

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

PRESENT:

THE HON'BLE JUSTICE TIRTHANKAR GHOSH

CRA 662 of 2018

Jagabandhu Biswas

-vs.-

The State of West Bengal

For the Appellant	:	Mr. Prabir Majumder, Mr. Snehansu Majumder.
For the State	:	Mr. Saswata Gopal Mukherjee, Ld. P.P. Mr. Sandip Chakraborty, Mr. Saryati Dutta.
Heard on	:	28.07.2022, 18.08.2022 & 23.08.2022.
Judgment on	:	31.08.2022

Tirthankar Ghosh, J:-

The present appeal has been preferred against the judgment and order of conviction and sentence dated 10.10.2018 passed by the Learned Additional Sessions Judge, Fast Track Court, IV, Krishnagar, Nadia, in Sessions Trial No. III(2)2017, arising out of Sessions Case no. 30(11)2016, thereby convicting the appellant under Section 325 of the Indian Penal Code and sentencing him to suffer Rigorous Imprisonment for two years and to pay a fine of Rs.5,000/-, in default to suffer Simple Imprisonment for a period of six months.

The genesis of the case related to a complaint lodged by one Kashi Biswas with the Officer-in-charge of Krishnaganj Police Station to the effect that on 08.11.2015 at about 3.00 pm an altercation took place between the complainant and her elder brother-in-law, Jagabandhu Biswas over family affairs. It has been alleged that bearing such a grudge with an intention to kill her daughter namely, Debika Biswas the said Jagabandhu Biswas struck on Debika's head with bamboo and when she tried to stop him he struck on her hands and leg also. The complainant's daughter was bleeding profusely and she was taken to Krishnaganj Gramin Hospital when the doctor had to administer 12 stitches on her head and thereafter referred her to Saktinagar District Hospital and she was released after treatment on 09.11.2015. The complainant requested the Officer-in-charge to take action against Jagabandhu Biswas who has committed the offence.

On the basis of the aforesaid complaint Krishnaganj Police Station case no. 483/15 dated 10.11.2015 was registered for investigation under Section 325/308 of the Indian Penal Code. The Investigating Officer on completion of investigation submitted charge-sheet no. 576/15 dated 31.11.15 under Section 325/307 of the Indian Penal Code. On receipt of the charge-sheet the learned Chief Judicial Magistrate was pleased to take cognizance of the offence and thereafter committed the case to the learned Sessions Judge, Nadia after compliance with the provisions of Section 207 of the Indian Penal Code. The case was transferred finally to the learned Additional Sessions Judge, Fast Track Court- IV, Krishnaganj, Nadia for disposal.

On or about 15.02.2017 the learned trial Court was pleased to frame charges under Section 325/307 of the Indian Penal Code against the accused Jagabandhu Biswas. The contents of the charge were read over and explained to him to which he pleaded not guilty and claimed to be tried.

The prosecution in order to prove its case relied upon 11 witnesses namely, PW1, Rabindranath Dutta, scribe of the FIR; PW2, Kashi Biswas, complainant and mother of the injured; PW3, Debika Biswas, injured; PW4, Tapan Biswas, son of the complainant; PW5, Sampa Biswas, acquaintance of the complainant; PW6, Kanan Bala Das, neighbour of the complainant; PW7, Banani Biswas, neighbour of the complainant; PW8, Dr. Amlan Pal Choudhury; PW9, Bhaskar Dey, Sub-Inspector of police attached to Krishnaganj police station; PW10, Shyamal Kumar Mandal, Sub-Inspector of Police who was attached with Krishnaganj police station at the relevant period; PW11, Dr. Sajal Biswas, attached to Krishnaganj Rural Hospital as a Medical Officer who treated both Debika Biswas and Kashi Biswas.

PW1, Rabindranath Dutta, happens to be the scribe of the FIR, who deposed that on instruction of the complainant he prepared the written complaint which was signed by the complainant after the same being read over to her. The said complaint was marked as Ext.1.

PW2, Kashi Biswas is the complainant, who identified the accused in Court. She deposed that her daughter was having her food when the accused spread dust and then entered the room and assaulted her daughter with

bamboo on her head, as a result of which her daughter sustained bleeding injury and when she entered and tried to save her as her daughter fell unconscious, she was also assaulted on her leg with bamboo. Local people namely, Sampa Biswas took both of them to hospital. The doctors administered about 10 to 12 stitches on the head of her daughter and admitted her. She herself was also treated at the hospital. As the bleeding did not stop, her daughter was referred to Saktinagar Hospital where she was admitted for two days. The local people namely, Sampa Biswas, Kananbala Biswas, Jiten Biswas knew regarding the incident. Her daughter was about 18 years old and a student of Class IX at the relevant point of time. She also deposed that her daughter was subsequently married. She further stated that the complaint was written by Rabindranath Dutta after she narrated the incident, she signed the same after the same was read over and explained to her, she identified her signature and the written complaint which was marked Ext.1/1.

PW3, Debika Biswas is the injured. She deposed that her mother lodged the complaint with Krishnaganj police station. She deposed that when she was having her food in the kitchen her elder uncle started spraying dust, when she came out from the kitchen and requested her elder uncle not to spray the dust as she was having her food. Her elder uncle took a bamboo and hit her on her head, as a result of which she sustained injury and lost her senses. The incident took place about two and half years ago between 3.00 to 4.00 pm in her house in front of the kitchen. She also deposed that when her mother came her uncle assaulted her mother on her leg and forearm. The neighbours

Kananbala, Sampa, Banani rushed to the spot and rescued them. She narrated that about 8/10 stitches were administered on her head by the doctors and she was also subsequently referred to Saktinagar Hospital, she was discharged after 3 to 4 days of the incident and stated that at the time of incident she was studying in Class IX.

PW4, Tapan Biswas is the son of the complainant and brother of PW3. He deposed that he was at the river when he heard from the local people that her sister had been killed, hearing such news when he rushed to the spot and found his sister was lying on the courtyard with bleeding injuries on her head. The witness deposed that the incident took place nearly about two and half years ago at around 3.00 pm. He further deposed that her sister was taken to Krishnaganj Hospital, number of stitches were administered on her head by the doctors. The witness categorically deposed that his elder uncle Jagabandhu Biswas assaulted his sister on her head with bamboo and also assaulted his mother on her leg and hand. He identified the accused person in Court.

PW5, Sampa Biswas, is a relation and neighbour of the complainant who deposed that Jagabandhu Biswas assaulted Debika on her head with a bamboo and also injured Kashi Biswas. She heard the incident when she was returning from her son's tuition class, when she visited their house she found that Debika was lying on the ground with bleeding injury, she took her to the doctor. She also stated that both Jagabandhu and father of Debika are her uncle-in-laws. The incident took place about 2/3 years ago at around 3.30 pm

at the house of Debika Biswas. The witness deposed that PW2 and PW3 were both taken to Krishnaganj Hospital, PW3 Debika Biswas was subsequently referred to Krishnaganj Hospital and she along with others took her to Krishnaganj Hospital, thereafter stitches were administered over the injured head of Debika at Krishnaganj Hospital.

PW6, Kanan Bala Das is a neighbour, who stated that she knew Debika Biswas. She also stated that there was a dispute between Kashi Biswas and Jagabandhu Biswas. One day there was a dispute between Debika Biswas and Jagabandhu Biswas when Jagabandhu suddenly hit Debika on her head with bamboo and he also assaulted Kashi Biswas. Witness also stated that Debika sustained bleeding injury and fell down on the ground and lost her consciousness, as a result she was taken to Krishnaganj Hospital and thereafter stitches were administered on her head and subsequently she was referred to Krishnaganj Hospital. She also narrated that the incident took place nearly 3 years ago at about 3.30 pm at the house of Debika.

PW7, Banani Biswas, is the neighbour of the complainant. The witness deposed that she knows Kashi Biswas, Debika Biswas, who were injured by Jagabandhu Biswas with a bamboo stick at about 3/4 pm. Debika was thereafter brought to Krishnaganj Hospital and from there to Saktinagar Hospital and stitches were administered on her head at Krishnaganj Hospital, however, she did not accompany Debika to the hospital. She identified Jagabandhu Biswas in Court.

PW8, Dr. Amal Pal Choudhury, deposed that on 08.11.2015, he treated a patient Debika Biswas being 17 years female which was referred to Krishnaganj Hospital with the history of physical assault. From the bed head ticket which has been marked as Ext.2, he stated as follows:

“On examination I found two 5 cm already stitched cut injury over scalp. Patient was discharged on the next day morning. I have not medically treated the patient. This is the BHT of the treatment of patient Debika Biswas. It bears my signature with seal. Let it be marked as Ext.2.”

PW9, Bhaskar Dey, is Sub-Inspector of Police attached to Krishnaganj Police Station, who received the complaint from Kashi Biswas and signed the same. His endorsement was marked as Ext.1/2. He also filled up the formal FIR which was signed by him, the same was marked as Ext.3. He assigned the case to S.I. Shyamal Mondal for investigation.

PW10, Shyamal Kumar Mondal is the Investigating Officer of the case who narrated regarding the chronology in which he carried out the investigation after the same was assigned to him on 10.11.2015. The witness stated regarding his visit to the place of occurrence, preparation of the rough sketch map with index at the place of occurrence which was marked as Ext.4. The witness also stated regarding the recording of the statement under Section 161 of the Code of Criminal Procedure of the available witnesses. He also stated regarding collection of the injury report, arrest of the accused and

producing him before the Court and also filing of charge-sheet no. 576/5 dated 30.11.15 under Section 325/307 of the Indian Penal Code.

PW11, is Dr. Sajal Biswas, who at the relevant time was attached to Krishnaganj Rural Hospital as a Medical Officer. The witness initially treated Debika Biswas aged about 17 years with the history of physical assault by one Jagabandhu Biswas at about 3.50 pm on 08.11.2015. The witness narrated the contents of the injury report and prescription of Debika Biswas and Kashi Biswas, both of whom he treated. Narration regarding the treatment, injury, and the report are set out as follows:

“On examination, I found patient was alert, conscious and cooperative and found two incised wound over the scalp about 3 cm in length and another wound 4 cm in length and another wound 4 cm in length. No other obvious lesion found. Patient was given primary treatment and referred to Nadia District Hospital. This is the injury report prepared by me. It bears my signature. Let it be marked as Ext.5. This is the certified copy of the prescription prepared by me along with my signature. Let the signature be marked as Ext.5/1.

On the same date I have examined one Kashi Biswas, female with the history of physical assault by Jagabandhu Biswas on the same date about 3.50 p.m. On examination I found patient was alert, conscious and cooperative. I also found abrasion on right shoulder joint. No other obvious lesion found. This is the injury report prepared by me. It bears my signature. Let it be marked as Ext.6.”

Mr. Prabir Majumder, learned Advocate appearing for the appellant submitted that there was a family dispute which resulted in the unfortunate incident which has been blown out of proportion. There was a previous enmity relating to family feud and the police authorities without listening to the same has investigated the case in a distorted manner. There is every scope of the appellant being falsely implicated because of provocation at the instance of the complainant and her daughter. However, learned advocate submitted that considering the age of the accused the Court should consider the sentence imposed upon him.

Mr. Sandip Chakraborty, learned Advocate appearing for the State submitted that the prosecution has proved the case beyond reasonable doubt. Each of the witnesses have corroborated the prosecution case and the manner in which the accused inflicted the injury calls for harsher punishment. Learned advocate submitted that there is no scope of interference in the order of conviction and sentence passed by the learned trial Court.

I have considered the evidence of the witnesses particularly that of PW2, Kashi Biswas, the complainant; PW3, Debika Biswas, injured and PW11, the doctor who initially treated both Debika Biswas and Kashi Biswas and I find that there is substantial strength in the deposition of the witnesses which was from the inception before the doctor, before the police authorities and before the Court are in same tune. Even in cross-examination the said witnesses could not be shaken. There were stitches administered as would be evident

from the deposition of PW8, Dr. Amal Pal Chaudhury. The Hon'ble Supreme Court in the case of State of M.P. –Vs. – Mansingh reported in (2003) 10 SCC 414, in paragraph 9 has set out the principles for considering the evidentiary value of the injured witnesses which is set out as follows:

“9. The evidence of injured witnesses has greater evidentiary value and unless compelling reasons exist, their statements are not to be discarded lightly. Merely because there was no mention of a knife in the first information report, that does not wash away the effect of the evidence tendered by the injured witnesses PWs 4 and 7. Minor discrepancies do not corrode the credibility of an otherwise acceptable evidence. The circumstances highlighted by the High Court to attach vulnerability to the evidence of the injured witnesses are clearly inconsequential. It is fairly conceded by the learned counsel for the accused that though mere non-mention of the assailants' names in the requisition memo of injury is not sufficient to discard the prosecution version in entirety, according to him it is a doubtful circumstance and forms a vital link to determine whether the prosecution version is credible. It is a settled position in law that omission to mention the name of the assailants in the requisition memo perforce does not render the prosecution version brittle.”

Having regard to the principles of law as also the factual foundation of the present case, I am of the opinion that the finding of guilt so arrived at by the learned trial Court in respect of the offence under Section 325 of the Indian Penal Code do not call for any interference.

However, having regard to the age of the accused which is reflected as 65 years on 09.10.2018, I am of the view that so far as the sentence is concerned

the same requires consideration in view of the fact that the foundation of the case was on the basis of a family feud and reaction of the accused was at the spur of the moment. Records of the case reflect that accused was arrested and produced before the learned Court on 15.11.2015 and was granted bail on 20.11.2015. Further there is no material in the record before this Court to suggest that the appellant is having criminal antecedents or he has misused the liberty while on bail during trial or at the time of pendency of the appeal since November, 2015.

Taking into consideration the aforesaid issues, I am of the opinion that the provision of Section 360 of the Code of Criminal Procedure, should be extended to the appellant, relying upon the decision of Om Prakash & Ors. –Vs. – State of Haryana reported in (2001)10 SCC 477. The relevant paragraphs being 2, 4 and 5 are set out as follows:

“2. The appellants herein have been convicted under Sections 323 and 325 read with Sections 148/149 IPC and sentenced to imprisonment for two years and six months with the further direction that the sentences would run concurrently. This conviction recorded by the Magistrate was affirmed in appeal as well as by the revisional court, namely, the High Court.

4. When the case came up for admission before this Court, the learned counsel for the appellants raised the contention that the provisions of Section 360 CrPC have not at all been looked into and we, therefore, issued limited notice as to why the said provisions will not be attracted to the facts and circumstances of the present case. The provisions of Section 360 CrPC are beneficial to the

accused only when the accused is a first offender in case the accused is more than 21 years of age. Section 361 of the Code of Criminal Procedure indicates that if the Court decided not to exercise its jurisdiction under Section 360, then it must record its reasons as to why the benefit of Section 360 CrPC is being denied. In view of the peremptory nature of the language of provisions of Section 361, the Magistrate as well as the Court in appeal and revision not having indicated as to why the provisions of Section 360 CrPC have not been applied, there has been a gross miscarriage of justice and the legislative mandate engrafted in the aforesaid two sections of the Code have not been complied with.

5. *In these circumstances, after hearing the learned counsel for the appellants and Mr Mahabir Singh, learned counsel appearing for the State of Haryana and bearing in mind the facts and circumstances of the present case, we are of the considered opinion that this is a fit case where the Court should have invoked the provisions of Section 360 CrPC. While, therefore, upholding the conviction of the appellants, instead of the sentence, we direct that they shall execute a bond with one surety to the extent of Rs 10,000 for a period of one year within which period they shall continue to be on probation for good behaviour and keeping peace. The appellants shall prove to be of good conduct and maintain peace during the period of probation. The bond be executed before the trying Magistrate within a period of two weeks from today.”*

Thus, the sentence of the appellant is altered and he is directed to furnish a good behaviour bond of Rs.10,000/- to be furnished before the learned Chief Judicial Magistrate, Krishnanagar, Nadia. The appellant would appear once in a month before the learned Chief Judicial Magistrate, Krishnanagar, Nadia, for a period of two years. The Officer-in-charge,

Krishnaganj Police Station will sent a report before the learned Chief Judicial Magistrate, Krishnanagar, Nadia once in every three months during the period of two years which should reflect regarding the behaviour and conduct of the present appellant which on probation.

Thus, CRA 662 of 2018 is partly allowed.

Pending Applications, if any, are consequently disposed of.

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

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.)