

Form No.J(1)

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

Present:

The Hon'ble Justice Tirthankar Ghosh

C.R.A. 607 of 2019

**Subhas Baidya and others
versus
The State of West Bengal and another**

For the Appellants : Mr. Uday Sankar Chattapadhyay,
Mr. Suman Sankar Chattapadhyay
Mr. Santanu Maji,
Mr. Surayu Das,
Ms. Trisha Rakshit.

For the State : Mr. Saswata Gopal Mukherjee, Ld.P.P.,
Mr. Arijit Ganguly,
Mr. Sanjib Kumar Dan.

For the P.W. 4 : Ramij Munsii.

Heard On : 18.08.2022.

Judgement On : 18.08.2022.

Tirthankar Ghosh, J. :

The present appeal has been preferred against the judgment and order dated 27th August, 2019 passed by the learned Additional District and Sessions Judge, 3rd Court, Hooghly in Sessions Trial

No.27(11)/2017 arising out of Sessions Case No.12/2017 wherein the appellants were convicted for offence under Sections 447 and 323 of the Indian Penal Code. Learned trial court was pleased to impose sentence of three months imprisonment and fine of Rs.1,000/- each, in default further imprisonment of 15 days for the offence under Section 447 of the Indian Penal Code and imprisonment for one year and fine of Rs.1,000/- each, in default simple imprisonment for one month for the offence under Section 323 of the Indian Penal Code.

The subject matter of the case relates to Pandua Police Station Case No.499 of 2014 dated 23.09.2014 under Sections 447/323/325/307/34 of the Indian Penal Code wherein the complainant alleged that a dispute arose in respect of cutting down trees. The complainant's son Md. Aftabuddin protested as a retaliation the appellants attacked him and tried to kill him by drowning and also tried to damage his eyes. The local residents, however, rushed to the spot and saved him. However, in spite of resistance, the local persons were also assaulted by the appellants.

On conclusion of investigation, the investigating agency submitted charge-sheet under Sections 447/323/325/307/34 of the Indian Penal Code. The case was thereafter committed to the court of sessions by the learned CJM, Hooghly and consequently charge was

framed under Sections 447/323/325/307/34 of the Indian Penal Code on or about 22.11.2017. The contents of the charge were read over and explained to the accused persons to which they pleaded not guilty and claimed to be tried.

Prosecution of this case relied upon seven witnesses and several documents have been exhibited which included the injury report exhibit 5. The learned trial court on assessment of the evidence compared the same with that of the evidence of P.W.6, Dr. Anindita Mitra and elaborated on her evidence as follows:

“On perusal of the Injury Report as well as the evidence of the doctor, it appears that the doctor did not find any external injury on the persons of Aftabuddin, though it is settled principle of law that in case of charge U/s. 307 of I.P.C injuries are not always necessary to prove the charge. But in this case I do not find that the accused persons tried to assault. Aftabuddin at his vital parts. Neither it reveals from the evidence of the doctor that the patient received any injury on his vital parts. There is no evidence either from the injury report or from the evidence of doctor that water was found inside the stomach of the victim, though it is alleged in the F.I.R. as well as of the evidence of P.W.-1 and the victim Aftabuddin that the accused persons were trying

to drown him in the water of the pond several times with a view to kill him. Though it is expected that if the accused persons tried to kill him by drowning him in the water of the pond on several occasions, water must have been found in the stomach of the victim. So, there is difference in between the evidence of P.W.-1, P.W.-2 and P.W.-4 with the evidence of P.W.-6 i.e. Doctor Anindita Mitra on this point. Accordingly, in absence of any cogent evidence on this point, this Court is not in a position to hold that the ingredients U/s. 307 of the I.P.C. have been proved beyond reasonable doubt.”

After analysing the evidence as a whole the learned appellate court arrived at a conclusion that the offence under Section 307 of the Indian Penal Code has not been made out and arrived at its finding that the offence so complained of are under Sections 447/323 of the Indian Penal Code and accordingly imposed sentence as stated above.

Mr. Chattapadhyay, learned advocate appearing for the appellants has submitted an affidavit which reflects that as per their undertaking given before this Court the appellants have deposited a sum of Rs.20,000/-each aggregating to a sum of Rs.80,000/- as fine.

Pursuant to the direction passed by this Court, the State effected service upon the injured P.W.4, Md. Aftabuddin, who is represented by learned advocate.

Report submitted by Mr. Arijit Ganguly, learned advocate appearing for the State be kept with the record.

In view of the fine so imposed and sentence which has already been suffered by the appellants, during investigation of the case, pendency of the trial as well as the appeal, I am of the firm opinion that the sentence so imposed by the learned trial court upon the appellants are reduced to what they have already served out previously. To that extent, the sentence is modified and reduced.

So far as the amount of Rs.80,000/- which has been deposited with the learned Chief Judicial Magistrate, Hooghly, P.W.4, Md. Aftabuddin, who was injured, would be entitled to whole of the amount. Learned Chief Judicial Magistrate, Hooghly or the trial court being the learned Additional District & Session Judge, 3rd Court, Hooghly would on an application, with identification proof of the person Md. Aftabuddin within a period of seven days release the amount in his favour.

Accordingly, CRA 607 of 2019 is partly allowed.

Pending application, if any, is consequently disposed of.

Department is directed to send back the lower court records to the learned sessions court and learned Magistrate court respectively immediately.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

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

(Tirthankar Ghosh, J.)

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