

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 190 of 2004

Sk. Rabbul & Ors.

-Vs-

The State of West Bengal

For the Appellants : Mr. Sujoy Sarkar
Mr. Rahul Chachan

For the State : Mr. Joydeep Roy
Ms. Sujata Das

Heard on : 01.08.2023, 04.08.2023, 11.12.2023

Judgment on : 13.12.2023.

Ananya Bandyopadhyay, J.:-

1. This appeal is preferred against the judgment and order dated 23rd February, 2004 passed by the Learned Additional District and Sessions Judge, 3rd Fast Track Court, Malda in Sessions Case No. 137 of 2001 and Sessions Trial No. 1(4) of 2003 (arising out of G.R. Case No. 936 of 1997 – State vs. Sk. Rabbul & Ors.) convicting the appellants under Sections 342/34 of the Indian Penal Code and under Sections 323/34 of the Indian Penal Code and sentencing the appellants therein to suffer rigorous imprisonment for one year with fine of Rs. 250/- in default to suffer imprisonment of two months.
2. The prosecution case originated on the basis of a complaint which inter alia stated that on 21.07.1997 at about 3 p.m. a conflict took place between Nur

Alam and his sister-in-law Sahanura. Due to a grudge the accused persons caught hold of Nur Alam on the way and started assaulting him with lathi and fastening napkin on the throat they started dragging him. When he got suffocated, they left him to fall and the villagers released him. The above mentioned accused persons again took him to their house and they assaulted him severely inside the room. Then they made him stand on the floor of the room and fastening his throat with rope they hang him from the beam of ceiling of the room. The villagers again saved him from death. After that the complaint saw that his son sustained bruise marks of rope on the throat and there were bleeding injury on the head due to assault by lathi.

3. On the basis of the said written complaint lodged by the de-facto complainant i.e. Raisuddin, police started Harishchandrapur Police Station Case No. 77/1997 dated 21.07.1997 for the offence punishable under Sections 342/325/307/34 of the Indian Penal Code, 1860, being G.R. No. 936 of 1997.
4. After the completion of the Investigation police filed charge-sheet under Sections 342/325/307/34 of the Indian Penal Code against the appellants. The Learned Sub-Divisional Judicial Magistrate, Malda committed the said case to the Learned Sessions Judge, Malda for trial. After that the charge has been framed under Sections 342/34, 325/34 and under Sections 307/34 of the Indian Penal Code.
5. The charges were read over and explained to the accused person to which they pleaded not guilty and claimed to be tried.

6. To prove the charges against the accused person the prosecution examined 11 witnesses and exhibited certain documents and defence adduced 1 witness.

7. The Learned Advocate for the appellant submitted that:-

- i. The Learned Judge ought to have disbelieved the PW-3, PW-5 & PW-6 who were in close relation of the injured person and as such their evidences are not admissible under Section 32(1) of the Indian Evidence Act as there were neither circumstances of wrongful confinement of the injured or assault by the appellants to constitute an offence punishable under Section 342 of the Indian Penal Code.
- ii. The Learned Judge ought to have disbelieved the PW-9 Nur Alam Badsha who was convicted for life on account of murder of his first wife and after murder of his first wife, Nur Alam, PW-9 married the sister of the appellants herein and the dispute took place due to assault of the sister of the appellants by Nur Alam, PW-9.
- iii. The prosecution could not establish evidence of wrongful confinement of Nur Alam Badsha by the appellants and as such the Learned Judge should not have held that the injured, namely Nur Alam was restrained and confined wrongfully in a room by three accused persons as also an incident of assault by the appellants under Sections 342/34 and Sections 323/34 of the Indian Penal Code.

- iv. The Learned Judge should not have disbelieved the D.W.1, Soven Bibi, the wife of the injured Nur Alam who was examined as D.W.1 where she had categorically stated that her husband Nur Alam took her to her father's house assaulting her brothers, the appellant herein tried to save her by restraining her husband, Nur Alam for this reason a false case was instituted against her brothers, the appellants herein.
- v. The Learned Judge over-looked contradiction of the evidence of the prosecution witnesses which were significant and most fatal to the prosecution case.
- vi. The Learned Judge illegally disbelieved the defence arguments that the place of occurrence as stated in the First Information Report and the other witnesses differed from the evidence of Nur Alam, PW-9.
- vii. Neither the maker of the alleged First Information Report nor the scribe was examined during the trial according to Section 114(4) of the Indian Evidence Act there was no evidentiary value of such alleged First Information Report.
- viii. The charges framed by the Learned Trial Judge as also the examination of the accused/appellants under Section 313 of the Cr.P.C. suffer from incurable illegality resulting in prejudice to the appellants.
- ix. The impugned conviction and sentence was otherwise bad in law and liable to be set aside.

8. The Learned Advocate for the State submitted that on the basis of the evidence of independent witnesses with the corroborative medical report the prosecution had been successful in proving its case and as such the appeal shall be dismissed.
9. A circumspection of the prosecution witnesses revealed as follows:-
 - i. PW-1 stated that he was familiar with the individuals accused. He also asserted his acquaintance with the victim, Nur Alam. The purported incident asserted to have occurred six years ago at 3 pm. Additionally, he conveyed witnessing the accused individuals physically assaulting the victim using a bamboo stick. He affirmed observing the accused individuals fastening a napkin around the victim's neck and forcefully bringing him to their residence.
 - ii. During the cross-examination, PW-1 affirmed cohabiting in the vicinity as the accused individuals. He specified that the victim married the sister of one of the accused persons. He was unable to authenticate whether the victim was engaged in physically harming the sister of the accused individual. He alleged witnessing the accused persons striking the victim approximately 10 to 12 times across his body, resulting in swelling without any outward bleeding. One of the accused individuals was purportedly in possession of a bamboo stick at the time of the incident. Despite attempts to intervene and restrain the situation, PW-1 was unsuccessful and incurred an injury on his finger.

- iii. PW-2 affirmed his familiarity with the accused individuals and acknowledged his acquaintance with the victim. He attested to acquire knowledge of the purported incident that occurred at 3 pm. According to his statement, he witnessed the accused individuals assaulting the victim, grasping his neck with a 'gamcha.' Subsequently, they transported the victim to their residence and confined him in a room, securing him with a tied rope. Consequently, PW-2 reported the incident to the local police station. Following this, the Investigating Officer, in the presence of PW-2, confiscated a rope, which PW-2 endorsed by providing his L.T.I. on the seizure list.
- iv. In the course of cross-examination, PW-2 clarified that the victim was his cousin. Witnessing the alleged incident, PW-2 promptly notified the police, who arrived at the scene at 4:30 pm.
- v. PW-3 affirmed his acquaintance with the accused individuals and his acquaintance with the victim. He acknowledged his awareness of the alleged incident that transpired approximately 5 to 6 years ago at 3 pm in Kubiamore, Santoshpur. According to his account, he witnessed accused Rabiul gripping the victim's neck with a napkin while the other two accused, Hasibul and Rabbul, physically assaulted the victim using a bamboo stick. Subsequently, they transported the victim to their residence. However, PW-3 lacked knowledge concerning the events that unfolded within the confines of the accused persons' home.

- vi. During the cross-examination, PW-3 disclosed that the victim had previously been incarcerated at Baharampur Jail following a conviction for the murder of his first wife approximately a year prior. The victim's conviction occurred at the Malda Court. Furthermore, PW-3 delineated that the victim had entered into a second marriage with the sister of one of the accused individuals. The altercation arose allegedly due to the victim's purported assault on the sister of the accused individual, as per the assertions of the accused persons.
- vii. PW-3 attested to have witnessed two of the accused individuals repeatedly striking the victim with a bamboo stick, causing substantial bleeding injuries, reportedly around 10 to 20 times. Subsequently, PW-3 claimed to have heard that the police arrived and transported the victim to the hospital. Notably, PW-3 stated that no one was present at the scene during the time of the incident.
- viii. PW-4 affirmed her acquaintance with the accused individuals as well as her familiarity with the victim. She acknowledged awareness of the alleged incident that occurred approximately 5 to 6 years ago at 3 pm in Kubiamore. She recounted that two of the accused individuals restrained the victim's neck with a napkin while another accused person, Rabiul, purportedly assaulted the victim using a bamboo stick. Subsequently, the accused individuals forcibly took the victim to their residence.
- ix. During the cross-examination, PW-4 clarified that the victim was not a relative but a fellow resident in the village. On the day of the

incident, the victim's wife was present at the residence of the accused individuals. PW-4 professed ignorance regarding the underlying cause that led to the incident. He observed one of the accused individuals wielding a bamboo stick. As a result of the assault, the victim suffered swelling in his limbs, an observation made upon the victim's return from the hospital.

- x. PW-5 affirmed his acquaintance with the accused individuals as well as his familiarity with the victim. He asserted knowledge of the alleged incident that occurred approximately 5 to 6 years ago at 3:30 pm. As he was returning home from the field along Kubiapara road, he encountered a crowd witnessing the situation. The crowd informed PW-5 that the accused individuals had taken the victim to their residence. Subsequently, PW-5 proceeded to the house of one of the accused individuals, Rabbul, where he observed the victim confined within a room, locked behind a door. Peering through a window, PW-5 witnessed the victim with a rope fastened around his neck, while two accused individuals were purportedly assaulting him. In response, PW-5 urged the accused individuals to release the victim, which led to the victim being freed from their residence.
- xi. During the cross examination, PW-5 mentioned a preceding disturbance between the victim and his wife, who happened to be the sister of one of the accused persons. Additionally, PW-5 clarified that he resided in close proximity to the victim, being a neighbor.

- xii. PW-6, identifying herself as the mother of the victim, asserted that the incident transpired six years ago in Kubiapara. She narrated that a discord between her son and his wife led to the wife leaving their residence. Subsequently, when her son went to retrieve his wife, the accused individuals purportedly assaulted him. Rabiul allegedly used a bamboo stick to assault her son, while Hasibul reportedly hung the victim with a rope within their residence. Following this, Rabiul and Rabbul allegedly continued to physically assault the victim with a bamboo.
- xiii. During the cross-examination, PW-6 clarified that she did not pursue an appeal against her son's prior conviction. She mentioned that the victim had supposedly assaulted his wife around 7 to 8 am on the day of the incident. She visited the house of the accused individuals where her son was held captive around 4 pm. There, she witnessed her son restrained and being subjected to physical assault. Her son had sustained bleeding injuries and had lost consciousness. The victim's garments were purportedly soaked in blood due to the severity of the assault, although the police did not seize these garments.
- xiv. PW-7 confirmed his acquaintance with both the accused individuals and the victim. He acknowledged being aware of the purported incident that occurred approximately 5 to 6 years ago at 3 pm. PW-7 recounted hearing about the victim's confinement at the house of one of the accused persons, prompting him to visit the location where he witnessed the victim in a tied-up state.

- xv. During the cross-examination, PW-7 admitted to providing his statement to the police approximately 5 to 6 days after the incident date.
- xvi. PW-8, assigned as the O.C. at Harishchandrapur police station on 21.7.97, at 20:05 hrs, received a written complaint lodged by an individual named Raisuddin against the accused persons. Subsequently, he formally registered the complaint under case number 77/97 dated 21.7.97 and delegated it for investigation to PW-11. The document recording the initial complaint was marked as Ext. 1, while the endorsement verifying the written complaint was documented as Ext. 2/1.
- xvii. PW-9, the victim, was serving a prison sentence at Baharampur Central Jail concerning S.C.113/97 in the court of Addl. Sessions Judge II, Malda. On 29.7.1997, an altercation occurred between PW-9 and his brother-in-laws, namely Rabiul, Hasibul, and Rabbul. The dispute arose due to an argument with his wife, leading to physical assault by his brother-in-laws. They restrained him using a 'gamcha' around his neck, tied his hands, and proceeded to beat his legs with a stick. Subsequently, they suspended him from a bamboo beam within the accused persons' residence. Upon police intervention, PW-9 was untied, taken to the police station, and subsequently admitted to Harishchandra Hospital, where he remained hospitalized for eight days.

- xviii. During the cross-examination, PW-9 disclosed that he had previously been convicted for a ten-year term in connection with the murder of his first wife. Following his first wife's demise, PW-9 entered into a marriage with his second wife. On the day in question, he visited the accused persons' residence to retrieve his wife. However, his wife declined to accompany him, subsequently heading to the police station to file a complaint against him, an action PW-9 attempted to obstruct. The refusal and ensuing disagreement led to a physical altercation. Furthermore, PW-9 notified the hospital staff about the identities of his assailants.
- xix. PW-10, serving as the M/O at Harishchandrapur Rural Hospital on 21.7.97, conducted an examination of the victim. Upon examination, he found *“abrasion over neck extending from post border of sterno masteroid muscle to the post border of the other side. Breadth of abrasion is about ½ inch and direction is backward and very slightly upwards. Laceration injury of lt. sine bone and scalp. Pt. refd. To Malda for special opinion and treatment”*. The report was marked as Ext. 3. However, PW-10 clarified that he did not possess a personal opinion regarding the cause of the injury or whether it indicated strangulation by a rope.
- xx. PW-11, serving as the S.I. of police at Harishchandrapur Police Station on 21.7.1997, was assigned case no. 77/97 dated 21.7.97 for investigation by PW-8. Subsequently, upon PW-8's visit to the location of the incident, the victim, found with his limbs restrained, was

rescued and promptly taken to Harishchandrapur Hospital for medical care. Following this, PW-11 revisited the site and created a sketch map denoted as Ext. 4. He purportedly seized two cords used in tying up the victim on the bamboo, documented in the seizure list as Ext. 5. PW-11 further indicated recording witness statements under Section 161 of the Cr.P.C., arresting two accused individuals, Sk. Rabbul and Sk. Hasibul, and procuring the victim's medical report from the hospital. Subsequently, he sought guidance from a superior officer and filed the F.I.R. against the accused persons.

- xxi. However, during cross-examination, PW-11 contradicted aspects of his initial testimony, refuting any mention of seizing cords utilized to restrain the victim. Additionally, he claimed not to have conducted an examination of the victim's wife.
- xxii. DW-1, identified as the wife of the victim, mentioned that her husband had a previous conviction for murder and subsequently married her after the demise of his first wife. According to DW-1, her brothers are the accused individuals in this instant case. She asserted that the victim assaulted her, prompting her brothers to intervene by restraining her husband, intending to protect her. DW-1 further alleged that the victim bribed the police and falsely accused her brothers by filing a fabricated case against them.
- xxiii. During cross-examination, DW-1 acknowledged her awareness of her husband's prior conviction for the murder of his first wife. However, she denied specific details presented earlier, such as the victim being

tied up and assaulted by her brothers. Additionally, DW-1 refuted the claim that the police recovered her husband in a tied-up position.

10. Section 342 of the Indian Penal Code states as follows:

“342. Punishment for wrongful confinement. - *Whoever wrongfully confines any person shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.*”

11. Section 323 of the Indian Penal Code states as follows:

“323. Punishment for voluntarily causing hurt.—*Whoever, except in the case provided for by section 334, voluntarily causes hurt, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.*”

12. On 21.07.1997 at about 3.00 p.m. a quarrel took place between Nur Alam and the appellants. Thereafter that appellants assaulted Nur Alam with lathi. After that they fastened the napkin around the neck of Nur Alam. The villagers came and rescued him. Subsequently, Nur Alam was taken to the house of the appellant forcibly by appellants. Thereafter the appellants tried to hang him.

13. As per the First Information Report two places of occurrence had been mentioned. Police also investigated two places and also prepared two rough sketch maps of the place of occurrences.

14. As per the evidence of the prosecutions certain witnesses stated that the incident took place on the road and certain witnesses stated that the incident took place in the house of the appellants.
15. The extract of the complaint and the evidence of PW-6, PW-9 stated that the victim had sustained bleeding injury, but expert opinion of the doctor (PW-10) said that the victim sustained simple injury.
16. As per the evidence of the PW-5 that he requested the appellants to release the victim. On his request appellants released the victim but as per PW-11 he went to the spot and recovered the victim from the clutch of the appellants.
17. As per the evidence of the PW-6, mother of the victim admitted that her son namely Nur Alam (victim) had assaulted his wife namely Sovena Bibi and PW-9 also admitted the same fact.
18. The appellants' sister namely Sovena Bibi married with the victim namely Nur Alam. On the fateful day Nur Alam assaulted Sovena Bibi. Then Sovena Bibi came to the appellants' house to take shelter. Thereafter appellants want to file a case against Nur Alam for torturing their sister. At that time Nur Alam came to the house of the appellants and tried to create pressure upon the appellant's sister not to file any case against him. But the appellants' sister was rigid to file a complaint against Nur Alam. At that time Nur Alam started assaulting the appellants' sister. Then the appellants tried to rescue their sister from the clutch of Nur Alam and due to such scuffling both sustained simple injury.
19. The prosecution had miserably failed to prove the place of occurrence.

20. The prosecution from its very beginning tried to establish that the victim had sustained bleeding injury but the expert opinion stated it was a simple injury. It is trite law if the evidence of the prosecution witnesses is totally inconsistent with the medical evidence being a fundamental defect in the prosecution case unless the inconsistency is reasonably explained it is sufficient not only to discredit the evidence but the entire case.
21. There are contradictions in the evidence of the prosecution witnesses with regard to the place of confinement as well as the nature of injury inflicted. The evidence of the prosecution witnesses did corroborate with the medical report. The prosecution has failed to establish its case beyond reasonable doubt.
22. In view of the above discussions, the prosecution cannot be said to have proved its case beyond reasonable doubt and accordingly the instant criminal appeal is allowed.
23. In view of the above discussions, the judgment and order dated 23rd February, 2004 passed by the Learned Additional District and Sessions Judge, 3rd Fast Track Court, Malda in Sessions Case No. 137 of 2001 and Sessions Trial No. 1(4) of 2003 (arising out of G.R. Case No. 936 of 1997 – State vs. Sk. Rabbul & Ors.) convicting the appellants under Sections 342/34 of the Indian Penal Code and under Sections 323/34 of the Indian Penal Code and sentencing the appellants therein to suffer rigorous imprisonment for one year with fine of Rs. 250/- in default simply imprisonment of two months is set aside.

24. Accordingly, the instant criminal appeal being CRA 190 of 2004 stands disposed of.

25. There is no order as to cost.

26. Lower court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.

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

(Ananya Bandyopadhyay, J.)