

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

Present:

The Hon'ble Justice Rai Chattopadhyay

C.R.A No. 5 of 2012

**Binod Nomodas
Vs.
State of West Bengal**

Amicus Curiae

: Ms. Sudeshna Das.

For the State

: Mr. Pravas Bhattacharya,
: Mr. M.F.A. Begg.

Hearing concluded on: 10/05/2023

Judgment on: 19/12/2023

Rai Chattopadhyay, J.

1. The property dispute between the parties has ultimately resulted into bloodshed and filing of criminal case by them, against each other.
2. One of such case has ultimately culminated into the judgment of conviction and order of sentence dated 29.11.2021, by the Additional Sessions Judge, Fast Track Court at Mathabhanga, Cooch Behar in Sessions Trial No. 01(04)/2011.
3. Thus charge was framed by the trial Court on 04.04.2011 under Sections 447 and 307 of the Indian Penal Code. The Court has ultimately found the present appellant guilty under Section 324 of the Indian Penal Code.

4. The FIR was started pursuant to a direction by the Magistrate upon the complaint lodged, on 05.06.2009. The Magistrate issued an order under Section 156 Clause 3 of the Cr.P.C, 1973, directing the police to treat the said complaint as a FIR and initiate investigation. Accordingly the FIR being Mathabhanga Police Station Case No. 204 of 2009 dated 17.08.2009 was initiated under Sections 447/341/323/325/307/506(2)/34 of the Indian Penal Code.
5. The allegations made in the FIR may briefly be noted as herein below:-
6. The FIR was lodged against the three accused persons namely, Binod Nomodas, Dipkanta Nomodas and Fatikmani Nomodas. The complainant has stated that the said three accused persons jointly, in furtherance of their common intention, trespass to the land owned by the wife of the complainant namely, Suchitra Roy, on the day of an incident, i.e, 16.05.2009. The issue was related to sale of trees by the complainant and his wife over the said piece of land and complainant says that for even a considerable period of time in past, with regard to this issue, he and his wife have been facing severe resistance as well as threat and intimidation from the said three accused persons. Be that as it may, on the day of incident as above, when the wife of the complainant Suchitra Roy entered in the said piece of land to show an intended buyer regarding the number and conditions of the trees, intended to be sold, allegedly the three accused persons entered and appellant Binod Nomodas violently hurled a blow by a heavy cosh over the head of the wife of the complainant, resulting into her grievous bleeding injury as well as the loss of sense immediately thereafter. The complainant has stated that pursuant to the neighbours assembling there, the accused persons left the place though only after abusing and threatening the complainant and his wife.

7. After conclusion of investigation the police submitted charge sheet against the present appellants and the case was committed to the Fast Track Court for trial.
8. In this appeal the appellant Binod Nomodas has not been represented initially. Therefore the Court appointed Ms. Sudeshna Das, learned Advocate as an Amicus Curiae to assist the Court in disposing of the appeal. Mr. P. Bhattacharya and Mr. M.F.A. Begg represented the State respondent.
9. Ms. Das assisted the Court by referring from the available evidence on record regarding doctor's finding of injury over the head of the victim. She has also pointed that excepting the victim herself, the prosecution has not been able to produce any other eye witness of the alleged assault. She has pointed out further regarding belated filing of the FIR and no explanation being available as regards the reason of delay in filing of the same. She is also of the opinion that in view of the credibility and unimpeachable of the evidence of the injured person, this Court may not even seek corroboration to the same by any other witness. By referring to the impugned judgment, it has been indicated that the trial Court has properly relied on the evidence of the vital witness, i.e, injured person and thus reach to a proper finding as regards the guilt of the appellant.
10. On behalf of the State respondent however the impugned judgment has been strongly supported on the ground that the sole testimony of the injured person is of reliable and unimpeachable nature and can be solely based upon to come to the finding of guilt of the accused persons. Respondent says that there is no necessity for this Court to interfere into the impugned judgment and order of sentence.
11. As stated earlier the trial Court though have framed charges otherwise, has finally found the appellant guilty of the offence punishable under

Section 324 of the IPC. The trial Court convicted the appellant and sentenced him to suffer simple imprisonment for a period of two years with a fine of Rs.1,000/- and for one month more in case of his failure to pay the fine. Rest of the accused persons have been found not guilty by the trial Court in this trial.

12. The complainant (P.W 2) and his wife (P.W 4), i.e, the injured persons are the witnesses of the case along with the doctor who attended the injured (P.W 3) and the hospital staff (P.W 5).
13. Before entering into the discussion if the ingredient of offence under Section 324, IPC is available in this case from the deposition of witness, let us first have an understanding as to what would be the ingredients of such an offence.
14. The relevant provision of law may be extracted as herein below:-

“324. Voluntarily causing hurt by dangerous weapons or means:-
Whoever, except in the case provided for by section 334, voluntarily causes hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.”

- (i) Therefore the prosecution would be required to show through the evidence on record that the victim has been voluntarily caused hurt;
- (ii) That the hurt was caused by dangerous weapons and means;
- (iii) Voluntarily as per Section 39 of the IPC is as follows:-

"39. 'Voluntarily'.

A person is said to cause an effect "voluntarily" when he causes it by means whereby he intended to cause it, or by means which, at the time of employing those means, he knew or had reason to believe to be likely to cause it."

15. The trial Court has placed sufficient reliance upon the evidence of P.W 4 who is the victim in this case.
16. P.W 4 supported the prosecution's case by deposing that on the date of incident when her husband was not present at home, she and the intended purchaser of Gamari trees, entered into the piece of land, for an inspection of the trees. The accused persons entered there, being armed with buttoms etc. They were offensive, with abusive language and threats being hurled. As a result Suchitra and the accused persons got involved in an altercation. In the midst of talks and in hot haste, suddenly the present appellant hit on the head of the said witness with a wooden buttom, which caused bleeding injury over her head. Her hue and cry drew the neighbours towards the place of occurrence and she was taken to the primary health centre for treatment. Due to the impact of the injury, the victim became senseless too. She was treated in the Primary Health Centre. The wound was stitched by the doctor there. She was referred to Mathabhanga S. D Hospital where she was treated for about three days. This witness has stated to have snatched the wooden buttom from the hand of the appellant and finally handed over to the investigating officer of the case.
17. The 'intended purchaser' has stated to have been present at the place of occurrence with the victim at the time of occurrence regarding whom both the complainant, i.e, P.W 2 and P.W 4 have deposed. However, no such person has been examined in this trial. Fact remains that P.W 2 who is the complainant of the case, is not an eye witness of the incident.

Strikingly enough, according to the evidence of the investigating officer, the material evidence, i.e, the buttom produced in trial would not resemble with the seizer list for the same. Therefore neither the fact of the present appellant having entered into the scene of occurrence with a buttom in hand, as stated by P.W 4 is corroborated nor the offending weapon, i.e, the buttom is proved in the case.

- 18.** The entire evidence of P.W 2, complainant is only hearsay. From the cross-examination of both P.W 2 and P.W 4, it transpire that there has been a long standing dispute between the parties relating to the landed property and P.W 4 has accepted in her cross-examination that the land on which the trees were standing, was recorded in the name of some other person, i.e, husband of one of the accused persons (subsequently acquitted).
- 19.** Also that in this trial none of the neighbours have been examined, who are said to have assembled after the occurrence, at the place of occurrence.
- 20.** On the premises as above it is required in this trial to consider as to what extend the evidence of P.W 4 would be credible and sufficient for reliance, as a foundation of guilt of the accused person in this case. No doubt it is a settled law that, not the number of witnesses but the quality of evidence would be the touch stone upon which the admissibility would depend.
- 21.** Doctor's reports have supported the statement of P.W 4 regarding sufferance of an injury. Now the question is about the perpetrator thereof regarding which P.W 4 names the present appellant. P.W 4 has also mentioned certain connected pre and post occurrence circumstances, where she mentions about presence of some other persons and use of the offending weapon. In this trial neither those

persons have been examined or even named nor the offending weapon is proved. As such the Court is inclined to find that the evidence of P.W 4, as the injured person, has not lived up to support the prosecution's case in its entirety. On the contrary her evidence has been left in isolation, insufficient to a great extent, in absence of any supportive or corroborative evidence of the independent persons, towards finding guilt of the present appellant. There has been a considerable delay in this case in filing the complaint from the date of occurrence. It is explained by the witnesses that the delay was due to hospitalisation of the victim. The fact of hospitalisation of the victim, is not proved in this trial. Though the victim says that she has been there in hospital, for three days, there is no supporting oral or documentary evidence to the same. Even if the Court takes the evidence of the victim on its face value, three days hospitalisation would not justify one month's delay, in filing the complaint. Such delay in filing the complaint is vital and fatal for the prosecution in this trial. Injury report does not specify as to what nature of injury the victim has suffered, that is, simple or grievous. The injury report is vague in that way.

- 22.** The trial Court has misdirected itself in considering these relevant aspects of the trial. Instead the trial Court has relied on the evidence of P.W 4 to find the same as sacrosanct so far as the proof of the present case is concerned. The trial Court, though did not find involvement of the other accused persons, but convicted the present appellant under Section 324 of the IPC and sentenced for his imprisonment, which unfortunately, is based on erroneous consideration of the evidence on record and misplaced reliance on the evidence of P.W 4.
- 23.** This Court finds the decision of the trial Court as erroneous and based on undue consideration of the evidence and non-consideration of the settled laws.

- 24.** For the reasons enumerated as above this appeal is eligible to succeed. Criminal appeal being C.R.A No. 5 of 2012 is allowed.
- 25.** The judgment and order of the Additional Sessions Judge, Fast Track Court at Mathabhanga, Cooch Behar dated 29.11.2020, in Sessions Trial No. 01(04)/2011, is set aside. The appellant is found not guilty of the offence under Section 324 of the IPC. He is free from bail bond.
- 26.** Before parting, the Court appreciates the able assistance put in by the Ld. Amicus Curie in this case. Let the High Court Legal Services Committee take necessary steps to pay fees to the learned Amicus Curiae in accordance with the scale applicable to “Category-A” lawyer in its panel. The same may be paid within a period of one month from the date. A copy of this judgment be immediately forwarded to the Secretary, High Court Legal Services Committee, for doing the needful.
- 27.** Criminal appeal being CRA No. 5 of 2021 is disposed of.
- 28.** Urgent photostat certified copy of this judgment, if applied for, be given to the parties, upon compliance of requisite formalities.

RAI
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ADHYAY

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(Rai Chattopadhyay, J.)