-in-Charge, Daspur Police Station wherein it was contended that the complainant's father has six brothers and they are at loggerheads with each other for about seven years. The reason behind such feud relate to landed properties for which her parents, brother and sister are often beaten up by them. One of the uncle, Sadananda Parui and his wife Bela Parui and the four brothers of his father once picked her father Sukhdeb Parui and dipped him in a reservoir wherein he was hit at his face, nose and hand which resulted bleeding injuries. On that occasion, the local residents rescued his father. When the said incident took place her mother was also assaulted by one of the uncle when she sustained injuries at her hands and lips. She further narrated that for about three years the other uncles, only threatened her father to finish the entire family but they did not assault any of the family members. On 13.07.2005 at about 1:30 hours at night, six to seven

persons attacked their house at Masudpur, threatened her father and took away 3 Kgs. of silver and thereafter took her father to a distant field and tortured him thereby attempting to kill him. People from the neighboring areas went out for search when they silenced him, by tying up his eyes and left him. She suspects that the other four brothers of her father attempted to do this thing in collusion with other persons and, as such, steps should be taken against them.

As stated earlier pursuant to such complaint Daspur Police Station Case No.77 of 2005 dated 13/07/2005 was registered for investigation and the police authorities on conclusion of investigation submitted charge-sheet under the same sections. The case was thereafter transferred to the Learned Judicial Magistrate, Ghatal, Paschim Medinipur and charges were framed under Section 448/ 323/ 379/ 34 against Gunumoy Parui, Jaladhar Parui, Sadananda Parui, Joydev Parui.

The prosecution in order to prove its case relied upon eleven witnesses and the four documents which included written complaint, sketch map alongwith index, charge-sheet and injury report. The prosecution witness no.1 is the de facto complainant, P.W. no.5 happens to be Bijali Parui who is the mother of the de facto complainant and P.W. 10 Sukdeb Parui is the injured and father of the de facto complainant.

P.W. 2 Ajit Bag is the local resident, however, he did not support the prosecution case.

P.W. 3 Biswanath Bag is also a local resident. He also stated that he was not present on the date of the occurrence.

P.W. 4 Gobinda Bag who stated that he heard about the incident that the accused person assaulted the complainant and she was taken to hospital for treatment.

P.W. 6 Barun Bag who is an acquaintance of the complainant but he stated that he knew nothing of the incident.

P.W. 7 is also a local resident but he knew nothing regarding the incident.

P.W. 8 is also a resident of the locality and he also knew nothing regarding the incident.

P.W. 9 Ranjit Kumar Maity is the Investigating Officer of the case who narrated the chronology in which he carried out the investigation and the manner in which documents were collected. He identified some of the documents in Court which were admitted in evidence.

P.W. 11 Subrata Pal is the Doctor who was posted as Medical Officer attached to Daspur Rural Hospital. The relevant part of the injury as narrated by the Doctor is that “after examination I found that the patient was conscious and co-operative, fist injury over the scrotum and shoulder region, no external injury detected.”

So far as P.W. 1 Anita Adak is concerned she narrated that at about 1:30 hours hearing hue and cry of her mother, from the room of her parents when she was sleeping in another room alongwith her sister and brother. She woke up and went there where about nine persons including the accused persons were present. She categorically stated that she was unable to identify the rest of the five persons who were present inside the room of her parents alongwith the four accused persons. She deposed that the accused persons tied the mouth of her father with a “Gamcha” and the remaining five accused persons took out the silver chains from the steel almirah of her father. It was narrated that the accused persons dragged her father towards field and when she alongwith her mother and the younger brother and sister started shouting they bolted the door from outside. The local residents thereafter rushed to the house and on hearing such information the local villagers started searching and finally her father was traced in a tied condition with his face towards the earth. The accused persons apprehending that the villagers would catch them fled away. It has also been alleged that the accused persons injured her father and, as such, he had to be taken to Daspur Rural Hospital. She lodged a complaint and the said complaint was treated as First Information Report.

P.W.5, Bijali Parui happens to be the mother of Anita Adak who deposed before the Court that when the incident occurred on 13th July, 2005 at around 1 a.m. to 1.30 a.m. (night), she was present in the house. She stated that there was a land

dispute between her husband and his brothers and about 3 kgs. of silver ornaments were taken away by 6 to 7 persons who were standing at the doorstep. They entered her room and assaulted her husband and demanded the silver ornaments. On being refused, they assaulted her husband mercilessly and as such she was forced to hand over the key of the almirah. After taking the silver ornaments, the accused persons tied the eye of her husband and took him to the nearby ground and assaulted him. At that point of time, her room was bolted from outside. After hearing hue and cry, the neighbours came to her rescue and opened the lock. The neighbours also searched her husband and found him on a playground on the eastern side. Her husband was rescued in an unconscious state from the field of the neighbours and there were injury marks on his left cheek and left hand. For treatment of the injured her husband was shifted to Daspur Hospital, where he was treated. The witness narrated that the accused persons could not be identified by her as they covered their faces. However, she suspected that the brothers-in-law are behind such incident.

P.W. 10, Sukdeb Parui is the injured. He stated that the incident took place on 12.07.2005 at about 1-30 a.m. On that day 6 to 7 persons entered his house and tied his mouth and asked for the key. The accused persons opened the almirah and took away the box where 3 kgs. of silver ornaments were kept. The accused persons also assaulted him and dragged him out of his house where he was

assaulted. At that time his family members were locked inside the room. He was taken to a field which is about 400/500 cubit away from his house. He further stated that he lost his sense. However, his wife and children raised hue and cry. After hearing such hue and cry the local neighbours came there to rescue him and found him in the nearby field. He was taken to hospital where he was treated. He narrated the incident to the doctor who treated him. He also identified the accused persons who were present in Court.

I have considered the deposition of the witnesses, which can be divided into two categories. Firstly, the villagers who are the residents as witnesses being P.Ws.2, 3, 4, 6, 7 and 8 and the other category is the other family members being P.Ws.1, 5 and 10. Rest of the witnesses are the Investigating Officer and the doctor who treated the injured.

The evidence of P.W.1 reflects that she was present on the relevant date and according to her, there were nine persons present at the time of incident, which included four persons inside the room and five other persons.

P.W.5, father of the complainant stated that as the persons who entered their house and committed the offence were wearing black dresses and covered their faces. She could not identify any of the accused persons.

P.W.10, Sukdeb Parui stated that it was his brother who committed the incident.

None of the individual witnesses stated anything regarding the incident.

P.W. 10 was an injured and was treated by the doctor at the Daspur Hospital.

However, to establish the connecting link/chain between the accused persons who committed the offence and assaulted and the relationship with the injured requires a proof beyond reasonable doubt.

In this case, the three family members/witnesses narrated the incident and the involvement of the accused/private respondents in a completely different in manner. It raises a doubt regarding the complicity of the accused/respondents, more particularly in the background that there were disputes over the landed properties between the brothers which included P.W.10 and rest of the five brothers on the other side.

Having regard to the veracity of the evidence, which has been adduced by the prosecution, I am of the opinion that it cannot be said that the accused persons are guilty of the offence or the evidence in this case can be said to be of the standard of proof beyond reasonable doubt.

Learned Judicial Magistrate, Ghatal did not commit any error in acquitting the accused persons in connection with G.R. Case No.197/2005 (T.R. No.98/2007), as such, no interference is called for.

Accordingly, CRA 451 of 2018 is dismissed.

Pending application, if any, is consequently disposed of.

Urgent photostat certified copy of this judgment, if applied for, be given to the parties upon compliance of all requisite formalities.

(TIRTHANKAR GHOSH, J.)

Sujit Srimani/K.S., A.R.(Ct.)