

IN THE HIGH COURT AT CALCUTTA
(CRIMINAL APPELLATE JURISDICTION)

PRESENT:

THE HON'BLE JUSTICE SIDDHARTHA ROY CHOWDHURY

CRA 537 of 2019

MANOJ KUMAR RAJAK @ MANOJ RAJAK
VS.
THE STATE OF WEST BENGAL & ANR.

For the Appellant	: Mr. Mritunjoy Chatterjee, Adv., Mr. Prodyut Hazra, Adv.
For the Opposite Party	: Mr. Kalyan Kr. Bhattacharyya, Adv., Ms. Reshmi Khatun, Adv., Ms. S. Khatun, Adv.
For the State	: Mr. Bidyut Kr. Roy, Adv., Ms. Rita Dutta, Adv.
Hearing concluded on	: 22 nd September, 2022
Judgement on	: 27 th September, 2022

Siddhartha Roy Chowdhury, J:-

1. Challenge in this appeal is to the judgement and order of acquittal passed by learned Additional Sessions Judge, 1st Court, Purulia in Sessions Trial No. 7 of 2018 arising out of Sessions Case No. 137 of 2017.
2. Briefly stated, Manoj Kumar Rajak the appellant herein set the criminal administration of justice into motion by informing the Officer-in-charge of Purulia (M) P.S. in writing, inter alia, that on 13th April,

2017 at about 12.30 hours in the night the informant was in his house when Ranjit Paitundi invaded his house with some ulterior motive. He along with his family members voiced protest which attracted the neighbouring people. Ranjit Paitundi hurled abusive language indicating the informant and his family members as persons belonging to lower caste. Mother of the informant requested Ranjit Paitundi to leave but Ranjit assaulted his mother and brother. He also slapped the informant. As the information disclosed offence cognizable in nature Purulia (M) P.S. Case No. 84 of 2017 dated 14th April, 2017 was registered under Section 341/323/506 of the I.P.C. and 3/4 SC & ST (Prevention of Atrocities) Act, 1989.

3. Police took up investigation which culminated into submission of charge sheet against the accused person. After complying with the provision of Section 207 and 209 of the Cr.P.C. the case was assigned before learned Additional Sessions Judge, 1st Court, Purulia for disposal.
4. Learned Trial Court framed charge against the accused person under Section 3 (1)(r)(s) of the SC & ST (Prevention and Atrocities) Act, 1989 and under Section 323 of the I.P.C. The accused person however, pleaded to be innocent and claimed to be tried.
5. Prosecution in order to crown success examined 10 witnesses in this case.
6. Learned Trial Court after considering the oral and documentary evidence recorded an order of acquittal.

7. Assailing the impugned judgement Mr. Mritunjoy Chatterjee, learned Counsel representing the appellant submits that learned Trial Court failed to appreciate the evidence on record and on misreading of evidence recorded an order of acquittal which is not sustainable in law. According to Mr. Chatterjee all the prosecution witnesses stood the test of cross-examination and it has been established that the accused-respondent Ranjit Paintandi voluntarily caused hurt not only to the appellant but also to his old mother and younger brother and in public abused them touching their caste. Mr. Chatterjee, learned Counsel submits that the order of acquittal may be reversed and accused person may adequately be punished for committing such grave offences.
8. Refuting such submission learned Counsel for the respondent Ms. Reshmi Khatun submits that the impugned judgement does not suffer from any infirmity. The informant failed to substantiate the information he gave, while adducing evidence on oath. Learned Trial Court having found no ingredient of offence within the meaning of Section 323 of I.P.C. and Section 3 (1)(r)(s) of the SC & ST (Prevention and Atrocities) Act, 1980, recorded an order of acquittal and quite correctly.
9. I have perused the evidence on record. PW-1 who informed the police in writing about the alleged offence, gave a different narrative altogether about the incident while adducing evidence on oath. In his written information Manoj Kumar Rajak stated that he was in his home when the accused person came and attacked him and his family members as well as hurled abusive language touching their caste. But

while adducing evidence as PW-1 Manoj Kumar Rajak stated that he went to Bandhgarh village to enjoy “Gajanmela” on the occasion of Shiva Puja on 13th April, 2017 at about 9/10 p.m. He received a phone call while in the fair ground. Mr. Dipak Koibarta informed him that a dispute cropped up in the village. Having received such phone call around 12.30 a.m. he came back home together with his friends or companions. PW-1 further stated during cross-examination:- *“On returning in front of my house, for the first time, I also found that accused person was assaulting my mother and brother, Panu Rajak and at that time I tried to rescue my mother and brother. I was assaulted by fists and blows when I tried to disperse the accused. Due to such assault and dash and push my mother and brother fall on the ground. Thereafter Ranjit Paitundi went away. Except those 10 to 15 persons no other persons came there. I was in my house till I took my mother and brother to hospital”*. Such statement of PW-1 is bereft of any whisper about alleged use of abusive language touching the caste of the informant. However, this testimony of PW-1 unerringly indicates that the accused person assaulted his mother, brother and he was also assaulted in his bid to rescue them. There is every reason to hold that the accused person committed offence within the meaning of Section 323 of the I.P.C.

10. Mr. Mukherjee, learned Counsel for the appellant drawing my attention to the testimony of other witnesses strenuously argued that though PW-1 the informant did not say anything about the use of

abusive language directing informant and his family members, other witnesses however, stated the said fact.

11. It goes without saying that when the oral testimony of prosecution witnesses indicate two different narratives, one which tilts in favour of the accused person should be acknowledged and accepted over the other and benefit should be extended to the accused person. Since the informant who was present at the time of incident did not say anything about use of abusive language, in my view, learned Trial Court was absolutely right in holding that the charges under Section 341/323/506 of the I.P.C. and 3/4 SC & ST (Prevention of Atrocities) Act, 1989 have not been proved.
12. The learned Trial Court did not consider the testimony of PW-1 particularly the cross-examination portion which I have indicated hereinabove. The said statement unerringly speaks of the fact that the accused caused hurt to PW-1 and his family members voluntarily and thereby committed offence within the meaning of Section 323 of the I.P.C.
13. Under such circumstances, I am of the view that the impugned judgement passed by learned Trial Court recording an order of acquittal warrants interference from this Court and it should be reversed in part and the respondent Ranjit Paitundi should be saddled with criminal liability for committing offence within the meaning of Section 323 of the I.P.C. which I accordingly do.
14. Ms. Reshmi Khatun led by her senior Kalyan Kumar Bhattacharyya submits that the Court may take lenient view while

imposing sentence and benefit of Section 360 of Cr.P.C. may be extended to the convict.

15. Learned Counsel representing the State also endorsed the view of Ms. Khatun. It is submitted by learned Counsel for the respondent no. 2 that the accused-respondent had no criminal antecedent. He is now about 43 years old and is the only bread earner of the family. Considering the nature of offence committed by the convict I am of the view that ends of justice would be met if the convict be released on his entering into bond in the sum of Rs. 5000/- with one surety of like amount to be furnished before the learned Chief Judicial Magistrate, Purulia to appear and receive the sentence when call upon during the period of two years and in the meantime, to keep the peace and be of good behaviour, which I accordingly do.
16. The appeal is thus allowed but in part.
17. Let a copy of this judgement be sent down to learned Trial Court along with L.C.R. for information and necessary action.
18. Parties to act on server copy.
19. Urgent Photostat certified copy of this judgement, if applied for, should be made available to the parties upon compliance with the requisite formalities.

(SIDDHARTHA ROY CHOWDHURY, J.)