

IN THE HIGH COURT AT CALCUTTA**Criminal Appellate Jurisdiction****Present: - Hon'ble Mr. Justice Subhendu Samanta.****C.R.A. No. -62 of 1998****IN THE MATTER OF****Hemanta Pal****Vs.****State of West Bengal****For the Appellant : Mr. Milon Mukherjee, Sr. Adv.,
Mr. Biswajit Manna Adv.****For the State : Mr. Saswata Gopal Mukherjee Ld. P.P.,
Mr. Narayan Prasad Agarwala Adv.,
Mr. Pratick Bose Adv.****Judgment on : 11.12.2023****Subhendu Samanta, J.**

The instant appeal has been preferred against the judgment dated 14.02.1998 passed by the Learned Additional Sessions Judge at Kandi, Murshidabad in sessions case No. 13 of 1997 (Sessions Trial No. 2 (8)/97) thereby finding the present appellant guilty of an offence punishable u/s 308 of IPC and thereby convicting him and sentencing him to suffer rigorous imprisonment for a period of 05 years.

The brief fact of the prosecution case is that on 05.10.1994 at about 06:00 p.m the present appellant and one Madhu Pal called Ranjan Das to the house of the appellant and

while the said persons were watching television in the drawing room therein Ranjan Das was assaulted by the appellant with the help of 'hasua' and iron rod as a result Ranjan sustained injuries on his face. Hearing hues and cry Swapn Das, elder brother of Ranjan Das and other co-villagers reached the house of the appellant and found the door of the drawing room lock from inside and Ranjan crying from inside of the said room thereafter, upon pushing open the door they found Ranjan lying in the room having injuries of his person and the said above mentioned two persons were found leaving the said room from the opposite side of the door. It is the further case of the prosecution that Ranjan thereafter taken to Burdwan hospital and therefrom referred to the Kandi hospital. The written complaint was lodged by the brother of the injured Swapn Das with the Officer-in-charge of Burdwan Police Station. In pursuance to such complaint Burdwan P.S Case No. 126/94 dated 05.10.1994 was initiated against the appellant and one Madhu Pal for the alleged commission of offence punishable u/s 326/34 IPC. After completion of investigation the investigating agency submit a charge-sheet against the only appellant u/s 325 of the IPC thereafter the appellant committed to the Court of Sessions for trial wherein the Learned Sessions Judge was pleased to frame charge against

the present appellant u/s 325/308 of the IPC. During the trial the prosecution has examined 11 witnesses while the defence preferred not to examine any witnesses. The story of the defence is mainly on denial and false implication.

The Learned Sessions Judge after going through the evidences on record and after examining the appellant u/s 313 of Cr.P.C. and also after hearing the Learned Advocate for the defence, and the Learned P.P passed the impugned judgment of order of conviction by holding the appellant guilty u/s 308 of IPC and thereby sentence him to suffer rigorous imprisonment for 05 years. Being aggrieved and dissatisfied with the aforesaid order of conviction and judgment the instant appeal has been preferred.

The Learned Advocate for the appellant submits that the Learned Sessions Judge has failed to appreciate the facts and circumstances of this case and came to an erroneous finding.

He further argued that the prosecution has adduced as many as 11 witnesses; all the witnesses are the close relatives of the victim and they are the interested witnesses. It is the further argument of the Learned Advocate for the appellant that the prosecution case goes to show that at the time of incident there were at least 20 to 50 persons gathered and broke out the door of the drawing room of the appellant and

rescued the victim, but no such witnesses were adduced by the prosecution to prove the case. There are major contradictions between the versions of the incident as given PW2, PW 3 and PW 9; thus it is very dangerous to convict the present appellant upon such unreliable and conflicted evidences.

Mr. Milon Mukherjee Learned Senior Advocate appearing on behalf of the appellant argued that from the entire case of the prosecution it would be revealed that the case is doubtful. The alleged date of occurrence is 5th of October 1994, FIR lodged on 06th of October 1994, FIR reached to the Magistrate on 10th October 1994, i.e, after 04 days of lodging the FIR. The prosecution has no explanation regarding such delay in this case PW 1, PW 4, PW 5, PW 7 and PW 8 are hostile witnesses. PW 2 is de-facto complainant and PW 3 is the victim PW 9 one of the relative of the injured so, the statement of PW 9 cannot be believed.

It is the case of the prosecution that the victim was assaulted by 'iron road' and 'hasua' but no such 'iron road' and 'hasua' was seized during the course of investigation in this case.

Learned Advocate for the appellant further argued that the ingredients u/s 308 of IPC is not at all established in this particular case. The alleged injury sustained by the injured is

actually doubtful. The evidence goes to show that the present appellant and the injured were friends. The modus operandi for commission of such offence was not proved by the prosecution. No evidence of the other prosecution witnesses sufficient the statement of PW 2 and PW 3 thus the instant conviction and sentence is liable to be set aside.

Mr. Mukherjee cited a decision of Hon'ble Apex Court in **Thanedar Singh Vs. State of MP (2002) 1 Supreme Court Cases 487** to show the law that –

That delay in sending FIR to the Magistrate wherein the prosecution was failed to clear the doubt regarding the date and time of recording of FIR—held on facts, advance inference can be drawn.

He also cited **Maharaj Singh Vs. State of UP (1994) 5 SCC188**. The Hon'ble Supreme Court Held that—

Whether the FIR was anti time—determination of—external checks—delay in sending special report to the Magistrate or failure to sent copy of the FIR to the medical officer along with dead body for post mortem and patients of its reference in inquest report can give rise to an inference that the FIR had been anti timed.

Learned Advocate appearing on behalf of the States submits that the case of the prosecution has been sufficiently proved by evidences of de-facto complainant and the injured. The injured has specifically stated that the appellant assaulted

him on the date of occurrence. The doctor has deposed to show that the injuries were severe in nature. All the injuries is on the vital part of the body of the injured. The injury may cause death to the injured, so the conviction u/s 308 IPC is quite justified. The case of prosecution may have some discrepancies but there are not so vital to entirely disbelieve the case of the prosecution. He further argued that the observation of the Learned Sessions Judge is quite justified in facts and circumstances of this case. The appeal got no merit and liable to be dismissed.

Heard the Learned Advocates.

Perused the impugned judgment of conviction and sentence passed by the Learned Tribunal I have perused the evidences of prosecution placed before the Learned Sessions Judge. It is true that the alleged incident occurs on 5th October 1994 after such incident the injured was admitted to the hospital. The FIR lodged just after one day on the incident that is on 06.10.1994. The first order of the Magistrate shows that FIR reached to the court on 10th of October 1994.

Let me consider where there is any chance of doubt in the alleged facts and circumstances of this case which may cause due to the delay sending of FIR to the Magistrate. In case **Tahanedar Singh** and **Maharaj Singh** it appears that the

doubt regarding the date and time of recording of FIR was not cleared or explained by the prosecution during trial but in this case the injured himself and the de-facto complainant also deposed before the Learned Tribunal. No suggestion was made by the defence regarding the denial of the alleged fact of incident on the alleged date of occurrence so considering such aspect I observed that the ratio of **Thanedar Singh** (Supra) and **Maharaj Singh** (supra) is not applicable in this case.

In considering the entire judgment passed by the Learned Sessions Judge it appears to me that the PW 3 who is the injured has deposed before this court that the appellant and himself was a friend; on call by the appellant he entered into his house to see the T.V. He also admitted that he had no previous enmity with the accused persons. The cause of assault by the accused persons has been stated during his examination in cheap that the accused appellant had asked him to murder one Prashanta Pal; when he refused the appellant started assaulted with the help of an iron rod on his nose and when he tried to get out of the room by opening door the appellant assaulted him by the 'hasua' at his head.

PW 11 is the IO of this case who stated that the injured (PW3) never stated before him during the investigation of this

case that the appellant ever asked him to murder Prashanta Pal.

The doctor adduce as PW 10 he deposed that during the examination he found the following injuries in the person of the injured--

1. Lustred injury over forehead with active bleeding.
2. There was one lustred below left lower eye lid.
3. Left upper jaw was seen lustred with bleeding from the wound.

On perusing three injuries it appears that the injury appears to be on the face portion of the injured.

In analysing the statement of injured (PW3), the injury on the face was stated to be by the use of an 'iron rod'. PW- 3 also stated that there was an injury caused by a 'hasua' when he wanted to go out from the room but the doctor could not find any injury at the backside of the head or any portion of the injured. The entire case of the prosecution has successfully prove the injury of the PW 3 caused by the present appellant but the reason for such commission of injury is became doubtful. It is also doubtful whether actually the appellant tried to cause murder to the injured. The injuries appears to be at the face portion of the injured but no injury appeared at the head or any vital portion of the body of the injured so it could

not be said by analysing the evidences of record that the appellant had any intention to cause death to the injury.

Learned Sessions Judge has opined that the injury was caused in such a fashion that it may cause death to the injured. Learned Sessions Judge has also opined that the punishments of Section 308 IPC as well as 325 IPC are the same so the appellant may be convicted u/s 308 of IPC.

To substantiate the offence u/s 308 IPC the prosecution has to prove that the offended had any intention to commit an offence of culpable homicide. The culpable homicide was defined u/s 399 IPC. In this attending facts and circumstances, the injury sustained by the injured does not suggest that the appellant had any intention to cause death to the injured (PW3). For the commission of culpable homicide to any person the reason for causing death and intention and active knowledge is essential. In this case the prosecution is failed to bring out any sufficient reason by which it can be proved that the appellant has the requisite intention to murder the injured.

Considering the facts and circumstanced of this case it appears to be that the prosecution has sufficiently proved, though have some discrepancies, that the appellant has committed voluntary grievous hurt to the injured. So in this

case the punishment also u/s 308 of IPC appears to be not justified. The prosecution has sufficiently established the offence against the appellant u/s 325 IPC.

The instant appeal is pending since the year 1998. The alleged incident happened in the year 1994. Now we have completed nearly 30 years. The appellant/accused has to gone through a long pending criminal trial as well as the criminal appeal. He must have suffered immense pains and agony of the long pendency of the instant criminal appeal.

Considering the entire circumstances I think it would be proper to reduce the punishment of the appellant from 05 years to 02 years. Accordingly, the order of conviction and sentence passed by the Learned Sessions Judge, is hereby modified. The appellant accused is found guilty of the offence punishable u/s 325 IPC and he is sentencing to suffer rigorous imprisonment for 02 years and a fine of Rs. 5,000 in default to rigorous imprisonment for further 06 months.

The period of detention undergone by the appellant during investigation, inquiry or trial is hereby set- off u/s 428 Cr.P.C.

The appellant is on court bail.

He is directed to appear before the Learned Additional Sessions Judge Kandi, Murshidabad on or before 19th January 2024 to serve out his remaining part of the sentence.

Failing which the Learned Sessions Judge is directed to issue necessary warrant of arrest upon the appellant for compliance of this order.

The instant Criminal Appeal is disposed of.

Any order of stay/ suspension of sentence passed by this court during the continuation of the instant appeal is hereby vacated.

Let a copy of this order along with the LCR be sent down to the Learned Sessions Judge for his information and necessary compliance.

Parties to act upon the server copy and urgent certified copy of the judgment be received from the concerned Dept. on usual terms and conditions.

(Subhendu Samanta, J.)