

**IN THE HIGH COURT AT CALCUTTA**  
(CRIMINAL REVISIONAL JURISDICTION)

PRESENT:

**THE HON'BLE JUSTICE SIDDHARTHA ROY CHOWDHURY**

**CRR 3211 of 2005**

***JOYDEB @ SUBRATA BANERJEE***  
**VS.**  
***STATE OF WEST BENGAL***

For the Petitioner : Mr. Kallol Mondal, Adv.

For the Opposite Party : Mr. Bidyut Kr. Roy, Adv.  
Ms. Sujata Das, Adv.

Order dated : 17<sup>th</sup> November, 2022

**Siddhartha Roy Chowdhury, J. (Oral):**

1. The proceedings stems out of an application under Section 482 of the Code of Criminal Procedure challenging the judgement passed by the learned Additional Sessions Judge, 1<sup>st</sup> F.T.C. Hooghly in Criminal Appeal No. 50 of 1997 affirming the judgement and order of sentence passed by Sub-Divisional Judicial Magistrate, Hooghly on 29.9.1997.
2. Briefly stated on 30.6.1988 around 19.30 hours Sankar Prosad Ghosh was in his shop at Uttarpara. The convict / petitioner before this Court, came to the shop to purchase biscuits and loggenzes worth Rs.1/. He tendered the money and demanded some portion back. The value of the goods given to Joydeb Banerjee was of Rs.1/-. Therefore, the shopkeeper refused to pay back. As a result an altercation took place between Sankar Prosad Ghosh, the shopkeeper and Joydeb Banerjee, the customer. Son of shopkeeper Tapan Ghosh came and requested

Joydeb to leave the shop. Infuriated Joydeb refused to do so and a scuffling took place between Joydeb and Tapan when Joydeb gave a bite on the lobe of right ear of Tapan Ghosh and made him suffer injury grievous in nature. The matter was brought to the notice of local police station in writing and Polba P.S. Case No. 30 dated 30.6.1988 was registered under Section 326 of I.P.C. Police took up the investigation submitted charge sheet against Joydeb Banerjee, before the learned Trial Court. Joydeb Banerjee pleaded his innocence and claimed to be tried.

3. Learned Trial Court having considered the oral testimony of fourteen witnesses examined by the prosecution recorded an order of conviction and thereby sentenced the convict Joydeb Banerjee to suffer rigorous imprisonment for six months and to pay a fine of Rs.500/- in default of simple imprisonment for further fifteen days.
4. Being aggrieved by and dissatisfied with the judgement passed by the learned Trial Court, Joydeb Banerjee, made an unsuccessful attempt to get the order of conviction reverse by preferring criminal appeal no. 50 of 1997.
5. Learned Additional Sessions Judge, 1<sup>st</sup> F.T.C. Hooghly was pleased to affirm the order of conviction and sentence passed by the learned Trial Court and directed the convict to surrender the jurisdiction of learned Trial Court to serve out sentence. Dissatisfied with the said judgement the convict preferred this application under consideration.
6. Mr. Kallol Mondal, learned counsel representing the petitioner submits that learned Appellate Court failed to appreciate the infirmities in the judgement passed by the learned Trial Court. At the time of alleged incident there was no power and in absence of electric light it

was not possible either for the father, the de facto complainant or the son victim to save with certainty that the petitioner had beaten the ear lobe of the victim.

7. Drawing my attention to the testimony of the prosecution witnesses Mr. Mondal submits that the victim was notorious and local people punished him by clipping of the right lobe of his ear. The petitioner was no way responsible for the injury.
8. Having perused the testimony of P.W.2 the victim I find that when the victim made an attempt to remove Joydeb from the shop as he was abusing his father, the miscreant gave a bite on his right ear and severed the ear lobe. This evidence of P.W. 2 is getting support from the testimony of medical officer P.W. 14 Dr. R.N. Bhattacharjee.
9. True it is that P.W. 14 did not attend the injured person who was referred to Chinsurah Hospital from Polba P.H.C. but Dr. Bhattacharjee found one stitch wound on the pinna of the right ear and loss of lower 1/3<sup>rd</sup> of right Pinna. The patient was admitted on 2.7.1988 and discharged on 9.7.1988. Therefore, I find airing of truth in what has been stated by the victim before the learned Trial Court as P.W. 2, which indicates that the injury caused by Joydeb Banerjee the convict, was grievous in nature. Learned Appellate Court was absolutely justified in affirming the order of conviction under Section 326 of the Indian Penal Code. I do not find any reason to interfere with the judgment and order impugned.
10. Mr. Mondal, learned counsel for the convict / petitioner with all fairness submits that incident took place in the year 1988 and 34 years ago. The petitioner is passing through the mental trauma, caused by his

misdeed. At the time of incident this petitioner was 24 years old and now he has become a middle age man with family to maintain.

11. Under such circumstances, I am of the view that ends of justice would be met if the convict is sentenced to pay a fine of Rs.5,000/- and compensation to the tune of Rs.20,000/- to be paid to the victim within four weeks from this date.
12. The petitioner shall report compliance of the order before the learned Trial Court by 15.01.2023 failing which the learned Trial Court shall be at liberty to issue warrant of arrest towards execution of sentence imposed upon him.
13. The criminal revision is thus disposed of along with application if any. However, there shall be no order as to costs.
14. The copy of the order and the lower court record be sent down to the learned Trial Court for information and necessary action.
15. The parties shall act upon the server copy duly downloaded from the official website of this Court.
16. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties, upon completion of requisite formalities.

***(SIDDHARTHA ROY CHOWDHURY, J.)***