

IN THE HIGH COURT AT CALCUTTA
(CRIMINAL APPELLATE JURISDICTION)

PRESENT:

THE HON'BLE JUSTICE SIDDHARTHA ROY CHOWDHURY

CRA 672 of 2019

GANAPATI GHOSH @ GONOPATI GHOSH & ORS
VS.

STATE OF WEST BENGAL

with

CRA 178 of 2020

BHUTU GHOSH & ANR.

VS.

STATE OF WEST BENGAL

with

CRR 519 of 2020

BHAKTI GHOSH @ BHOKTI GHOSH
VS.

STATE OF WEST BENGAL

For the Appellants : Mr. Sudip Ghosh Chowdhury, Adv.

For the Petitioner/De-facto
Complainant in CRR 519 of 2020 : Mr. Kallol Mondal, Adv.
Mr. Krishan Ray, Adv.
Mr. Souvik Das, Adv.
Mr. Samsheer Ansari, Adv.
Mr. Ayan Mondal, Adv.

For the State : Mr. S. S. Imam, Adv.
Mr. S. Kundu, Adv.

Hearing concluded on : 14th March, 2023

Judgement on : 14th March, 2023

Siddhartha Roy Chowdhury, J.:

1. These appeals assail the judgement and order of conviction passed by the learned Additional Sessions Judge, 2nd Court, Jangipur

Murshidabad in S.T. No. 04(08)/2014 corresponding to Raghunathganj P.S. Case No. 332/2012 while revisional application is manifestation of displeasure of the victim over quantum of sentence. By the impugned judgement the appellants have been sentenced to suffer Rigorous Imprisonment for seven years for committing offence under Sections 307/34 of the Indian Penal Code and to pay a fine of Rs.5,000/- each with a default clause.

2. Shri Bhakti Ghosh set the criminal proceeding into motion by informing the Inspector in-charge of Raghunathganj Police Station in writing that on 27th September, 2012 at about 8.00 A.M. in the morning his son Goutam Ghosh was attacked by Ganapati Ghosh, Bhutu Ghosh, Bhoton Ghosh and Satya Ghosh. Satya Ghosh landed a blow of sickle (Kati) on the right arm of Goutam Ghosh, who was at the relevant point of time sitting on the bench in front of his grocery shop. Goutam sustained bleeding injury. With the advent of some local people, the accused persons fled away. Goutam was taken to Jangipur Hospital and he was referred to hospital in Kolkata. The information since disclosed offence cognizable in nature Raghunathganj Police Station Case No. 332 of 2012 dated 27th September, 2012 was registered under Sections 326/34 of the Indian Penal Code. Police took up investigation which culminated into submission of charge sheet. On 5th August, 2014 trial commenced and the accused persons stood the trial, pleading innocence.

3. The prosecution in order to crown success, examined as many as 13 witnesses and learned Trial Court after considering the evidence on record was pleased to pass the impugned judgement.
4. Mr. Ghosh Chowdhury, learned counsel for the appellants impeach the impugned judgement on the ground that the testimony of prosecution witnesses are inconsistent and discrepant in nature. There was no material to indicate that the appellants shared common intention to commit the offence. The victim as P.W. 2 stated that it was Satya Ghosh who landed the blow of Sickle on his right shoulder, but prosecution failed to prove that fact as well as the fact that other appellants had the intention to cause harm to the victim. There was enmity and in the backdrop of such inimical relationship the appellants have been falsely implicated in this case. It is further contended that, accused Satya Ghosh during his cross-examination under Section 313 of the Cr.P.C. stated that he was not present at the time of alleged incident, as he was plying his rickshaw van. According to Mr. Ghosh Chowdhury, the impugned judgement in the outcome of absolute misreading of the evidence. The right arm of the victim had to be amputated because he was suffering from blood sugar, it does not have any nexus with the alleged injury. It is further submitted by Mr. Ghosh Chowdhury that, assuming and not admitting that the appellants had committed the offence as alleged, considering the old age of the appellants this Court may interfere with the sentencing part.

5. Mr. Kallol Mondal, learned counsel for the victim has filed a criminal revision registered as **CRR 519 of 2020** seeking enhancement of sentence. According to Mr. Mondal, the victim has lost his capacity to earn bread for himself. The appellants should be adequately punished for the offence they have committed.
6. Mr. Immam, learned counsel for the State supports the judgement impugned.
7. From the attending facts of the case it transpires that Goutam Ghosh was assaulted by Satya Ghosh. The injured witness as P.W. 2 stated that on 27th September 2012 at about 8.00 A.M. he was reading the newspaper sitting in front of his grocery shop, and his daughter was inside the shop room. At that point of time accused Satya Ghosh, Ganapati Ghosh, Bhutu Ghosh, Bhoton Ghosh and Sripati Ghosh being armed with Kati, Heso, Sabal and lathi etc. came there and being directed by four accused persons Satya Ghosh landed a blow of Sickle (Kati) on the right shoulder of the victim. He tried to flee, he was screaming for help but accused persons did not allow him to leave the place and made attempt to assault him further. He could run only a few yards and ultimately fell down on the road at a distance of 15-20 cubic feet from the place of occurrence. His parents and co-villagers came there the accused persons fled away. He was then taken to the Jangipur Sub-Divisional Hospital where he was attended by a Doctor. During cross-examination he stated that his parents managed the injury with a piece of cloth. He was reading Anandabazar Patrika facing his shop room. He told the attending

Doctors the name of the assailants. He did not tell the Doctor that a criminal case would be initiated against the accused persons. He fell down in front of the house of Biren Das. He did not come across any Police personnel while in hospital. He did not hand over the newspaper to the Police. The incident of assault lasted for 2-2½ minutes and he was assaulted within 2-3 seconds after the suggestion was given to the victim that Satya did not hit the victim on his right shoulder with sickle.

8. Thus I do not find anything to impeach the credibility of this P.W. 2 who was assaulted and sustained injury. P.W. 2 was attended by Doctor Goutam Ray at Jangipur S. D. Hospital. The Doctor examined the victim on the date of incident at about 9.00 A.M. and found deep incision wound (4" length X ¾" depth) on the lateral side of the right forearm caused by sharp cutting weapon. The patient was taken to the operation theatre and he was admitted to the male surgical department. The injury report was admitted as Exhibit – 3. During cross-examination he stated that injury report does not reflect the colour of injury, and the age of injury was determined clinically. He did not give the final treatment to the patient. The patient was referred to operation theatre for better treatment. This evidence of P.W. 10 is lending support to the testimony of victim P.W. 2 and the oral testimony of P.W. 2 coupled with Exhibit - 3 is sufficient to hold that the victim sustained grievous injury on his right arm and primarily Satya Ghosh was responsible for such injury. From the testimony of P.W. 9 Dr. Soumitra Guha, I find that patient was

subsequently admitted to T.R.A. General Hospital and his right arm was amputated. The injury report issued by Dr. Guha was admitted as Exhibit – 2. Now comes the question of culpability of remaining four appellants. True it is other than Satya Ghosh rest of the four appellants did not assault the victim but the crucial question that calls for consideration is whether those persons shared the common intention to cause harm to the victim.

9. It is trite law to say that the provision of Section 34 of the Indian Penal Code carves out an exception from general law that a person is responsible for his own act as it provides that a person can equally be held vicariously responsible for the act of others if there is a common intention to commit the offence. Common intention necessarily implies a pre-conceived plan and a construed act pursuant to such plan. Thus, common intention shall have to be there prior to the commission of offence at any point of time, which can be proved by direct evidence. It can also be inferred from the attending circumstances. In this case victim as P.W. 2 stated that all five persons came together, Satya Ghosh landed the blow, and when he made attempt to free he was being chased by all the five accused persons. This narrative of P.W. 2 is sufficient to indicate that all the five persons shared the common intention to cause harm to the victim. Thus I do not find any reason to hold that those four persons other than Satya Ghosh were innocent and learned Trial Court had no reason to saddle them with criminal liability for committing offence within the meaning of Section 307 of the Indian Penal Code.

10. Though 13 witnesses have been examined by the prosecution, Bhakti Ghosh, the defacto complainant did not have any direct knowledge about the incident.
11. Sumita Ghosh, the daughter of the victim was inside the shop room at a proximate distance and she narrated the incident of assault. She has thoroughly been cross-examined but she stood the test of cross-examination.
12. Manju Ghosh, the mother of the victim, Anil Ghosh, the uncle of the victim, Judhistir Ghosh, P.W. 6, Ratan Ghosh, P.W. 7 did not have any direct knowledge about the incident, they all were post occurrence witnesses. When testimony of P.W. 2 inspires confidence and he is getting support from the testimony of Medical Officer and Doctor who attended him and adduced evidence as P.W. 10 and P.W. 9, I do not find any reason to discuss the evidence of all those witnesses who did not have any direct knowledge about the witnesses.
13. Learned Trial Court, as I find from the impugned judgment, held that *“offence under Section 326 of the Indian Penal Code is minor offence in nature in relation to the offence under Section 307 of the Indian Penal Code and offence under Section 307/34 of the I.P.C. has since been well established conviction under Section 326 of the I.P.C. would not be necessary in the present facts and circumstances of the present case.”* However, I do not endorse the view expressed by learned Trial Court in this regard. The appellants have committed the offence under Section 326 of the I.P.C., there is no doubt about it.

From the place of injury I do not find the intention of the appellants to commit murder. Had there been any such intention to commit offence within the meaning of Section 300 of the I.P.C., the appellants had ample opportunity to land a blow on any vital part of the victim. There is no doubt that Doctor has given opinion that such type of injury, due to loss of blood, would have resulted into loss of life but in my opinion the accused persons should have been convicted for committing offence within the meaning of Section 326 of the I.P.C. as well, Thus I am inclined to modify the impugned judgment. The appellants Satya Ghosh, Ganapati Ghosh, Bhutu Ghosh, Ghoton Ghosh and Sripati Ghosh are found guilty in committing offence within the meaning of Sections 326/34 of the I.P.C. and ends of justice would be met if they are sentenced to undergo Rigorous Imprisonment of seven years. Since the victim has lost his ability to work in order to earn bread for the family because of the act on the part of the appellants, invoking the provision of Sub-section 3 of Section 357 of the Cr.P.C. I am directing the appellants to pay compensation to the tune of Rs.2,00,000/- each aggregating to Rs.10,00,000/- to the victim within a period of six months, failing which they have to undergo further imprisonment for five years.

14. I do not consider it expedient to enhance the terms of imprisonment.
15. The appellants are directed to surrender to the jurisdiction of learned Trial Court within a week from date to serve out the sentence.

16. Accordingly the criminal appeals being **C.R.A. 672 of 2019, C.R.A. 178 of 2020 and C.R.R. 519 of 2020** are thus disposed of.
17. Let a copy of the order along with the Lower Court Records be sent to learned Trial Court for information and necessary action.
18. Urgent photostat certified copy of this judgement, if applied therefor, should be made available to the parties upon compliance with the requisite formalities.

(SIDDHARTHA ROY CHOWDHURY, J.)