

IN THE HIGH COURT AT CALCUTTA
(CRIMINAL APPELLATE JURISDICTION)

PRESENT:

THE HON'BLE JUSTICE SIDDHARTHA ROY CHOWDHURY

C.R.A. 147 of 2020
With
IA. No. CRAN 1 of 2020 (Old No. CRAN 4793 of 2020)
+
IA. No. CRAN 2 of 2020 (Old No. CRAN 4794 of 2020)

SERAFAT KHAN & ORS.
VS
THE STATE OF WEST BENGAL

For the Appellants	: Mr. Sekhar Kumar Basu, Sr. Adv. Mr. Antarikshya Basu, Adv. Mr. Sayan Mukherjee, Adv. Ms. Madhumita Basak, Adv.
For the State	: Mr. Madhusudan Sur, Adv. Mr. Dipankar Paramanick, Adv.
Heard on	: 17.03.2023, 28.04.2023, 05.05.2023 & 15.05.2023
Judgement on	: 16 th May, 2023

Siddhartha Roy Chowdhury, J.:

1. This appeal challenges the judgement and order of conviction passed by the learned 1st Court of Additional District & Sessions Judge, Bankura in S.C. 10 (06) 2016 corresponding to Bankura Sadar P.S. Case No. 342 of 2015 dated 10th September, 2015. By the impugned order, the learned Trial Court recorded an order of conviction against seven accused persons and directed them to suffer rigorous imprisonment for five years for committing the offence under Sections

326/ 149 of the Indian Penal Code and to pay fine of Rs.10,000/- with default clause subject to Section 428 of the Cr.P.C.

2. Briefly stated, Smt. Bula @ Bulbul Gorai on 17th August, 2015 filed a petition of complaint before the learned Chief Judicial Magistrate, Bankura stating inter alia, that on 24th June, 2015 cattle owned by Enarul Khan caused damage to brinjal plantation of her brother-in-law, Mahadeb Gorai. Mahadeb took the cows and tied them. At about 4 p.m. the accused persons forming an unlawful assembly, armed with lathi, iron rod, tangi invaded the house of the informant and started assaulting them physically. Even they did not hesitate to outrage the modesty of the mother-in-law and sister-in-law of the complainant. Mahadeb Gorai was assaulted by the accused persons and he sustained injuries on his two legs, right hand. He lost consciousness and he was dragged outside the house by the accused persons.
3. Bankura Police Station was informed. Soon thereafter police rescued the victim and took him to Bankura Sammilani Medical College & Hospital. He was referred to S.S.K.M. Hospital by the doctors. The complainant further explained the delay caused as they were busy with the treatment of Mahadeb Gorai.
4. Learned Chief Judicial Magistrate, Bankura forwarded the petition of complaint under Section 156(3) of the Code of Criminal Procedure to the jurisdictional police station and Bankura Police Station Case No.342 of 2015 was registered on 10th September, 2015.
5. The accused persons stood the trial pleading innocence to the charges brought against them under Sections 147/148/149/326/307 of the Indian Penal Code.

6. The prosecution, in order to crown the success, examined as many as nine witnesses. Fakruddin Middya @ Mabruddin adduced evidence as D.W.1. The learned Trial Court after considering the evidence, both oral and documentary, was pleased to pass the impugned judgment.
7. Impeaching the said judgment, Mr. Sekhar Kumar Basu, learned senior counsel appearing for the appellant ably assisted by Mr. Antarikshya Basu, learned advocate submits that the learned Trial Court passed the impugned judgment upon absolute misreading of evidence on record.
8. The incident, according to Mr. Basu, admittedly took place on 24th June, 2015, police was informed, as claimed by the de facto complainant, soon after the alleged incident and police rescued the victim. Victim was taken to Bankura Sammilani Medical College & Hospital, where he was admitted as indoor patient.
9. P.W. 1, Dr. Chinmoy Biswas attended the victim on 15th July, 2015. Ext. 1 is the bed-head ticket and Exhibit-2 is the emergency outdoor ticket of the patient. These documents belie the claim of the de facto complainant that on the date of alleged incident the victim was taken to hospital by police. There is even no document other than Exhibits-1 and 2 to substantiate such claim.
10. It is further adverted by Mr. Basu that the victim Mahadeb Gorai was produced before the doctor from the correctional home with injuries on 15th July, 2015. This evidence is sufficient to hold that Mahadeb did not sustain any injury on 24th June, 2015, as claimed by the de facto complainant, P.W.2 as well as by Mahadeb Gorai, P.W.7.

11. P.W. 7 during cross-examination stated that Nilufa Khatun died an unnatural death and Fakruddin Middya @ Mabruddin, who is one of the accused persons, informed the police about such unnatural death of Nilufa Khatun. The Investigating Officer of this case P.W. 9 in course of investigation did not collect any document to show that police rescued Mahadeb and got him admitted to the hospital.
12. Drawing my attention to the oral testimony of Fakruddin Middya @ Mabruddin as D.W.1, Mr. Basu adverted that Fakruddin Middya @ Mabruddin set the criminal proceeding in S.C. 23 (11) 2016 by informing the police about the death of Nilufa Khatun. The case was registered against Mahadeb Gorai, Sadhu Gorai, Shankar Gorai, Krishna Gorai and Baul Gorai, which was registered as Bankura P.S. Case No.269 of 2015 dated 24th June, 2015.
13. The present case, according to Mr. Basu suffers from serious infirmities. May be the victim P.W. 7 sustained fracture injuries, as found by the doctor, P.W.1 on 15th July, 2015, when he was brought to the doctor from the Bankura Correctional Home. But there is no document to show he sustained injuries on 24th June, 2015 and was admitted to hospital.
14. Mr. Madhusudan Sur, learned counsel for the State with all fairness submits that there is delay of 50 days in filing the case and such delay has been duly explained by the informant but Mr. Sur could not satisfy the Court about the yawning gap between the date of alleged incident of 24th June, 2015 and date of examination of the victim by Dr. Chinmoy Biswas on 15th July, 2015 when he was produced from Bankura Correctional Home with fracture of Fibula on his right leg, head injury.

15. If the victim was assaulted on 24th June, 2015, how could he be made to suffer such injuries till 15th July, 2015 i.e. almost 21 days without any treatment? He was produced from the correctional home and there is no explanation as to how he was made to endure the trauma of fracture and head injury for such a long period without treatment. This factum alone shrouds the case of prosecution with dense shadow of suspicion. In my humble opinion, failure on the part of the prosecution to explain this yawning gap between 24th June, 2015 and 15th July, 2015 makes the prosecution case absolutely doubtful and at the same time, paves the avenue for the accused persons to have an order of acquittal. I do not find any observation of learned Trial Court regarding this time gap.
16. According to P.W.2 Bulu Gorai, after incident police was informed over phone. Police rescued Mahadeb from the house of Enarul. But according to P.W.9, S.I. Pranabesh Mahato, the I.O., the victim was taken from his house to hospital. He did not find any document to substantiate the claim of P.W.2 that she along with her family members went to Bankura Police Station on 24th June, 2015. No document is forthcoming to show that the victim was taken to hospital on 24th June, 2015. Exhibit-4 shows on 15th July, 2015 the patient was attended by doctors of Bankura Sammilani and Exhibit-3 contains the endorsement of Superintendent Bankura District Correctional Home dated 15th July, 2015 requesting the E.M.O., B.S.M.C.H. for urgent admission and treatment. The doctor found fracture on right hand of the patient and one lacerated injury on head. There is a carbon impression of a note of Medical Officer, Bankukra District Correctional Home on Exhibit-3,

indicating that the man was in B.S.M.C.H. from 24th June, 2015 to 15th July, 2015. If that be so then why again he was referred to hospital on 15th July, 2015, is a question that remains without answer.

17. In my opinion, the impugned judgment suffers from serious infirmity and should not be allowed to remain in force and should be set aside, which I accordingly, do.
18. Consequently, the appeal succeeds. The impugned judgment and order of conviction passed by the learned Trial Court is set aside. The accused persons be set at liberty and be released from bail bonds upon execution of bond under Section 437A of the Code of Criminal Procedure for six months.
19. In view of the above, all the connected applications stand disposed of.
20. Copy of the judgment be sent down to the learned Trial Court along with Lower Court Records for information and necessary action.
21. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(SIDDHARTHA ROY CHOWDHURY, J.)