

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

Present:

The Hon'ble Justice Rai Chattopadhyay

C.R.A No. 106 of 2010

**Sanjoy Mondal
Vs.
The State of West Bengal**

Amicus curiae : Mr. Somopriyo Chowdhury.

For the State : Mr. Pravash Bhattacharyya,
: Mr. M.F.A. Begg.

Hearing concluded on: 15/03/2023

Judgment on: 23/08/2023

Rai Chattopadhyay, J.

1. Appellant, being convicted and sentenced in Sessions trial No. 187/March/09 under Section 324 of the Indian Penal Code, has preferred the instant appeal. Impugned is the judgment in the above mentioned Sessions Trial, i.e, dated October 31, 2009 and an order of sentence, also dated same.
2. The appellant has been found guilty of an offence committed under Section 324 of the Indian Penal Code and convicted for that. He has also been sentenced to suffer rigorous imprisonment for two years and pay a fine of Rs. 5,000/- in default of which he was to suffer rigorous imprisonment for three months more.

- 3.** The de facto complainant lodged FIR on July 1, 2004, alleging an incident of the same date. The time of incident has been mentioned in the FIR to be at 9.30 p.m. Allegedly the octogenarian mother of the defacto complainant was preparing snacks and food article namely 'papad', at a gathering of people, which assembled for some amusement programme. The food article was being prepared in hot mustard oil. Allegedly the appellant asked for the same on credit but was refused by the victim. Being prompted by that, the appellant has been alleged to have poured hot oil from over the head of the victim, resulting into her sustaining burn injury all over the body. The victim was immediately admitted and treated at Anupnagar Hospital.
- 4.** On the basis of the said FIR as mentioned above the specific police case was started being Samserganj Police Station Case No. 63/04 dated 01.07.2004 under Section 326 of the Indian Penal Code. After investigation and submission of charge sheet the Court started trial, under Sections 324 and 307 of the Indian Penal Code. The trial has ultimately culminated into the judgment impugned, as mentioned above which sentenced the appellant as above upon finding him guilty of the offence under Section 324 of the Indian Penal Code.
- 5.** The propriety of the same has been challenged in this appeal. However, in spite of grant of sufficient opportunity, none appeared to represent the appellant. Under these circumstances, Court appointed Mr. Somopriyo Chowdhury as amicus curiae, to assist the Court in deciding the appeal. The efforts put in by Mr. Chowdhury is acknowledged and appreciated.
- 6.** The prosecution in this trial has examined seven witnesses including the defacto complainant (P.W 1), the victim (P.W 2), the co-villagers (P.W 3 and P.W 6) of the parties, doctor (P.W 5), investigating officers (P.W 7 and P.W 4).

7. So far the facts that the victim suffering injury and that due to pouring of hot oil over her person, are concerned, evidence of victim (P.W 2) as well as that of doctor (P.W 5) would be material. Victim has stated in her evidence that when the appellant was asked by her to pay back some previous dues, the appellant became angry, abused her and ultimately poured hot mustard oil on her head. P.W 5, i.e, the doctor had examined the victim after the occurrence. According to his evidence he found burn injury by hot oil covering back of both upper extremist, front and back of chest. The doctor has stated in the Court that the burn suffered was near about 36 percent. He has also opined that the injury as aforstated was caused due to pouring of hot oil.
8. Thus, by way of the ocular evidence as above, the prosecution in this trial has brought on record above the injury sustained by the victim. That is to the standard of beyond any scope of reasonable doubt, in so far as, there is nothing on record to actually challenge the expert evidence of P.W 5. It is now to be seen if the reason of occurrence of such injury to the victim, by pouring hot oil, can be attributable to the appellant or not. To these however, evidence of P.W 3 and P.W 6 would be counter productive for the prosecution. Both are co-villagers. P.W 6 has been declared hostile and P.W 3 says the burn suffered by the victim was due to an accident only. The involvement of the appellant would transpire only from the evidence of P.W 1 and P.W 2, i.e, the defacto complainant/son of the victim and the victim herself respectively. Amongst them however, P.W 1 is not an eye witness. Also that he has not been interrogated by police before deposing in Court and was deposing in Court for the first time. Therefore, it is evidence of the victim only, i.e, P.W 2, remains to be weighed by the trial Court, so far as involvement of the present appellant as to the alleged offence is concerned.

- 9.** Evidence of P.W 2 however lacks sufficiency so far as the appellant's specific and overt acts are concerned. P.W 2 has stated that being infuriated due to her asking lack some old and outstanding dues, the appellant poured oil on her person. Unfortunately there are substantive lack clarity regarding the time, place and manner of the alleged occurrence, leaving thereby sufficient ground for doubt as regards the culpable intention as well as action of the present appellant, in commission of the alleged crime. Pertinent here to note is that, none of the other witness is supporting victim's version.
- 10.** Nonetheless, it is well settled that considering the nature of evidence of even one witness, and particularly when it is of the victim him/herself, the Court can found its judgment on the same alone, without calling for any other corroboration whatsoever. But for that, the evidence on record should satisfy the cognition, by being unimpeachable, truthful and sufficient. All questions that may arise reasonably in the mind of a prudent man, must receive answer from the evidence that has been brought on record. Merely that the victim has spoken in the trial Court would not be sufficient and safe to rely on the same blindly as a foundation of his guilt. The quality of evidence must inspire confidence in the mind of the trial Judge for the same to rely solely on the victim's evidence and not to go for any other corroboration. Unfortunately in this case evidence of P.W 2 would not inspire that confidence in the mind of the Court. There are missing links existent pre-dominantly, raising strong doubt as regards reasonability for what the victim has stated the trial Court. The same could not have been relied on, in the same manner as it has been done, for the reason of its insufficiency, non-specificness and in coherence. Unless evidence of the prime witness is not worthy to rely on unhasitantly, a Court should restrain it from placing such reliance. In absence of coherence and truthfulness in her statement, the

trial Court has erred in relying on the same to found its judgment on the basis of her evidence. The finding of the trial Court that the appellant put out hot oil from the utensils being used by the victim and poured the same upon her person, has been only baseless and imaginary, in so far as none of the witnesses including the victim has specified the manner of incident, in the way as stated above. Thus, the role of the present appellant though alleged is not proved by the prosecution in this trial, in commission of the offence as alleged. Under such circumstances the impugned judgment cannot sustain. Also that the appeal merits success.

- 11.** Criminal appeal being CRA 106 of 2010 to challenge the judgment dated October 31, 2009, in Sessions trial No. 187/March/09 in the Court of Additional Dist & Sessions Judge, 4th F.T.C. Jangipur, Mursidabad, is allowed. The impugned judgment and order dated October 31, 2009, is hereby set aside.
- 12.** The appellant is found not guilty in Sessions trial No. 187/March/09 in the Court of Additional Dist & Sessions Judge, 4th F.T.C. Jangipur, Mursidabad. He be immediately acquitted and released from all the bail bonds.
- 13.** With the directions as above this appeal being CRA 106 of 2010 is disposed of along with application, if any.
- 14.** Urgent photostat certified copy of this judgment, if applied for, be given to the parties, upon compliance of requisite formalities.

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(Rai Chattopadhyay, J.)