

17.07.2023

Court No.35
Item No. 1

D.Hira

CRA 100 of 2010

**Kashinath Bairagi
Vs.
The State of West Bengal**

Mr. Mit Guha Roy.

... for the amicus curiae

Mr. Bidyut Kumar Roy,
Mr. Narayan Prasad Agarwala,
Mr. Pratick Bose.
Ms. Rita Dutta.

... for the State

Mr. Roy, who appeared in this case on January 24, 2023, has submitted today a report of the Superintendent of Presidency Correctional Home dated February 1, 2023 as regards the status of the appellant in the correctional home. Let the same be kept with the record.

It is worth noting that previously also the similar report was submitted by Mr. Agarwala, learned counsel for the State dated February 2, 2023. The same was by the Inspector of Special Bench, Chandannagar Police Commissionerate at Chandannagar.

Both the reports are indicating in an unequivocal manner that the present appellant who was sentenced for seven years of rigorous imprisonment along with payment of fine of Rs.5,000/- in Sessions Trial no. 10 of 2009 under Sections 307/324 of the Indian Penal Code, by the Court of Additional District and Sessions Judge, Fast Track Court, Hooghly, was released from the correctional home on April 13, 2016 after being incarcerated for a period of six (6) years two (2) months and twenty nine (29) days. Two hundred and seventy two days (272) of his sentence period was remitted under the applicable rules.

Taking into consideration the above two reports, let the matter be

disposed of, by the following order:-

The appellant was found guilty for an offence under Section 307/324 of the Indian Penal Code by the Trial Court in Sessions Trial No. 10 of 2009 vide judgment dated January 15, 2010 and was sentenced to suffer rigorous imprisonment for seven years and to pay a fine of Rs.5,000/-, in default of which he would be suffering imprisonment for a further period of two years.

Informant lodged the FIR on January 27, 2008 alleging that on the same date at about 11:30 a.m. in the morning when he was talking with some person while standing on road, he was attacked with sharp-cutting weapon, from his backside. He suffered sharp-cut injury and could by somehow turning back in the injured condition, identify the present appellant, to be the assailant.

Upon filing of such FIR, the police started investigation and the same was culminated into filing of charge-sheet against the present appellant.

Subsequently, the Trial Court has framed charges and conducted trial in the matter. The evidence given by the victim is the principal piece of material on which the prosecution has founded its case and ultimately the Court has found that the prosecution could bring home the charges against the assailant/appellant beyond the scope of all reasonable doubt. Hence, sentenced the appellant in the manner, as mentioned above.

On thorough scrutiny of the evidence of the victim/PW 1, the prosecution's case is found to be duly substantiated.

PW 1 has withstood the cross-examination and there is nothing on record to disbelieve or doubt the truthfulness of the evidence given by the PW 1 in the Court. As a matter of fact, all the subsequent witnesses have corroborated that of PW 1 only to suffice as regards the acceptability of the evidence of the prosecution.

On careful perusal of the impugned judgment, it is found that the evidence on record has been thoroughly scrutinized and discussed by the Trial Court to leave no scope of any flaw in assessment of the same, in its right perspective.

On the premises as above, this Court finds that the decision of the Trial Court to find the present appellant guilty of the offence punishable under Section 307 read with Section 324 of the Indian Penal Code is just proper and legal and requires no interference by this Court at all.

Therefore, so far as the finding of guilt of the present appellant and his conviction in the impugned judgment are concerned, this court does not interfere to the same in this appeal.

However, while evaluating the sentencing part, the reports mentioned as above, are taken into consideration.

It is seen that two hundred and seventy two days from the period of sentence has been remitted in adherence to the appropriate rules. Before that the appellant had already undergone rigorous imprisonment for six years two months and twenty nine days.

In consideration of these facts, this Court directs that the appellant be sentenced with the period already undergone by him.

CRA 100 of 2010 is partly allowed.

Mr. Mit Guha Roy, learned amicus curiae has extended extensive help and support in disposing of this case. His diligent and sincere efforts are appreciated.

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, within a period of two months from the

date. Let a copy of this order be immediately forwarded to the Secretary, State Legal Services Authority (SLSA), for necessary action.

All pending applications, if any, are consequently disposed of.

Certified website copies of this order, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

(Rai Chattopadhyay, J.)