

IN THE HIGH COURT AT CALCUTTA
Criminal Miscellaneous Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

CRA 191 of 2021

Sk. Jiaruddin @ Jiar

Vs.

The State of West Bengal

For the Appellant : Mr. Saryati Datta, Adv.
Mr. Sanjib Kumar Dan, Adv.
Mr. Chitrak Biswas, Adv.

For the State : Mr. Neguive Ahmed, Ld. APP
Ms. Amita Gaur, Adv.

Hearing Concluded on : January 19, 2023
Judgement on : February 2, 2023

DEBANGSU BASAK, J.:-

1. The appellant has preferred an appeal against the judgement and order of conviction dated March 18, 2021 passed by the learned Sessions Judge, Birbhum in Sessions Trial No. 11 of 2019 arising out of Sessions Case No. 24 of 2019.

2. By the impugned judgement and order of conviction dated March 18, 2021, the learned trial judge has convicted the appellant under Section 326 of the Indian Penal Code, 1860 and sentenced the appellant to undergo rigorous imprisonment for 10 years along with a fine of Rs. 10,000 in

default to undergo simple imprisonment for further 6 months for commission of the offence punishable under Section 326 of the Indian Penal Code, 1860.

3. The prosecution had alleged before the trial Court, against the appellant that, the appellant married the victim on July 3, 2005 according to Muslim Shariat law and that they were living as husband-and-wife. The appellant had subjected his wife to physical and mental torture by severely assaulting her while being in a drunken condition and on October 4, 2018 at about 5 AM the appellant had assaulted his wife with a sharp cutting tool on both her hands, legs nose, ear and neck at random, inflicting serious injuries and causing grievous hurt with the intention of murdering her.

4. Charges had been framed as against the appellant on July 16, 2019 under Sections 498A/326/307 of the Indian Penal Code, 1860. The appellant had claimed to be innocent and was tried. At the trial, the prosecution had examined 10 witnesses and tendered documentary and material evidence. On the conclusion of the evidence on the part of the prosecution, the appellant had been examined under Section 313 of the Criminal Procedure Code where the appellant claimed to be innocent and falsely implicated.

5. Learned advocate appearing for the appellant has submitted that, there were contradictions in the testimonies of the prosecution witnesses. He has drawn the attention of the Court to the evidence of PW 2 who is the injured witness and the evidence of the medical officer being PW 5 treating PW 2 at the material point of time. He has contended that, the discrepancies are major and fatal to the case of the prosecution.

6. Learned advocate appearing for the appellant has submitted that, two vital witnesses were not examined by the prosecution. He has referred to the materials in the paper book and submitted that, non-examination of such material witnesses were fatal to the case of the prosecution.

7. Learned advocate appearing for the appellant has submitted that, pictures which were marked as exhibits at the trial did not have the requisite certificate under Section 65B of the Evidence Act. Consequently, such the pictures could not have been admitted in evidence.

8. Learned advocate appearing for the appellant has submitted that, the allegation as against the appellant was that, the appellant assaulted his wife with a sharp cutting tool. Such sharp cutting tool and the wearing apparels were

not sent by the prosecution for forensic examination. In absence of such forensic examination, the benefit of doubt should be afforded to the appellant in view of the fact that, the prosecution had failed to bring forth the best evidence available.

9. Learned advocate appearing for the state has submitted that, the evidence of the victim being PW 2, the doctor treating the victim being PW 5 and PW 6 were of vital importance. He has submitted that, the doctor who attended to the victim stated that, on October 4, 2018, the victim disclosed to him the history of assault by the appellant. He has referred to the list of injuries found on the victim.

10. Learned advocate appearing for the state has submitted that, PW 6 was another doctor and who examined the victim on October 30, 2018 and treated her for her bone and tendon injury. According to him the testimony of the 2 doctors and the medical papers had corroborated the version of the victim being PW 2.

11. Learned advocate appearing for the state has submitted that, minor discrepancies with regard to time if any, cannot outstand the vital oral depositions and exhibited documents. He has submitted that, after the appellant was

arrested on October 4, 2018 and on the basis of his leading statement, the offending weapon bearing bloodstain was recovered from a bush near the house of the appellant. He has referred to Exhibit 3 dated October 4, 2018 and Mat Exhibit I in support of his contention.

12. Learned advocate appearing for the State has submitted that, latches on the part of the Investigating Officer in not sending the seized offending weapon or the wearing apparels for forensic test does not and should not destroy the prosecution case.

13. Learned advocate appearing for the State has submitted that, the statement of other witnesses namely PW 8 who was the brother of the victim was explicit. Such witness had received a call from the sister of the appellant requesting him to take the victim as the appellant had assaulted her severely. The victim had been admitted in the hospital for a considerable period of time.

14. Learned advocate appearing for the State had submitted that, the evidence of PW 2, 5, and PW 6 had corroborated the case of the prosecution. He has also referred to Exhibits 3, 4, 5 and 6.

15. Learned advocate appearing for the State has submitted that, the impugned judgement and order of conviction be affirmed.

16. The de facto complainant had deposed as PW 1. He had stated that, the victim got married to the appellant on July 3, 2005 according to Muslim Shariat law. After marriage, the victim had lived in her matrimonial home. Out of the marriage, the victim had given birth to one son and one daughter. Initially, the victim had lived peacefully at her matrimonial home. Thereafter, from the year 2014, the victim had been subjected to mental and physical torture. The appellant used to return home in a drunken condition and used to abuse and assault the victim. He had identified the appellant in Court.

17. PW 1 had stated that, on October 4, 2018 at about 5 AM, the appellant had assaulted the victim with a sharp cutting tool causing bleeding injury on her nose, hands and legs. The appellant used to demand money from the victim on various occasions and had also used filthy language. Neighbours and co-villagers had taken the victim to the hospital for treatment and informed him about the matter over telephone. On receiving the news, he had proceeded to the

hospital on his motorcycle. He had seen the injuries on the victim. The victim had been transferred to another hospital. He had lodged the written complaint with the police. He had identified the written complaint which was tendered in evidence and marked as Exhibit 1. He had tendered the photographs which he had taken of the victim at the hospital, in evidence and the same was marked as exhibit 2.

18. PW 1 had been cross-examined at great length on behalf of the appellant. The defence could not elicit anything favourable from the cross-examination of PW 1.

19. The victim had deposed as PW 2. She had stated that, the appellant is her husband. She had identified the appellant in Court. She had stated that, she got married to the appellant in July 3, 2005 according to Muslim Shariat law. After marriage, she had stayed at her matrimonial home and gave birth to a daughter and a son. Initially after the marriage, till the year 2014, she had concealed all types of ill-treatment of her husband and did not disclose the same to her mother or brothers as her mother was a widow and her brothers worked outside. She had stated that, her parents in law were aware about the treatment meted out by the appellant. Her in-laws did not ill-treat her. Her husband used to assault her

physically when she asked him to look out for work. He had also abused her and cast aspersions on her claiming that she was unchaste and having a relationship with her father-in-law.

20. PW 2 had stated that on October 4, 2018 at about 5 AM, the appellant had assaulted her with a sharp cutting tool on both her hands. Due to such cut injury, she was unable to move her little finger and ring finger of her right hand. The appellant had inflicted injuries on her nose. Due to such injuries, the tip of her nose was literally severed. The appellant had also dealt a blow with the weapon on both her legs, right shoulder and left upper arm. She had shown the injuries inflicted on her in Court. She had stated that, the appellant had attacked her without any provocation or prior quarrel. He had simply demanded money from her which she was unable to provide. She had pleaded with her husband to leave but her husband continued to assault her. At that time, Rabiul and his brother-in-law had come to rescue her. She had become unconscious at home due to profuse bleeding. She had been taken to the hospital for medical treatment. On the same day she had been taken to another hospital for better treatment. PW 1 had come to the 1st hospital to meet

her. She had disclosed about the incident to PW 1. It had taken 5 months for her to recover from the injuries. At the time of the incident, her son was at school and her daughter was at a private tuition. She had gone to her paternal home from the hospital and is residing there at. She had identified the sharp cutting instrument used by the appellant to assault her. She had also identified her wearing apparels as also the wearing apparels of the appellant.

21. PW 2 had been cross-examined at length on behalf of the defence. In cross-examination, she had stated that, the incident of assault was completed in 10 to 15 minutes. She had regained consciousness at the 1st hospital at about 11 AM when she disclosed to the doctor regarding the cause of injury.

22. A relative of the appellant had deposed as PW 3. He had stated that, on October 4, 2018 at about 8 AM, he received a telephone from the mother of the appellant that the appellant had attempted to murder his wife at his house. He had proceeded to the matrimonial home of the victim and found that the victim had been taken to the hospital. He had reached the hospital at about 9/9:30 AM when he saw the victim to be in an unconscious condition. The victim had

regained consciousness at 11 AM. The doctor had referred the victim to Burdwan for better treatment. He had stated that, at the 1st hospital, he had seen marks of cut injury on the victim on her nose, hands, shoulder, legs and ankle bearing bleeding injuries.

23. Another relative of the appellant had deposed as PW 4. He had stated that, he was not present at the time of occurrence. He had identified the appellant in Court. After returning from the field, he had heard from his wife that the victim had been assaulted. He had identified his signature on the seizure list. He had been declared hostile by the prosecution. On cross-examination by the prosecution after he had been declared hostile, he denied the suggestions put on behalf of the prosecution. In cross-examination, he had stated that, the police officer did not read out the contents of the document on which, he put his signature.

24. The doctor who had treated the victim at the 1st hospital deposed as PW 5. He had stated that, on October 4, 2018, the victim was brought and admitted to the hospital at 6 AM under him. On examination of the victim he had found 6 injuries. He had tendered the bed head ticket of the victim. He had stated that all the wounds were found fresh in nature. He

had described the wounds found on the victim. He had stated that the patient suffered multiple injuries, for which she was referred to a higher centre meaning Burdwan Medical College and Hospital. He had opined that the injuries suffered by the victim may have been caused by a sharp cutting weapon or instrument. The victim was in a conscious condition at the time of examination.

25. In cross-examination, PW 6 had stated that, the patient was admitted at 7:40 AM in terms of the bed head ticket. In reply to a query of the Court, he had stated that, patients brought by the patient party are first kept in the observation room and after observation they are admitted. He had stated that, the patient party disclosed to him that they brought the patient at 6 AM. He had stated that, initially an emergency observation ticket was issued to the patient which he tendered in evidence and the same was marked as exhibit A. He had stated that, the assault was disclosed to him by the patient herself.

26. The father of the appellant had deposed as PW 7. He had stated that, the incident took place in October 4, 2018 in the morning. On that date at about 6:30 AM he had left his house with his grandson that is the son of the appellant to

accompany him to school. On his return, at about 10:30 AM, he had heard from his neighbours that the appellant had assaulted his wife who sustained cut injuries. He had seen many persons to be present at his house. He had gone to visit the victim at the 2nd hospital. His son, the appellant herein had gone to the police station voluntarily.

27. The elder sister of the victim had deposed PW 8. She had stated that, the victim was married to the appellant. She had identified the appellant in Court. She had stated that, after marriage, the victim used to reside in her matrimonial home. The appellant used to subject the victim to torture and picked up quarrels with her. He had also demanded money from the victim. The appellant did not attend any work and whenever the victim had asked him to go for work, he picked up quarrel with her. On October 4, 2018, an incident had taken place in the matrimonial home of the victim. At 5:30 AM on that date, he had received a telephone from the sister of the appellant asking her to take away the victim as the appellant had assaulted her severely with a sharp cutting tool. At that time, she was in Kolkata and on receiving the news she had started for Suri. On the way she had been informed that the condition of the victim was serious and that the

victim was taken to the 2nd hospital for better treatment. She had got down from the train at Burdwan and arranged for medical treatment of the victim at the hospital. The victim had been admitted to the 2nd hospital on October 4, 2018 for 4 days. She had been admitted again on October 15, 2018. On the 2nd occasion she had remained for 3 days. She had seen the victim bearing cut injuries on her nose, shoulder, both hands and both legs. The nose was severed. She had identified the pictures of the victim which were tendered in evidence and marked as exhibit 2. The photographs which she had identified were taken by PW 1 and transmitted to her on WhatsApp while she was travelling by train. She had handed over such photographs to the police on October 25, 2018. She had identified the seizure list as Exhibit 7.

28. The mother of the appellant had deposed as PW 9. She had stated that at the time of the occurrence she was at the pond for washing utensils. She had heard a hue and cry. She had rushed to the house. She had found the victim to be lying unconscious with her nose, hands and legs bearing bleeding cut injuries.

29. The investigating officer had deposed as PW 10. He had narrated about the course of investigations. He had

spoken about the seizures he had made. He had identified the photographs of the victim. He had submitted the chargesheet on conclusion of the investigations. He had been cross-examined at length by the defence. Nothing favourable had been extracted from him in such cross-examination.

30. The appellant had been examined under Section 313 of the Criminal Procedure Code where he had claimed that he was falsely implicated. He had stated that, he surrendered voluntarily to the police. He had also claimed that the police forced him to sign the seizure list being Exhibit 3.

31. The victim had been treated in two hospitals on October 4, 2018. Medical documents relating to the victim at the two hospitals on and from October 4, 2018 had been marked as Exhibit 4, 5, 6 and A. All the 4 medical documents had noted physical assault on the victim with the victim bearing multiple sharp cut injuries. Two doctors who had treated the victim had been examined on behalf of the prosecution. Both the doctors had spoken about the victim suffering from multiple cut injuries. The 1st doctor who treated the victim being PW 5 had stated in details the injuries he had found on the victim, namely: –

“1. One lacerated wound on the medial side of the left hand near the base of left little finger measuring 1 ½ ” x ¼ ”.

2. One incised wound on the medial side of left elbow, oblique in direction measuring 3” x 1/4”, skin and subcutaneous tissue cut.

3. Two incised-like wound on the dorsal aspect of right hand, oblique in direction measuring 3” x ½”, involving skin and subcutaneous tissue and deep structure with bleeding.

4. One oblique incised wound on the lower 1/3rd of left forearm, oblique in direction measuring 3” x ½”, involving skin, subcutaneous and deep structure – also bone cut.

5. One incised wound on the back of the left ankle area involving tendon and deep tissue.

All wound were fresh in nature.”

32. PW 5 had stated that, the injuries sustained by the victim may be caused by sharp cutting weapon or instrument. The discharge certificate of the 2nd hospital being Exhibit 6 stated that, the doctor conducted repair of multiple cut injuries under general anaesthesia on October 4, 2018.

33. PW 1, 3, 8 and 9 had seen bleeding cut injuries on the person of PW 2. PW 8 had seen the injuries on PW 2 immediately after the assault on PW 2.

34. The prosecution had therefore established that, the victim suffered multiple cut injuries on October 4, 2018 by a

sharp cutting instrument for which she was admitted to the hospital.

35. The injured in her oral testimony as PW 2 had implicated the appellant as the person who assaulted her on October 4, 2018 by a sharp cutting instrument. The sharp cutting instrument had been seized by the police. The victim had identified the sharp cutting instrument used for the purpose of assaulting her on October 4, 2018 by the appellant, in Court.

36. The prosecution had established at the trial that, the victim had suffered grievous hurt. Due to the cut injuries that had been suffered by the victim, she was unable to move her little finger and ring finger of her right hand with her nose being severed.

37. It has been contended on behalf of the appellant that the photographs of the injuries of the victim were unaccompanied by requisite certificate under Section 65B of the Evidence Act and therefore inadmissible in evidence. Independent of the photographs of the injuries marked as exhibits at the trial, the evidence of the 2 doctors and the documentary evidence being exhibits 4, 5, 6 and A have

conclusively established that, the victim had suffered grievous hurt.

38. The victim had identified her husband as the assailant. The appellant in his examination under Section 313 of the Criminal Procedure Code has not offered any explanation with regard to the claim of the victim that he was the assailant except stating that it was false. The appellant has not been able to draw attention to any material on record to disbelieve the oral testimony of the victim where she identified the appellant as the assailant.

39. The contention of the appellant that there were discrepancies in the oral testimonies of the prosecution witnesses, in the facts and circumstances of the present case, has no substance, with the deepest respect. The discrepancies are too minor to impact the reliability of the oral testimonies of the prosecution witnesses.

40. It has also been contended on behalf of the appellant that, two relevant witnesses had been withheld. Again with the deepest of respect, the prosecution had been able to establish the guilt of the appellant beyond reasonable doubt on the basis of the evidence led at the trial. The appellant has not drawn the attention of the Court to any material on record

to suggest that, the 2 witnesses spoken of were of such nature that, their absence had vitiated the case of the prosecution.

41. The absence of forensic evidence in the facts and circumstances of the present case is not fatal to the prosecution as the prosecution had led sufficient ocular and documentary evidence to establish the guilt of the appellant beyond reasonable doubt.

42. The trial Court had sentenced the appellant under Section 326 of the Indian Penal Code, 1860 and directed him to undergo rigorous imprisonment for 10 years along with the fine of RS. 10,000 and in default to undergo simple imprisonment for further 6 months. The Court had also invoked provisions of Section 357A of the Criminal Procedure Code and recommended the District Legal Services Authority, Birbhum to decide on the compensation that may be awarded to the victim for her financial rehabilitation.

43. In the facts and circumstances of the present case, we have not found any ground to interfere with the impugned judgement of conviction and the order of sentence. We affirm the same.

44. CRA 191 of 2021 is dismissed.

45. Trial Court records along with a copy of this judgement and order be sent down at once to the appropriate Court for necessary action.

46. 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.]

47. I agree.

[MD. SHABBAR RASHIDI, J]