

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

PRESENT:

THE HON'BLE JUSTICE TIRTHANKAR GHOSH

CRA 576 of 2016

Mahibul Islam Chowdhury

@ Mohibul Choudhury & Ors.

-vs.-

The State of West Bengal

For the appellants : Mr. Milon Mukherjee, Sr. Adv.,
Mr. Biswajit Manna

For the State : Mrs. Anasuya Sinha,
Mr. Pinak Kumar Mitra

Heard on : 12.07.2022 & 28.07.2022.

Judgment on : 29.07.2022

Tirthankar Ghosh, J:-

The present appeal has been preferred against the judgment and order of conviction and sentence dated 31.08.2016 and 01.09.2016 passed by the learned Additional Sessions Judge, 2nd Fast Track Court, Berhampore in Sessions Trial No. 4 of 2013 (corresponding to Sessions Serial No. 414 of 2012) wherein the learned Trial Court was pleased to convict the appellants under Section 143 and 326/34 of the Indian Penal Code and sentenced them as follows:

1. For the offence punishable under Section 143 of the Indian Penal Code to suffer simple imprisonment for 1 (One) month and fine of Rs.200/- in default to suffer further simple imprisonment for 15 days,
2. For the offence under Section 326 read with 34 of the Indian Penal Code to suffer Rigorous Imprisonment for a period of five years and also to pay a fine of Rs.2,000/- in default suffer simple imprisonment for a further period of two months.

The genesis of the case relate to a complaint being lodged by one Amzad Momin Chowdhury with the Officer-in-charge, Beldanga Police Station to the effect that on 31.01.2009 at about 08.00 am Mahibul Islam Chowdhury, Anesur Ambia Chowdhury, Tajemuddin Chowdhury, Chanchal Chowdhury, Isahak Chowdhury, Mahubul Sk and Ajgar Sk attacked his father (Ajim Chowdhury) and brothers (Akram Chowdhury and Ajijul Haque Chowdhury) and also the labourers. The accused persons with bomb and other weapons attacked them when they were working in the sugarcane field under the supervision of police. Due to their attack the complainant's father and brothers were severely injured and were referred to Beldanga Health Centre for treatment. On the basis of the complaint Beldanga Police Station case no. 41/09 dated 31.01.09 under Section 143/324/326/506 of the Indian Penal Code was registered and subsequently Section 307 of the Indian Penal Code was also added. The investigating authority on completion of investigation submitted charge-sheet. The case being sessions triable was committed by the

learned Magistrate and by the Court of Sessions and after compliance of provisions of Section 207 of the Code of Criminal Procedure date was fixed for consideration of charges and the learned trial Court framed charges under Sections 143/324/326 and 307/34 of the Indian Penal Code against 7 accused persons named above.

The prosecution in order to prove its case relied upon 14 witnesses which included the injured as also number of documents which included injury reports.

Mr. Milon Mukherjee, learned senior advocate appearing for the appellants drew the attention of this Court to the evidence of the injured witnesses and all the Medical Officers who were cited as witness. Learned advocate submitted that the oral and documentary evidence are contradictory and as such the appellants are entitled to an order of acquittal.

Mrs. Anasuya Sinha, learned Advocate appearing for the State opposed such contention and submitted that there are injuries which support the prosecution case and the sentence so imposed by the learned trial Court being minimum should not be interfered with.

I have considered the evidence of PW2, Akram Chowdhury, who happened to be an injured who narrated the incident as the accused persons being armed with revolver, Jhaba, rod, spade attacked them and struck at the back of the neck of Ajijul Haque Chowdhury with an intention to kill him and when his father tried to rescue his brother his father received injuries on his

finger and while the witness proceeded to see his brother one of the accused with spade struck a blow in order to kill him. The accused also assaulted with a blow of a pipe-gun and when both of them tried to save his brother Ajijul they were assaulted in random manner and as a result of which five ribs of the back of his father were broken.

PW3, Ajijul Haque Chowdhury another injured witness narrated in the same manner as PW2.

So far as the other injured is concerned he died subsequently as he was suffering heart disease, urinal disease and other disease. One of the Investigating Officer of the case PW13 examined Dr. Kalyan Mitra who narrated the same.

The oral deposition of PW2, PW3 and the evidence of the doctors who deposed before the Court i.e. PW10, Dr. Obaidur Rahaman and PW12, Md. Abul Kalam Azad require assessment by this Court.

PW10 in his examination-in-chief deposed as follows:

“The patient was admitted with history of assaulted caused by wood piece. On examination I found blunt trauma on chest and superficial injury over thumb. X-ray of chest shows fracture ribs on right side. Injury was grievous in nature. This is injury report. This injury report prepared and signed by me. This injury report be marked as Ext.2. This is bed head ticket and treatment sheet and x-ray report of the said patient containing 4 sheets. All are Xerox copies. In the treatment sheet observation regarding treatment of

the patient was written by me. And the other portion of the treatment sheet was filled up by the clerk was in-charge at that time. All the 4 sheets containing treatment paper, bed head ticket and report of x-ray collectively be marked "X" for identification"

PW12 in his evidence before the Court stated as follows:

"As per this injury report history of assault was that the patient was assaulted with sword (Jhaba). On examination of the injured I found that sharp pointed injury on mid line of back at C-7, T-1 region and blunt trauma on right thumb. And the patient was treated and discharged. This injury report was prepared and signed by me. This is the said injury report of the patient Azizul Haque Chowdhury be marked as Ext.3.

Another injury report is given in the hand of the another injured --- this injury report of Akram Chowdhury, son of Abdul Azim Chowdhury. History of the injury was record in this report is that it was blunt trauma by pipegun. On examination I found that mild swelling around 4 cm in diameter in the left side of forehead. The patient was treated and discharged. This injury report also prepared and signed by me. This injury report be marked as Ext.3/ 1.

Another injury report is given in the hand of the another injured --- this another injury report of patient namely Abdul Azim Chowdhury, son of Lt. Mohaseb Khan Chowdhury, male, 62 years. On examination I found that left thumb 2 cm skin cut and two stitches required and 4 cm superficial linear cut in right fore arm and no stitch only dressing done. I also found right infra scapular region 10 cm in diameter boggy swelling. Those injuries occurred by spade and sword. The patient was treated and referred to

Berhampore N.G. hospital. This injury report prepared and signed by me. This injury report be marked as Ext.3/2.”

Learned trial Court after framing of charges was pleased to acquit the accused persons under Section 324 and 307 of the Indian Penal Code. I have scrutinised the materials appearing in evidence and I am unable to differ with the conclusion arrived at by the learned Trial Court regarding the finding of guilt of the accused persons under Section 143 of the Indian Penal Code and Section 326/34 of the Indian Penal Code.

However, having regard to the injury reports which have been admitted in evidence and the time period which has elapsed in the meantime, I am of the opinion that the oral version was exaggerated and there were cut injuries, bruises, swelling, trauma and stitches which were reflecting from the injury reports which were available in evidence. Taking into account the same, I am of the considered view that the sentence so imposed is excessive and is reduced to what has already been undergone by the appellants in course of trial of the case and during pendency of the appeal, additionally each of the appellants would furnish good behaviour bond of Rs.10,000/- with one local surety for a period of two years under Section 106 of the Code of Criminal Procedure before the jurisdictional Executive Magistrate. Such bond is to be furnished by 31.08.2022.

Accordingly, CRA 576 of 2016 is partly allowed.

Pending Applications, if any, are consequently disposed of.

Department is directed to send back the Lower Court Records and communicate this judgment, so that effective steps are taken by the learned trial Court and the jurisdictional Executive Magistrate.

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

Urgent Xerox certified photocopy of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Tirthankar Ghosh, J.)