

25.04.2023
Sl.no. 97
Ct. No. 236
P.M.

C.R.A. 42 OF 2017

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CRAN 2 of 2022

Manirul Sk. @ Sentu & Anr.
- vs -
The State of West Bengal & Anr .

Mr. Arnab Chatterjee,
Mr. Subrato Roy,
Mr. Azizul Islam
... for the appellants

Ms. Faria Hossain
Mr. Anand Keshari
... for the State

This criminal appeal challenges the judgement and order of conviction passed by the learned Additional Sessions Judge, Fast Track Court, Rampurhat, Birhum in Sessions Trial No. 3/February/2010 whereby the learned Trial court was pleased to record an order of conviction against Manirul Sk. @ Sentu and Muktar Sk. @ Pintu for committing offence within the meaning of Section 324/34 of the Indian Penal Code and directed them to suffer rigorous imprisonment for two years and to pay fine of Rs. 2,000/- each subject to Section 428 of the Code of Criminal Procedure.

It is stated that Gaziur Rahaman of Kamalpur Village informed the Officer-in-charge of Murarai Police Station that on 22nd April, 2007 at 6 P.M. he along with

Dafin Sk., Ujjal Sk., Asraf Ali, Masud Raihan, Sentu Sk. and many others assembled to discuss the issue of operation of deep shallow tubewell, but in vain. No decision could be taken and they left for their respective home. When the informant along with Julhaque Sk., Masud Raihan and Asraf Ali came to the eastern side bank of Lokaripukur of their village Rahul Amin, Sayed Sk. Akatar Sk., Manirul Sk., Muktar Sk., Sentu Sk., Ajad Sk. Sofique Sk. Miran Sk., Bulbul Sk. assaulted his uncle with lathi, rod, tangi and made him suffer bleeding injuries. The miscreants took away a sum of Rs. 1000/- from his pocket. His uncle Julhaque Sk. was taken to Rampurhat Sub Divisional Hospital. There was delay, as all of them were busy with the treatment of Julhque Sk..

The information since disclosed offence cognizable in nature under Murarai P.S. Case No. 49 of 2007 dated 27th April 2007 was registered. Police took up investigation and submitted a charge-sheet against the accused persons. On 6th February, 2010 trial commenced and the accused persons pleaded their innocence and claimed to be tried.

To bring home charges, prosecution examined as many as thirteen witnesses and after considering the evidence on record learned Trial Court was pleased to pass the impugned judgement.

Impeaching the impugned judgement Mr. Arnab Chatterjee, learned counsel for the appellants submits that the belated FIR says proper explanation makes the case of prosecution doubtful. As a matter of fact, the defacto complainant and his associates, including the victim assaulted the accused persons of this case together with their other family members, police was informed and Murarai P.S. Case No. 48 of 2007 was registered on 24th April, 2007. This is but a counterblast, a ploy to escape the clutches of law.

Drawing my attention to exhibit 8 Mr. Chatterjee submits that according to prosecution case on the date of incident the matter was reported to the police and the information was reduced into writing in the form of G.D. Entry No. 931 dated 22nd April, 2007. The said information which was reduced into writing in the form of G.D. Entry No. 931 discloses the incident where the victim Julhaque Sk. claimed to have been assaulted by the accused persons by fists and blows and lathi but in the FIR the informant exaggerated the fact.

P.W. 10 Md. Julhaque Sk. while adducing evidence stated that he was assaulted by tangi, hansua, rod which he did not disclose in his maiden statement before the police on 22nd day of April, 2007. Drawing my attention to the impugned judgement Mr. Chatterjee submits that at the instance of Rahul Amin, Murarai P.S. Case No. 48 of 2007

was registered on 24th April, 2007 alleging inter alia that the family members of the present convicts, were assaulted by the defacto complainant of this case along with his associates as a result Ali Akhtar Sk. sustained injuries and succumbed to such injuries on his way to Burdwan Medical College and Hospital near Ilambazar. No weapon of assault was seized by the I.O. in this case. The victim, who was responsible for the death of Ali Akhtar was one of the members of the unlawful assembly, He did not disclose the name of his assailants before the doctor.

This case was filed as a ploy to circumvent punishment which was imposed upon him as well for committing the offence under Section 304(II) of the IPC.

Mr. Keshari, learned counsel representing the State submits that an incident took place on 22nd April, 2007 on the eastern embankment of lokaripukur after the meeting fails to yield any result to settle the issue of rationing of deep shallow tube well. It is not very clear that who among the persons attended the meeting were aggressor and who were at the receiving end. One of the family members of this appellants succumbed to injuries, he received during such free fight and at the same time the victim P.W. 10 also suffered injuries. He was examined by P.W. 12 at the first instance, thereafter, by P.W. 1 and in between P.W. 11 also attended the victim at R.G. Kar Medical College and hospital.

From the injury reports prepared by the attending Medical Officers indicate that victim sustained fracture injury as well as lacerated injuries over his head, lip and left thumb. This fact is getting support from the content of exhibit 8 G.D. Entry No. 931 dated 24th April, 2007. There is nothing to impeach the credibility of P.W. 10 the victim.

According to the learned counsel for the State the order of conviction does not warrant any interference as prosecution has proved the fact that the victim P.W. 10 was assaulted by the accused persons.

However, it is submitted that nature of injury does not justify the order of conviction under Section 324 of the I.P.C. the victim sustained fracture injury and exhibit 8 indicates that lathi was used as weapon of assault. According to Mr. Keshari that part of order of conviction warrants interference. In his maiden statement as to the cause of injuries P.W. 10 stated that he was assaulted by lathi and he took the name of these two persons as accused.

Learned Trial Court, in absence of any injury caused by sharp cut weapon, could not have recorded the order of conviction under Section 324 of the I.P.C. As the victim was assaulted by lathi, the order of conviction ought to have been recorded for committing offence within the meaning of Section 325 of the I.P.C. Accordingly I modify the order of conviction instead of committing offence under Section

324/34 of the IPC. The appellants are found to have committed offence under Section 325/34 of the IPC.

According to Mr. Chatterjee the convicts lost their brother Ali Akhtar and for that the victim along with seven other convicts have been sentenced to suffer imprisonment for seven years for committing offence under Section 304 part II of the IPC among others. Considering the said fact and the period of sentence may be reduced.

The learned counsel for the State with all fairness submits that he has no objection if the period of sentence is reduced.

Taking into consideration the fact that the convicts have lost their brother who succumbed to injuries, he sustained over the said incident, I am inclined to reduce the sentence imposed upon them by the learned Trial Court. Instead of undergoing rigorous imprisonment for two years, in my opinion ends of justice would be met, if the convicts are sentenced to suffer rigorous imprisonment for one year and to pay fine of Rs. 10,000/- each in default to suffer rigorous imprisonment for three months subject to the provisions of Section 428 of the Code of Criminal Procedure.

Appeal is, thus, allowed in part.

Copy of the judgement along with the LCR be sent down to learned Trial court for information and necessary action.

Urgent Photostat certified copy be made available to the parties, if applied therefor, upon usual formalities.

(Siddhartha Roy Chowdhury, J.)