

CRA 15 of 2017

In the matter of : Rinku @ Pervej Aktar & Ors.

Mr. Debabrata Ray
Ms. Koyeli Bhattacharyya
Ms. Sarbani Mukhopadhyay
Mr. Soumik Mondal
Mr. S. Sarkar

.... For the petitioner

This criminal appeal challenges the judgment and order of conviction passed by learned Additional District and Sessions Judge, Fast Track 1st Court, Howrah in S.T. No. 288 of 2012. By the impugned judgment learned Trial Court was pleased to hold the accused persons guilty for committing offence within the meaning of Sections 148/326 of the Indian Penal Code and directed them to undergo imprisonment for six months for committing offence under Sections 148 of the I.P.C. and three years Rigorous Imprisonment for committing offence under Section 326 of the I.P.C.

None is appearing on behalf of the State.

Heard Mr. Ray, learned counsel for the appellants. My attention is drawn to the testimony of prosecution witnesses. Briefly, P.W. 1 is the de facto complainant and P.W. 4 is Sabir Ali, one of the injured. From the testimonies I find that Shibpur P.S. case No. 430 of 2010 was registered

on 29th June, 2010 at the instance of Nilufar Naaz wife of Pervej Aktar @ Rinku. Even learned Trial Court in the judgment impugned came to the following finding:

“But it is not proved that such hurts may cause their death and there was no intention to cause the death of the victims because it appears from the evidence and documents that due to some altercation and rivalry both parties gathered and assaulted each other to teach them lessons and injuries of the victim as stated by the Doctors do not indicate any serious wounds which may cause death of the victims or any such intention or knowledge that such act may cause death and it will be an attempt to murder according to Section 307 of the I.P.C.”

Having observed the aforesaid, learned Trial Court ought to have come to a finding as to who were the aggressors and who were the aggresses. Without such clear cut finding the learned Trial Court in my humble opinion committed error by holding the accused persons guilty for committing offence within the meaning of Penal Code. The evidence of prosecution witnesses further indicated that one Pervej Aktar @ Rinku who happens to be the appellant No. 1 sustained injury and learned Trial Court was of the opinion that both the accused persons and the injured indulged in application of criminal force with weapons and assaulted each other. No incriminating evidence, upon which learned Trial Court placed reliance to record an order of conviction was brought to the notice of the accused persons during their examination under Section 313 of the Code of Criminal Procedure. Thus the appellants were deprived of their right

to explain the circumstances which led the Trial Court to come to the decision. Learned Trial Court though observed that there is no provision in the Criminal Procedure regarding cross cases but learned Trial Court ought to have considered the fact that unexplained injuries upon the accused persons go a long way to strike at the root of the prosecution case when it was brought to the notice of the learned Trial Court that the accused persons were also assaulted or there was a pre fight. Both the cases should have been tried together. Learned Trial Court virtually contradicted itself by saying that there was no serious injury, but at the same time recorded order of conviction under Section 326 of the I.P.C. against the appellants.

Under such circumstances, I am of the view that prosecution cannot be said to have been proved beyond reasonable doubt. Therefore the impugned judgment should not be allowed to remain in force and should be set aside, which I accordingly do. Consequently the appeal is allowed. The appellants are discharged from their bail bonds subject to their execution of bond under Section 437A of the Cr.P.C. for six months.

Thus the criminal Appeal is disposed of.

Copy of the order be sent down to the learned Court below for information and necessary action.

(Siddhartha Roy Chowdhury, J.)