

IN THE HIGH COURT AT CALCUTTA
(CRIMINAL APPELLATE JURISDICTION)

PRESENT:

THE HON'BLE JUSTICE SIDDHARTHA ROY CHOWDHURY

CRA 165 of 2020

MAKUL SK. @ MAHABULLA
VS.
THE STATE OF WEST BENGAL

For the Appellant	: Mr. Tapan Dutta Gupta, Adv. Mr. Parvej Anam, Adv.
For the State	: Mr. Avishek Sinha, Adv.
Hearing concluded on	: 10 th May, 2023
Judgement on	: 10 th May, 2023

Siddhartha Roy Chowdhury, J.:

1. This criminal appeal challenges the judgment and order of conviction passed by the learned Additional District & Sessions Judge, 4th Court, Malda in Sessions Case No. 138 of 2019 arising out of Englishbazar P.S. Case No. 23 of 2019 dated 6th January, 2019.
2. Briefly stated, on 6th January, 2019, Aloka Karmakar informed the Inspector-in-Charge of Englishbazar Police Station that her son Milon Karmakar lent Rs. 100/- to Makul Sk @ Mahabulla, her neighbour. On 5th January, 2019 in the evening Milon Karmakar, son of the informant asked the accused person to pay back the money he had borrowed, when he was attacked on the ground of Kumarpur village at about 6-00 p.m. The accused person stabbed her son and made him suffer bleeding injury near his arm-pit. He was brought to home

and from there he was taken to Malda Medical College & Hospital. The information since disclosed offence cognizable in nature Englishbazar P.S. Case No. 23 of 2019 was registered on 6th January, 2019. Police took up investigation which culminated in the submission of charge sheet against the accused person under Sections 341/324/326/307 of the Indian Penal Code.

3. The accused person stood the trial pleading his innocent to the charges. In order to crown success prosecution examined 10 witnesses.
4. Learned trial court after considering the evidence on record was pleased to hold the accused person guilty to the charge under Section 326 and 307 of the Indian Penal Code and was pleased to direct him to suffer imprisonment for five years for committing offence under Section 326 of the Indian Penal Code and to pay fine of Rs. 5,000/- and imprisonment for seven years and to pay fine of Rs. 10,000/- for the offence committed under Section 307 of the I.P.C. Impeaching the judgment Mr. Dutta Gupta, learned Counsel, representing the appellant submits that the impugned judgment was passed by the learned trial court absolutely on misreading of the evidence. Prosecution did not examine those persons before whom the money was allegedly lent by the victim. Babu Sk, Anwar Sk and Muslim Sk were withheld by the prosecution but the learned trial court did not draw adverse presumption in the light of illustration (g) of Section 114 of the Evidence Act.
5. It is further submitted that in course of investigation offending weapon was not recovered and produced before the learned trial

court. The victim did not disclose the name of the assailant before the attending doctor or before the head of department who adduced evidence as PW-7.

6. Out of 10 witnesses, examined by the prosecution, three witnesses who allegedly were present when the incident took place did not support the prosecution case. They were examined in the light of Section 154 of the Evidence Act but nothing came out to the help of the prosecution.
7. It is further submitted, drawing my attention of testimony of PW-9, by Mr. Dutta Gupta that the I.O. in course of investigation not only failed to recover the weapon of assault he did not even seize blood stained earth.
8. It is further submitted that even the I.O. did not take the pains to see the injury allegedly sustained by the victim before submitting the charge-sheet.
9. It is further submitted that PW-1, the victim is not getting support from any other prosecution witnesses. Therefore, learned trial court had no reason to record the order of conviction solely on the basis of the uncorroborated testimony of the victim of PW-1. According to Mr. Dutta Gupta prosecution case cannot be said to have been proved beyond reasonable doubt because of the aforesaid lacunae.
10. Refuting uch contentions of Mr. Dutta Gupta, learned counsel for the appellant, Mr. Sinha, learned Counsel representing the State submits that testimony of PW-1 is getting support from the testimony of PW-10, Dr. Chandan Kr. Jha who attended the victim on 5th

January, 2019 at Malda Medical College & Hospital in the emergency Operation Theatre.

11. The patient was brought to the Hospital with a bandage at the left side of the chest below Exila. Removing the bandage, the doctor found profuse bleeding from arteries. According to Mr. Sinha, the testimony of PW-1 is getting support from the testimony of PW-10, the attending doctor. Therefore, learned trial court rightly recorded the order of conviction. There is nothing to impeach the credibility of PW-1 who has thoroughly been cross-examined by the defence counsel. It is further adverted by Mr. Sinha that PW-2 also lent support to PW-1. PW-2 narrated what she was told by the victim, immediately after Milon was brought to his house from the place of occurrence.
12. I have perused the testimony of the victim, PW-1, it is rightly submitted by Mr. Sinha that there is nothing to impeach the credibility of the injured witness. He has stood the test of cross-examination. Even, I do not find any cross-examination on the point that he was assaulted by the accused person with a knife. PW-1 is getting support from the testimony of PW-10, who attended the victim immediately after the incident at Malda Medical College & Hospital and he opined that the victim was produced before him with bleeding injury from the arteries. According to PW-10 since it was the vascular injuries, it was severe in nature and it could have brought death to the injured.
13. The doctor further stated that sharp edged weapon was responsible for such injury, Exbt.3 is the injury report.

14. It is true that the I.O. as PW-9 admitted that he did not collect the blood stained earth nor did he produce the weapon of assailant. But such lapses on part of the Investigating Officer, in my humble opinion, do not over-shadow the testimony of PW-1. The victim PW-1, as correctly pointed out by Mr. Dutta Gupta did not disclose the name of assailant to the attending doctor PW-10. But such non-disclosure of the name of assailant before the attending doctor is not sufficient to throw the prosecution case overboard. The injured witness had no reason to implicate an innocent person and shield the real assailant. Though PW- 3, PW-4 and PW-6 turned hostile but that cannot be a reason to disbelieve the testimony of PW-1. Law does not demand any particular number of witnesses to be examined to prove the charge. Section 134 of the Evidence Act says:-

“No particular number of witness shall in any case be required for the proof of any fact.”

15. I do not find any reason to disbelieve the prosecution case. There is a ring of truth in the testimony of PW-1. Exhibit 3 coupled with testimony of PW-10 instill further confidence. Therefore, the opinion of doctor that the vascular injuries could have caused the death of the victim is sufficient to justify the order of conviction under Section 307 of the Penal Code.

16. According to PW-2 her son narrated the incident to her, while PW-1 said that he remained senseless till 2.30 a.m. This apparent discrepancy however, does not have the potential to strike at the root of the prosecution case. I do not find any reason to interfere with the impugned judgment.

17. The appellants are directed to surrender the jurisdiction of learned trial court to serve out the sentence within two weeks from date.
18. It is submitted by Mr. Dutta Gupta, appellant does not have criminal antecedent. He is a young man, at the time of incident he was aged about 23 years. He has long way to go. Considering the surrounding circumstances the sentencing in part may be interfered with.
19. Considering the age of the appellant, his antecedent, I am of the view that the ends of justice would be met if the convict sentenced to suffer imprisonment for five years for committing the offence under Section 307 of the Indian Penal Code instead of 7 years subject to Section 428 of the Code of Criminal Procedure. Rest part of the order shall remain unaltered. Appellant is directed to surrender before the learned trial court within four weeks from date to serve out the sentence, failing which learned trial court shall take necessary step under the law.
20. Thus, the appeal is allowed in part.
21. Let a copy of the judgment along with LCR be sent down to the trial court forthwith.
22. Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis.

(SIDDHARTHA ROY CHOWDHURY, J.)