

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

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

CRA 128 of 2020

Prashanta Majhi

VS.

The State of West Bengal

For the Appellant : Mr. Prabir Kumar Ghosh, advocate

For the State : Mr. Sanjoy Bardhan,
Ms. Trina Mitra, Advocates

Heard and judgement on: March 29, 2023

DEBANGSU BASAK, J.:-

1. The appeal is directed against the judgment of conviction dated December 20, 2019 and the order of sentence dated December 21, 2019 passed by the learned Additional Sessions Judge, 3rd Court, Bankura in Sessions Trial no. 05 (05) 18 arising out of Sessions Case no. 109/2018.

2. By the impugned judgment of conviction, the learned Judge convicted the appellant under Section 307 of the Indian Penal Code, 1860. By the impugned order of sentence, the learned Judge imposed a sentence of 10 years rigorous imprisonment and a fine of Rs.10,000/- and, in default, further simple imprisonment of six months.

3. The case of the prosecution at the trial was that, the appellant entered into the house of the victim, assaulted her with a sharp cutting weapon on her throat and, thereby, attempted to murder the victim on January 23, 2018 at about 14.00 hours.

4. The police received a written complaint. On the basis of the written complaint, a First Information Report was registered being Saltora Police Station F.I.R no. 03 of 2018 dated January 24, 2018 under Sections 448 /341 /354 / 326 /307 of the Indian Penal Code, 1860. On completion of the investigations, police submitted a charge sheet being Charge Sheet no. 14 of 2018 dated March 21, 2018 under Sections 448/341/354/326/307 of the Indian Penal Code,

1860 as against the appellant. The Court framed charge under Section 307 of the Indian Penal Code, 1860 against the appellant on May 19, 2018. The appellant pleaded not guilty to the charge. The appellant claimed to be tried.

5. At the trial, the prosecution examined 11 witnesses. Prosecution also relied upon various documentary and material evidences. On conclusion of the evidence of the prosecution, the appellant was examined under Section 313 of the Criminal Procedure Code when he claimed to be innocent and falsely implicated.

6. Learned advocate appearing for the appellant submits that, the written complaint was not tendered in evidence and marked as exhibit. He submits that, no Forensic Science Laboratory report was produced at the trial. Blood strain earth was not duly established. He submits that, there was shifting of the place of occurrence.

7. Learned advocate appearing for the appellant submits that, there were contradiction between the testimonies of prosecution witness nos. 1 and 6. According to prosecution

witness no. 6, the victim was sleeping in a room when the incident occurred while, the victim claimed in her evidence as P.W. 6 that, she was feeding her child.

8. Learned advocate appearing for the appellant submits that, the seizure list witnesses turned hostile. Therefore, according to him, seized articles were not established at the trial. Referring to the deposition of the prosecution witnesses, he submits that, there was actually no eye-witness to the incident apart from P.W.6, who is the victim. The claim of P.W.3, that he was an eye-witness to the incident was disbelieved by the learned trial Judge. According to him, P.W.3 was correctly disbelieved by the learned trial Judge as an eye-witness.

9. Learned advocate appearing for the appellant submits that, the charge framed as against the appellant was defective. He refers to the contents of the charge and submits that, the charge sheet claims that in furtherance of common intention, the appellant inflicted the injury on the victim. No other person was arrayed as an accused either at the stage of the

investigation or during trial for the element of common intention to come into operation. In support of his contention he relies upon **21(1982) Delhi Law Times, 127 [Dal Chand @ Dalia vs. The State]**.

10. Learned advocate appearing for the appellant submits that, the offending weapon was not adequately proved at the trial. He refers to the deposition of P.W.-3. He submits that, the nature of injury suffered does not sustain a case of attempt to murder. In support of such contention, he relies upon **AIR 1976 SC 2423 [Ishwar Singh vs. The State of Uttar Pradesh], 1984 Criminal Law Journal 29 (Sakek Sk. & Anr. Vs. The State and Ors.)** and an unreported decision of the High Court rendered in **CRA 611 of 2014 dated February 24, 2020 [Subrata Das, vs. The State of West Bengal]**.

11. Learned advocate appearing for the State refers to the injury report being Exhibit-3. He submits that, the victim, named the appellant as the assailant before the Doctor examining her.

12. Learned advocate appearing for the appellant refers to Exhibit-6, being the seizure list, by which, the offending weapon was seized on the leading statement made by the appellant.

13. Learned advocate appearing for the State submits that, coming to the nature of the injury suffered by the victim and the fact that the appellant assaulted the victim in the manner as narrated by the prosecution witnesses, the charge under Section 307 of the Indian Penal Code, 1860 as against the appellant stands proved beyond reasonable doubt. The quantum of sentence imposed by the learned trial Judge was adequate. Therefore, according to him, no interference is called for.

14. P.W.-1 is the mother-in-law of the victim. She stated that, the victim was sleeping in a room with her child at about 2 P.M. being the time of the incident. On such date, beside her and the victim who is P.W.-6, no other member of their family was present at their residence. At the relevant point of time, she was at the courtyard of the house preparing 'gul'. At that

time, P.W.-6 rushed to her with an outcry that someone assaulted her. The appellant assaulted P.W.6 by the side of her neck by a knife. On seeing the incident, she raised hue and cry and the neighbouring people rushed there. On sustaining knife injury, the victim fell down on the ground and she was immediately shifted to hospital of Saltora and, thereafter, to the Bankura Sammilani Medical College and Hospital. She narrated the incident before Court and police previously.

15. P.W.-2 is the father-in-law of the victim, P.W.-6. He stated that at the time of the incident, he was not present in the residence and that P.W.-1 and P.W. 6 were present along with the baby of the P.W.-6. He learnt about the incident from P.W.-1. He returned home at the night. He came to learn that P.W.-6 was shifted to the Bankura Sammilani Medical College and Hospital and, thereafter, he went to the hospital to see P.W.-6 and on the next date, he narrated the incident to Arun Majhi who wrote the complaint as per his instruction.

Thereafter, he submitted complaint with the police station. He put his left thumb impression on it.

16. P.W. 3 is a neighbour of the victim. He stated that, the incident took place relating to P.W. 6 on January 23, 2018 at about 2 p.m. to 2.30 p.m. At the relevant point of time, he went to bring straw for his cows when he heard a hue and cry from the house. He heard the outcry of P.W. 6 by the words “save me, save me”. He rushed to the house of the P.W. 6 and found the appellant to make a stroke on the neck of P.W. 6 by a knife. P.W. 6 got senseless and fell down on the ground on receiving injuries and the appellant ran away from the place. The villagers immediately shifted the victim to a room and thereafter took her to hospital. He identified the appellant in Court.

17. A seizure witness, deposed as P.W. 4. He stated that, he heard a hue and cry and found neighbours to enter into the house of P.W. 6. He also rushed there and found P.W. 6 lying on the ground with serious bleeding injuries. The neighbours immediately hospitalised P.W. 6. Police visited the house of

P.W. 6 and seized blood stained earth in his presence under a seizure list, which was marked as exhibit 1/1. He was declared hostile by the prosecution. On cross-examination by the prosecution, he denied the suggestions put to him. He, however, acknowledged that the police examined him.

18. P.W. 5 is another seizure list witness. He stated that, in one occasion, police visited their village and seized blood stained earth from the house of P.W. 6, where he put his signature. He identified his signature on the seizure list, which was marked as exhibit 1/2. He was declared hostile by the prosecution. On cross-examination by the prosecution, he denied the suggestions put to him on behalf of the prosecution. He stated that, he was not examined by the police in connection with the case.

19. P.W. 6 is the injured victim. She stated that, she knew the appellant. She identified the appellant in Court. She stated that, on the date of the incident at about 2 p.m., she was at her residence. P.W. 1, her mother-in-law, was also present at the residence. P.W. 1 was preparing 'gul' in the

courtyard and she was feeding her baby inside the bed room. On that time, the appellant entered into her room and caught hold of her hand and dragged her wearing saree. Appellant gave her some illegal proposal, to which she refused. She raised a hue and cry. She reached out to the courtyard where P.W. 1 was preparing 'gul'. Appellant followed her and the appellant immediately caught hold of her from back side and struck her with a knife on her neck. She immediately got senseless and fell down on the ground. After she regained her senses, she narrated the incident to the doctor. She was referred to Bankura Medical College and Hospital for treatment. She remained admitted in Bankura Medical College and Hospital for a period of time. She also narrated the incident to the police. She stated that, she recorded her statement before the learned Magistrate under Section 164 of the Code of Criminal Procedure. She put her left thumb impression on such statement.

20. P.W. 7 is the younger sister of P.W. 6. She stated that, she received information that the appellant assaulted P.W. 6

on her neck by a knife. She rushed to the hospital. She identified the appellant in Court.

21. P.W. 8 is a doctor of the Bankura Medical College and Hospital. He stated that, P.W. 6 was admitted at the emergency department of the hospital under him. He noted one cut injury on the right side of the neck of P.W. 6 measuring 15 cm long. He also found lacerated injury on the right side of the neck of the P.W. 6. He stated that, the injuries mentioned in his report and found during medical check up of the patient were sufficient to cause death of the patient. He tendered the injury report of P.W. 6 as evidence and marked as exhibit 2.

22. P.W. 9 is a doctor attached to Saltora Health Centre. He attended to P.W. 6 on January 23, 2018 at about 3.10 p.m. He stated that, on examination of P.W. 6, he found 12 cm. vertical incised injury on right side of throat and found food materials coming out and also found bleeding from that part.

23. P.W. 9 stated that, P.W. 6 told him that P.W. 6 was assaulted by the appellant at her village over throat at about

2 p.m. Necessary treatment was provided to P.W. 6 and she was referred to Bankura Medical College and Hospital for admission and treatment. P.W. 9 tendered the injury report prepared by him, which was marked as exhibit 3 at the trial.

24. P.W. 10 is the resident medical officer of Bankura Medical College and Hospital. He stated that, on January 23, 2018, P.W. 6 was admitted in the hospital along with the injury as mentioned in exhibit 2. He stated that, the injury report being exhibit 2 was written by him as per observation of the team under P.W. 8 on examination of P.W. 6 physically. He stated that the injury report was in his handwriting and he signed the same.

25. The Investigating Officer deposed as P.W. 11. He stated that, police received a written complaint. He identified the signature of the Sub-Inspector of Police in written complaint, which was marked as exhibit 4/1. The formal First Information Report was tendered in evidence and marked as exhibit 5. He narrated about the investigations. He stated that, during investigations, he visited the place of occurrence,

drew rough sketch map of the place of occurrence along with index, examined available witnesses and recorded their statement under Section 161 of the Code of Criminal Procedure, seized some soil containing blood and controlled earth from place of occurrence under seizure list in presence of witnesses. He arrested the appellant. He also seized the offending weapon being one knife on the basis of interrogation of the appellant and as per his statement. The knife was seized from one canal of Bhudhiband from Chakchakidanga as shown by the villagers. He tendered the seizure list relating to the knife, which was marked ss exhibit 6. The part of the statement on the basis of which the knife was recovered was marked as exhibit 7/1. The appellant signed the seizure list after his recovery. The statement of the accused during seizure of the offending weapon was tendered in evidence and marked as exhibit 8/1.

26. P.W.11 stated that, he forwarded the appellant to Court on January 27, 2018. P.W.6 was admitted at Saltora Hospital and thereafter referred to Bankura Medical College and

Hospital. He collected the bed-head ticket from Bankura Medical College and Hospital as well as from Saltora Hospital. He collected the statement of P.W.6 recorded under Section 164 of the Criminal Procedure Code and also of P.W.1. He tendered the rough sketch map of the place of occurrence, which was marked as Exhibit-9. He identified the appellant in Court.

27. As noted above, on conclusion of the evidence of the prosecution, the appellant was examined under Section 313 of the Criminal Procedure Code where the appellant claimed to be falsely implicated and innocent.

28. P.W.6 suffered injuries on her neck. She was initially taken to Saltora Health Centre, where, she was treated by P.W.9.

29. P.W.9, in his testimony stated that, P.W.6 was brought to him by the neighbours of P.W.6 at about 3:10 p.m. He examined the patient. P.W.6 was conscious, oriented and co-operative. He found 12 c.m. deep cut injury. The injury report

prepared by him was tendered in evidence and marked as Exhibit-3.

30. It appears from the testimony of P.W.9 that, P.W.6 suffered a deep cut injury on right side of her throat with food materials coming out.

31. Exhibit-3 refers to the nature of injury suffered by P.W.6. Exhibit-3 also refers to the fact that P.W.6 told P.W.9 that the appellant assaulted her with a sharp cutting weapon.

32. The nature of injury suffered by P.W.6 stands corroborated by Exhibit-2, which is the injury report of P.W.6 prepared at Bankura Medical College and Hospital.

33. Saltora Health Centre referred P.W.6 to Bankura Medical College and Hospital. P.W.6 was admitted at Bankura Medical College and Hospital under P.W.8. P.W.8 described the injury suffered by P.W.6. He stated that, he repaired such injury.

34. It would be apposite to set out the nature of injury suffered by P.W.6 as noted by P.W.8 which is as follows:-

“I noted one cut injury on the right side of the neck of that patient, measuring 15 cm long. I also found lacerated injury on the right side of the

neck, Cutting from about 2.5 cm, below and anterior to mastoid tip and extending downwards medially and crossing the mid line at the level just below the lower border of cricoid cartilage. Depth of laceration was maximum at the middle part and it was superficial at both ends. Skin subcutaneous tissue platysma and strap muscles were also found to be lacerated. The right lamina of thyroid cartilage was found fractured and inferior constrictor of pharynx was also found lacerated. A 4 cm long L shaped laceration was seen involving nuchal of pharynx, (Larynx Pharynx). Large vessels of neck were not injured. Wound was thoroughly cleaned with normal saline and betadine lotion.

Two minor lacerations were also found middle part of main laceration and another lower part of main laceration.”

35. P.W.8 opined that injuries as mentioned in his testimony and as found during medical check up were sufficient to cause death of the victim. Although, P.W.8 was cross-examined on behalf of the defence. No question was put to P.W.8 with regard to such opinion.

36. P.W.6 is the injured eye-witness and victim. She described the nature of assault that the appellant inflicted on her. In her testimony, she stated that, she was feeding her child in her room at her residence at about 2:00 P.M. on January 23, 2018. Appellant entered the room, and gave an indecent proposal to her, which she refused and upon such rejection, appellant dragged up her sari. She raised a hue and cry and came out to the courtyard where P.W.1 was there. P.W.1 was preparing “gul” at the courtyard. Appellant struck her on the neck with a sharp cutting weapon, whereupon, P.W.6 lost her consciousness. She regained consciousness at Saltora Hospital. She narrated the incident to the doctor treating her.

37. The fact that the appellant assaulted P.W.6 with a sharp cutting weapon was corroborated by the oral testimony of P.W.1. P.W.1 is a natural witness. She was present at her house. P.W.6, as noted above, is an injured eye-witness and victim. Both P.W.1 and P.W.6 were examined at length on

behalf of the defence. Defence could not elucidate anything favourable to it during such cross-examinations.

38. The fact that P.W.6 was conscious at the time when she was taken to Saltora Health Care Centre is corroborated by the testimony of P.W.9, the doctor who initially treated her at such centre at about 3:10 P.M.

39. The offending weapon was recovered on the leading statement made by the appellant by a seizure list being Exhibit-6. Exhibit-6 contains his signature. His leading statement recorded under Section 27 of the Evidence Act was tendered in evidence and marked as Exhibit-8/1.

40. Charge as against the appellant was framed on May 19, 2018. Charge states that in furtherance of a common intention, the appellant assaulted P.W.6. The appellant is unable to show any prejudice being caused to the appellant on the basis of the user of the word “in furtherance of common intention”. The appellant was well aware of the nature and extent of the charge he was faced with. All incriminating materials which were against the appellant, were placed to the

appellant in his examination under Section 313 of the Criminal Procedure Code.

41. In **Dal Chand @ Dalia** (supra) the Court, in the facts of that case, found, the charge against the accused there to cause prejudice to the accused in view of the serious lacuna and lapses on the part of the trial court in confronting the appellant with vital pieces of evidence on record in the examination of the accused under Section 313 of the Criminal Procedure Code. The factual scenario in the present case is different.

42. In **Ishwar Singh** (supra), the accused were found guilty under Sections 323 and 324 read with Section 149 of the Indian Penal Code, 1860. On appraisal of the evidence, the Supreme Court found that the charge was not proved as against the accused. It notes that the doctor who treated the injury, said that the fatal injury “might have been” caused by ballam and admitted on cross-examination that he did not know the difference between ‘ballam’ and ‘bhalla’. The weapon seized was not shown to the doctor.

43. In **Sadek Sk. (supra)**, the High Court, on appraisal of the evidence, did not find any evidence to infer that, there was an intention to kill the victim. In such circumstances, the conviction of the accused under Section 307/34 was converted into a conviction under Section 324/34 of the Indian Penal Code.

44. P.W.6, the injured victim, received 12 cm. cut injury on her throat with food materials coming out therefrom along with her bleeding.

45. P.W.8, who repaired such injury on P.W.6 at the Bankura Medical College and Hospital, stated in his testimony that, the injuries found on P.W.6 were sufficient cause the death of the patient. Such opinion of P.W.8 was not assailed during cross-examination by the defence of P.W.8. P.W.6 survived the injuries suffered by her. The injuries were of grievous hurt and were capable of causing death to a person in ordinary course of nature. The appellant was the assailant inflicting

the injuries on P.W. 6. Prior to the appellant inflicting the injuries, appellant gave an indecent proposal to P.W.6 which she refused. Therefore, the prosecution established at the trial that the appellant assaulted P.W.6 in an attempt to murder her.

46. Therefore, in the facts of the present case, there are sufficient materials on record to sustain the charge under Section 307 of the Indian Penal Code, 1860 as against the appellant.

47. In ***Subrata Das (supra)*** the Court considered the nature of injury inflicted on the victim. On appraisal of the evidence, the Court found that the injury inflicted came within the purview of Section 325 and not Section 307 of the Indian Penal Code, 1860.

48. On appraisal of the evidence led by the prosecution at the trial, we find no contradiction between the testimonies of P.W.1 and 6. P.W.1 stated that, P.W.6 was in her room sleeping. P.W.6 stated that, she was in the room feeding her child. The crucial fact is the location of P.W.6 at the time of

commencement of the incident. P.W.6 was located inside her room and such fact stand corroborated by the oral testimonies of P.W.1 and 6. Therefore, it cannot be said that, there was any material contradictions in the testimonies of P.W.1 and 6.

49. Bloodstained earth was seized by the police. However, in the facts and circumstances of the present case, we can keep aside the bloodstained earth and the Forensic Science Laboratory reports, as the quality of the ocular evidence corroborated by the medical evidence on record, conclusively sustains a charge under Section 307 of the Indian Penal code, 1860, as against the appellant.

50. The absence of the written complaint being marked as an Exhibit is of no moment in the facts and circumstances of the present case. Police registered a First Information Report, investigated thereon and submitted a charge sheet. P.W.2, who lodged the written complaint, stated that, he put his left thumb impression on the written complaint. He also identified the scribe of the written complaint. P.W.11 is the Investigating Officer, who received the written complaint from P.W.2. In his

testimony, he stated that, he received such written complaint from P.W.2. He drew the First Information Report on the basis of such written complaint. The endorsement of P.W.11 on the body of the written complaint was tendered in evidence and marked as Exhibit-4/1. Receipt of the written complaint is acknowledged by P.W.11. Police acted on the written complaint by registering the formal First Information Report. Therefore, in the facts and circumstances of the present case, existence of the written complaint was established, on the basis of which, police acted.

51. In such circumstances, we find no reason to interfere with the impugned judgment of conviction and the order of sentence. We uphold the same.

52. CRA 128 of 2020 is **dismissed**.

53. Period of detention of the appellant pre-trial, post-trial and during the pendency of the appeal be set off against the substantive sentence awarded.

54. A copy of this judgment and order along with the trial court records be transmitted to the appropriate Court forthwith.

55. Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Debangsu Basak, J.)

56. I Agree.

(Md. Shabbar Rashidi, J.)