

Form J(2)

**IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side**

**Present :
The Hon'ble Justice Bibek Chaudhuri**

CRA 408 of 2014

Trilochan Pandey

-Vs.-

The State of West Bengal & Ors.

***Amicus Curiae* : Mr. Archan Dutta.**

**For the respondents : Mr. Prasun Dutta,
Md. Kutubuddin.**

Heard & Judgment on : 25.02.2022.

This is an application under Section 372 of the Code of Criminal Procedure challenging the judgment and order of acquittal passed in connection with Sessions Case No.209 of 2013 corresponding to Sessions Trial No.3 of 2014.

The learned Assistant Sessions Judge, Additional Court at Purulia disposed of the said case by recording an order of acquittal under Section 235(1) of the Cr.P.C. The *de facto* complainant being an injured person and victim of the case has filed the instant application under Section 372 of the Code of Criminal Procedure.

The application under the Proviso of Section 372 of the Code was filed in the year 2014. Subsequently, the learned Advocate for the appellant never appeared before the Court. Therefore, Mr. Archan Dutta is requested to assist the Court on behalf of the appellant as Amicus Curiae. Mr. Prasun Dutta, learned Senior Additional Public Prosecutor with Md. Kutubuddin are requested to appear on behalf of the State respondent.

I have heard the learned Counsel for the State as well as the learned Amicus Curiae.

It is found from the impugned judgment that charge against the private opposite parties was framed under Sections 341/308/34 of the Indian Penal Code.

The prosecution case in brief is that the *de facto* complainant/appellant lodged an FIR on 27th October, 2012, stating, inter alia, that an altercation between him and the accused persons cropped up over cutting earth near the temple of Lord Shiba at Chirka in the District of Purulia. During such altercation Mahadeb Pandey assaulted one Sunil Chandra Pandey with a crowbar over his shoulder and he was admitted to hospital. Accused Mahadeb Pandey and others also wrongly confined the *de facto* complainant and the witnesses in a room and closed the door of the said room till 9 p.m. and abused them with filthy languages.

It appears from the application under Section 372 of the Code of Criminal Procedure that the *de facto* Trilochon Pandey is the appellant but he did not sustain any injury. Therefore, he is not victim of the incident. The application for appeal under the proviso to Section 372 of the Code was not filed by Sunil Chandra Pandey.

It is also found from the judgment passed by the learned Assistant Sessions Judge, Additional Court at Purulia that during trial 10 witnesses were examined. Injured Sunil Chandra Pandey @ Sushil Chandra Pandey was examined as P.W.10. The learned Trial Judge carefully considered the entire evidence on record. She took into consideration the inherent contradiction appearing in the evidence of P.W.10. According to P.W.5 on being injured, he became unconscious. He did not state the fact to the police in his statement recorded under Section 161 of the Code of Criminal Procedure. The injury report does not disclose the nature of injury, the time when injury was received or the name of the assailant. When a person is charged under Section 308 of the Indian Penal Code, prosecution is under obligation to prove that the accused persons attempted to commit culpable homicide not amounting to murder. In order to prove such fact the nature of injury is required to be assessed by the Court on the basis of the injury report prepared by the Medical Officer and the statement of the injured person on oath. The

evidence on record as disclosed by the learned Trial Judge does not disclose any such offence under Section 308 of the Indian Penal Code.

Therefore, I do not find any ground to allow the instant application.

The application under Section 372 of the Code of Criminal Procedure is, therefore, dismissed on contest however, without costs.

This Court records appreciation of Mr. Archan Dutta, learned *Amicus Curiae*.

The appointment of Mr. Prasun Dutta with Md. Kutubuddin for the State be regularized by the learned Legal Remembrancer.

CRA 408 of 2014 is accordingly **dismissed on contest**.

[Bibek Chaudhuri, J.]

**Mithun
A. R. (Court)**